



**City of Kingston
Report to Council
Report Number 18-175**

To: Mayor and Members of Council
From: Lanie Hurdle, Commissioner, Community Services
Resource Staff: Same
Date of Meeting: June 12, 2018
Subject: Municipal Accommodation Tax – Implementation Plan

Executive Summary:

In March 2018, Council endorsed in principle a 4% Municipal Accommodation Tax (MAT) which would apply to hotels, motels and bed & breakfast accommodation, pending a final staff report with details on the implementation of the MAT.

Staff have worked with both Kingston Accommodation Partners (KAP) and Tourism Kingston (TK) to develop an implementation plan and conducted consultation with accommodators.

As previously noted in the March Council report, KAP has been collecting a 3% voluntary fee from participating accommodators since 2004. The implementation of the MAT would mean that a 4% mandatory accommodation tax would be charged by all accommodators. An important point to note is that this tax is payable by the visitor and **not** the business itself. This is **not** a property tax.

The MAT can be implemented by municipalities as a result of the approval of Bill 127, A Stronger, Healthier Ontario and Transient Accommodation Regulation 435/17 which came into force in December 2017. A number of municipalities have now implemented or are in the process of implementing a municipal accommodation tax. Such municipalities include Ottawa, Mississauga, Toronto, Brockville and Niagara Falls.

The proposed implementation plan developed by City staff, Tourism Kingston and KAP proposes an effective date of August 1, 2018 for the MAT. The implementation plan proposes that the collection of the MAT be executed by KAP, similar to the 3% existing voluntary fee that has been collected by KAP. The mandatory MAT will replace the current 3% voluntary fee.

It is proposed that the funds collected be redistributed between marketing/promotion and a Development Fund. The marketing/promotion funds would be spent based on an integrated plan

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developed by KAP, TK and in consultation with a Marketing Committee which includes City representation. The Development Fund would be utilized to finance product development, major events attraction and strategic initiatives to advance the implementation of the Integrated Destination Strategy, which is currently in progress. Decisions related to the Development Fund would be authorized through a committee which would include representation from TK, KAP and the City.

There are a number of exemptions to the MAT, including colleges and universities, which are exempted based on provincial legislation. Rental accommodations, such as Airbnb's, are also proposed to be initially exempted from the MAT. However, it is expected that these accommodations types be included at the same time as the rental licensing program is introduced. This is expected to be presented to Council in the fall of 2018. Should Council endorse the program, changes would be made to the MAT program to include Airbnb's type of accommodations. Staff recognize the importance of including these accommodations types, as part of the holistic objective.

In 2017, KAP collected approximately \$1.6M through the 3% voluntary fee from 24 accommodators, not including revenues from St. Lawrence College and Queen's University. Based on this information and the potential number of rooms should the mandatory 4% MAT be implemented, it is estimated that the MAT could generate up to \$3M from visitors. Staff recognize that this amount is estimated based on the 2017 3% voluntary fee and that the estimated amount could be lower than \$3M. The addition of Airbnb's type of accommodations will increase this estimate.

An agreement between KAP, TK and the City will be required to implement the MAT. The Options/Discussion section of this report provides the highlights of the proposed tri-partite agreement which would be completed following Council endorsement of this report.

Recommendation:

That Council approve the proposed implementation plan for the Municipal Accommodation Tax to be effective August 1, 2018 as described in Report Number 18-175; and

That Council delegate authority to the Mayor and Clerk to enter into necessary agreements with Kingston Accommodation Partners and Tourism Kingston to implement the Municipal Accommodation Tax as described in Report Number 18-175; and

That a Municipal Accommodation Tax Development Fund Reserve be created with funds used to support tourism promotion, including product development, major event attraction and other strategic initiatives; and

That a by-law, attached as Exhibit A to Report Number 18-175, be presented to Council to establish the Municipal Accommodation Tax.

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Options/Discussion:**Legislative Background**

The Province endorsed the 2017 Ontario Budget, A Stronger, Healthier Ontario, which grants authority to municipalities to impose a mandatory municipal accommodation tax (MAT). The MAT would apply to hotels, motels, bed & breakfasts, participants operating a common platform for room nights of under 30 days. The legislation exempts all rooms rented by institutions.

Municipalities that implement a MAT, who have an existing Destination Marketing Program (DMP) program, will be required to revenue share an amount equivalent to what was raised from the DMP to the local non-profit tourism entity who previously received such revenues. For municipalities without such a DMP, at least 50% of the MAT revenue is to be allocated to the appropriate eligible tourism entity.

As a result of the approval of Bill 127, A Stronger, Healthier Ontario, which provided a framework for the MAT, the Ministry of Municipal Affairs, Ministry of Finance and Ministry of Tourism, Culture and Sport have worked together to develop a Regulation which specifies the requirements for the administration of the MAT. In November 2017, the Province issued the Transient Accommodation Regulation 435/17 which came into force in December 2017 and provided the provisions to enable municipalities in Ontario to implement a MAT.

The Regulation enables municipalities to establish a MAT through a municipal by-law as well as set the appropriate rate for a MAT. Municipalities can also enter into agreements with other parties for the collection of the MAT on behalf of the municipality. The Regulation also prescribes a revenue sharing formula where proceeds are shared with the eligible tourism entity. Under the Regulation, the municipality is required to provide the local tourism entity:

- The amount collected and received by the not-profit tourism entity through the DMF based on the previous year; and
- In subsequent years, the previous fiscal year MAT revenue collected and received by the non-profit tourism entity adjusted by a 10-year rolling average of the annual percentage change in Ontario's total tourism receipts published by the Ministry of Tourism, Culture and Sport.

The Regulation requires municipalities to ensure that the local tourism entity receives similar revenues collected through the DMF in the last fiscal year before the tax came into effect. Municipalities are not required to supplement the MAT if revenues are below the base year of the previous fiscal year.

Highlights of Proposed Implementation Plan for the Municipal Accommodation Tax

Implementation and Exemptions – It is proposed that the MAT be applicable to all hotels, motels and bed & breakfasts starting on August 1, 2018. Other accommodations such as Airbnb's would be added at the same time as the implementation of rental licensing which would require a future amendment to the by-law, most likely in the fall of 2018. The Province has also provided for a number of additional exemptions, which include universities and colleges. Both

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Queen's University and St. Lawrence College have been collecting the voluntary 3% fee for a number of years. Under the MAT, both institutions would not be required to collect the MAT but could still choose to voluntarily collect a 4% and remit it to KAP. This contribution would be part of KAP's separate collection and budget and would not be accounted for in the yearly MAT collection. The complete list of exemptions is provided in the draft by-law attached as Exhibit A to this report.

Collection and Penalties – It is proposed that KAP be responsible for the administration and collection of the MAT. KAP has been collecting the 3% voluntary fee and has a system in place to provide for a smooth transition to the mandatory 4% MAT. KAP has been and will continue to provide training to accommodators for proper collection of the MAT. This includes providing standard forms as well as processes for remittance of the MAT by accommodators. There is also flexibility in the collection schedule for smaller accommodators. It is proposed, through the implementing by-law, that both KAP and the City would have the ability to add penalties and interest and the City would have the ability to prosecute should an accommodator refuse to comply with the municipal by-law on the MAT. The City's Financial Services Department will work closely with KAP to ensure that appropriate collection, tracking and reporting systems are in place and regularly reviewed and will collaborate with KAP on collection methods where funds are overdue. The agreement between KAP, TK and the City for the MAT implementation will outline specific requirements in this regard.

Marketing & Promotion – It is proposed that up to 65% of the yearly MAT be redirected to marketing and promotion efforts. It is important to note that based on Regulation 435/17, the same amount as previously collected by KAP, in their role as DMP, has to be reallocated to KAP. The Legislation also includes an inflationary increase over time. Based on audited numbers recently provided to the City, KAP collected \$1.6M from participating accommodators in 2017. This amount does not include Queen's University and St. Lawrence College's 3% voluntary fees. Based on some high level calculations of rooms that contributed to the 3% voluntary fee in 2017 and the potential to implement a 4% mandatory tax to all hotels, motels and bed & breakfasts, it is estimated that the total funds collected through the MAT could be around \$3M and that 65% of that amount (\$1.95M) would be reallocated to marketing and promotion efforts.

As per the existing 3% voluntary fee, these funds would cover KAP's base operational costs and the majority of the funds would then be invested directly into marketing and promotion as per an integrated marketing plan prepared by KAP and TK, in consultation with the Kingston Destination Marketing Committee which includes City representation. Funds collected through the MAT that are being proposed to be reinvested into marketing are in addition to funds currently included in TK's operational budget as well as funds being generated through the Kingston Penitentiary Tours for destination marketing. It is not yet known how long the Kingston Penitentiary funds will be available. Both funds combined have been highly successful in increasing Kingston's promotion and it will be critical to ensure that initiatives for these two sources of funding are coordinated to maximize promotion.

Development Fund – It is proposed that 35% of the yearly MAT (about \$1M per year based on estimates) be redirected to a Development Fund which would be utilized to support product

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development, major event attraction as well as strategic initiatives that will advance the implementation of the Integrated Tourism Strategy which is being finalized by Tourism Kingston and is to be presented to City Council in the fall. This fund would not be utilized for operational expenses, marketing efforts or to cover any of the three (3) partners' staff salaries. Decisions related to the allocation of the Development Fund would be made by a committee composed of two (2) representatives of KAP, two (2) representatives of TK and three (3) representatives of the City. The fund would be managed jointly by the City and KAP. Yearly reports would be provided to all three (3) partners.

Audits – It is proposed that annual audited financial statements for both KAP and TK include supplementary information specific to the MAT and that these audited financial statements be submitted to the City each year. It is also proposed that KAP and the City have the ability to request a special purpose audit of the MAT amounts collected and submitted by any accommodator, as required.

Consultation and Training – KAP, TK and City staff have held a lunch and learn with accommodators to go over information and the proposed implementation of the MAT. KAP has also held one on one training sessions with various accommodators to ensure that they will be ready for the MAT collection starting on August 1, 2018. KAP will continue to provide training as required.

Existing Policy/By-Law:

Not applicable

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

KAP has been collecting a voluntary fee of 3% on accommodations since 2004. In 2017, this voluntary fee amounted to approximately \$1.6M, not including St. Lawrence College and Queen's University contributions. Based on the number of participating accommodators and number of rooms available within the City, it was estimated that up to \$3M could be leveraged yearly through the MAT. Staff recognize that this amount is estimated based on the 2017 3% voluntary fee and that the estimated amount could be lower than \$3M. The introduction of additional hotels, as well as the addition of accommodations such as Airbnb's, will result in an increase in funds collected through the MAT.

As per the Transient Accommodation Regulation 435/17, the same amount as previously collected by KAP, as the DMP, from eligible accommodators, has to be transferred back to KAP for marketing and promotion purposes. The implementation plan and agreement between the

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City and KAP proposes that 65% of the 4% mandatory MAT be redirected to KAP, to be invested in the integrated marketing plan to be developed in partnership with Tourism Kingston and in consultation with the Kingston Destination Marketing Committee which has City of Kingston representation. It is anticipated that the 65% will be about \$1.95M and therefore higher than the amount previously collected by KAP.

It is also proposed that 35% (approximately \$1M) of the yearly MAT collection be redirected to a Development Fund that will be utilized for product development, major event attraction and the advancement of strategic priorities within the Integrated Destination Strategy to be completed by Tourism Kingston.

Contacts:

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Other City of Kingston Staff Consulted:

Alan McLeod, Senior Legal Counsel & Deputy City Solicitor, Legal Services

Desiree Kennedy, CFO & City Treasurer, Chief Financial Officer

Jeff Walker, Manager, Taxation & Revenue, Financial Services

Others Consulted

Megan Knott, Executive Director, Kingston Accommodation Partners

Rob Kawamoto, Executive Director, Tourism Kingston

Exhibits Attached:

Exhibit A A By-Law to Establish the Municipal Accommodation Tax

By-Law Number 2018-XX

A By-Law of the City of Kingston to establish the Municipal Accommodation Tax

Passed: June XX, 2018

WHEREAS the City 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, Chapter 25, as amended, and the Transient Accommodation Tax Regulation 435/17; and

AND WHEREAS at its meeting on June 12, 2018, the Council of The Corporation of the City of Kingston approved the establishment of the transient accommodation tax to be imposed on the purchase of short term accommodations within the City of Kingston, which will generate revenue that may be shared with designated non-profit entities who promote local tourism as further described in Regulation 435/17;

AND WHEREAS section 425 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under that Act is guilty of an offence;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

Definitions

1. For the purposes of this By-Law:

“accommodation” means lodging, and the right to use lodging, that is provided for consideration, whether or not the lodging is actually used.

“person” means an individual as well as a corporation.

“provider of transient accommodation” means a person or an entity that sells, offers for sale, or otherwise provides accommodation.

“purchaser” means a person who gives money or other consideration in exchange for accommodation.

Administration

The Financial Services Department is responsible for the administration and enforcement of this By-Law.

Application of Tax

2. (a) A provider of transient accommodation shall charge the Municipal Accommodation

Tax, plus applicable taxes, to every Purchaser, at the time of purchase.

- (b) A purchaser shall pay to the provider of transient accommodation an accommodation tax, at the time of purchase, in the amount of four (4) percent and any associated tax of the purchase price of the transient accommodation which is provided for a continuous period of less than 30 nights and is provided within a hotel, motel, inn, bed and breakfast, resort or hostel.
- (c) A provider of transient accommodation shall include on every invoice and receipt for the purchase of transient accommodation a separate item for the amount of tax on the transient accommodation imposed on the purchase, and the item shall be identified as "Municipal Accommodation Tax".

Exemptions

- 3. The Municipal Accommodation Tax imposed by subsection 1(a) does not apply to:
 - (a) Every university in Ontario and every college of applied arts and technology and post-secondary institutions in Ontario whether or not affiliated with a university, the enrolments of which are counted for the purposes of calculating annual operating grant entitlements from the Crown on accommodations provided to students while the student is registered at and attending the institution;
 - (b) 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 license issued under the Private Hospitals Act;
 - (c) Every long-term care home as defined in subsection 2(1) of the Long-Term Care Act, 2007, retirement home and hospices;
 - (d) Every treatment centre that receives provincial aid under the Ministry of Community and Social Services Act;
 - (e) Every house of refuge or lodging for the reformation of offenders;
 - (f) Every charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for emergency;
 - (g) Every tent or trailer site supplied by a campground, tourist camp or trailer park;
 - (h) Every accommodation supplied by employers to their employees in premises operated by the employer;
 - (i) Every private, residential dwellings (or part of dwellings) rented through a third party home-sharing listing entity to provide sleeping accommodations to a person or persons on a temporary basis (generally less than 28 days, with daily or weekly

rates);

- (j) Every hospitality room in an establishment that does not contain a bed and is used for displaying merchandise, holding meetings or entertaining; or
- (k) The accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.

Tax Collected by Service Provider

- 4. Providers of transient accommodation shall collect the Municipal Accommodation Tax from the purchaser at the time the accommodation is purchased and shall remit the Municipal Accommodation Tax to the tax collection agents, designated by the City, and within the time prescribed in any notice and shall include a detailed statement in the form required by the tax collection agents detailing the Municipal Accommodation Tax collected for the reporting period.

Tax Collection Agent

- 5. The Municipal Accommodation Tax received by providers of transient accommodation shall be collected by the Kingston Accommodation Partners as agents for the municipality who shall administer the Municipal Accommodation Tax in accordance with an agreement entered into with the City.
- 6. The Mayor and the Chief Administrative Officer may designate additional tax collection agents for the municipality and enter into agreements with any designated collection agents.

Penalties and Interest

- 7. Past due amounts payable by providers of transient accommodation shall bear penalties and interest at the rate applicable to property tax arrears and shall be payable on the non-payment of the full amount of the outstanding Municipal Accommodation Tax by the due date as set out in the notice issued by Kingston Accommodation Partners. A penalty will be charged on the unpaid amount of a Municipal Accommodation Tax installment on the first day of default and monthly interest charges will be imposed on the first day of each month thereafter until paid in full. An additional fee will be charged in respect of any remittances made by cheque that are not honoured by the financial institution upon which it is drawn.

Liens

- 8. All Municipal Accommodation Tax, penalties and interest that are past due shall be deemed to be in arrears, and may be transferred to the tax collectors' roll of the City to be collected in the same manner as municipal property taxes and shall constitute a lien upon the lands.

Audit and Inspection

9. (a) Every provider of transient accommodation shall keep and retain books of account, records and documents sufficient to furnish the City and its designated tax collection agents with the necessary particulars of sales of accommodation, amount of levy collected and remittance.
- (b) The City's designated tax collection agent may inspect and audit all books, documents, transactions and accounts of the transient accommodation service provider as required for the purposes of administering and enforcing this by-law.
- (c) No person shall obstruct or hinder or attempt to obstruct or hinder a designated tax collection agent or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-Law.
- (d) Every designated tax collection agent shall have the right to enter lands and premises to conduct an inspection to determine whether the provisions of this By-Law and any order(s) issued hereunder are being complied with in accordance with the provisions of Sections 435 and 436 of the Municipal Act, 2001.

Orders

10. If the City is satisfied that a person has contravened a provision of this By-Law, the City may Order the person who contravened the By-Law or who caused or permitted the contravention to discontinue the contravening activity.
11. No person shall fail to comply with an order issued pursuant to section 10 of this By-Law.

Offence and Penalties

12. (a) Every person who contravenes any provision of this by-law is guilty of an offence as provided for in subsection 429(1) of the Municipal Act, 2001, and all such offences are designated as continuing offences as provided for in subsection 429(2)(a) of the Municipal Act, 2001.
- (b) 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 total of all of the daily fines for the offence is not limited to \$100,000.00, as provided for in 429(3) paragraph 2 of the Municipal Act.
- (c) As provided for in section 431 of the Municipal Act, 2001, if a person has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the person convicted issue an order:

- (d) Prohibiting the continuation or repetition of the offence by the person convicted;
and
- (e) Requiring the person convicted to correct the contravention in the manner and
within the period that the court considers appropriate.

Without limiting the foregoing, the City may establish and use other dispute resolution mechanisms and enforcement measures if an amount assessed for outstanding tax, penalties or interest remains unpaid after it is due, including measures such as garnishment or the seizure and sale of property.

Validity

- 13. If a Court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

Short Title of By-Law

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

Commencement

- 15. This By-Law shall come into force and take effect on the 1st of August, 2018.

Given First and Second Readings: June 12, 2018

Given Third Reading and Passed: [meeting date]

John Bolognone
City Clerk

Bryan Paterson
Mayor