

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2023-56

A By-law to implement a Municipal Accommodation Tax

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

AND WHEREAS pursuant to Section 400.1 of the Act and the Ontario Regulation 435/17, the Council of The Corporation of the Town of Midland wishes to establish the tax rate and to levy on the purchase of transient accommodation within the Town of Midland;

AND WHEREAS pursuant to section 400.1 (3) and 400.4 of the Act, Council can 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 Council wishes to add the arrears of the MAT, interest and penalties to the tax roll for the properties in the Town of Midland registered in the name of the Provider to be collected in like manner as property taxes and such arrears shall constitute a lien upon the lands, but pursuant to section 400.4(2) of the Act, such lien shall not be a priority lien for the purposes of subsections 1(2.1), (2.2) and (3) of the 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.

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND ENACTS AS FOLLOWS:

1. For the purposes of this By-law:

"Accommodation" means Lodging, whether in a hotel, motel, motor hotel, lodge, inn, resort, bed and breakfast, short term rental accommodation or other establishment providing lodging, and the right to use Lodging, that is provided for consideration, whether or not the lodging is actually used. Where **"Lodging"** includes:

- a) the use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom;
- b) the use of one or more additional beds or cots in a bedroom or suite.

"Bed and Breakfast" means an owner-occupied, single-detached dwelling with no more than four guest rooms available for overnight lodging, where only breakfast may be included, and may include living accommodations used by the resident of the dwelling during time of operation.

"Council" means the Council of The Corporation of the Town of Midland.

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

“Establishment” means the physical location, a building or part of a building that provides Accommodation or Short-Term Rental Accommodation.

“Municipal Accommodation Tax” or **“MAT”** means the tax imposed under this By-law.

“Officer” means a Police Officer, Fire Inspector, Building Inspector, Zoning Examiner, Plans Examiner, Municipal Law or Enforcement Officer.

“Owner” means the Person holding title to the property on which the Accommodation is located, and **“Ownership”** has a corresponding meaning.

“Person” means an individual, a Corporation, a partnership, or an association.

“Provider” means a person or an entity that sells, offers for sale, or otherwise provides Accommodation, and includes agents, hosts or others who sell, offers for sale or otherwise provides Accommodation. Where the Provider cannot easily be determined, the Owner is deemed to be the Provider.

“Purchaser” means a person who purchases 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, but does not include the goods and services tax imposed by the Government of Canada or by the Province of Ontario;

“Short-Term Rental Accommodation” means the use of a single-family dwelling, that operates or offers a place of temporary residence, lodging or occupancy by way of concession, permit, lease, licence, rental agreement or similar commercial arrangement for any period equal to or lesser than thirty (30) consecutive calendar days, throughout all or any part of the calendar year, unless otherwise prohibited by this by-law or any other by-law of the Town of Midland. Accommodation uses shall not include commercial operations such as bed and breakfast, hotel, motel, motor hotel, nursing home, private or public hospital, a recreation vehicle, a tent campground, boat slips, or similar commercial or industrial uses.

“The County” means the Corporation of the County of Simcoe.

“Town” means the Corporation of the Town of Midland.

Application of Municipal Accommodation Tax

2. Subject to the exemptions provided in Section 3, a Purchaser shall, at the time of purchasing Accommodation, pay the Municipal Accommodation Tax in the amount of two-and-a-half per cent (2.5) the first year of implementation, three-

and-a-half per cent (3.5) the second year of implementation, and four (4) per cent the third and following years of implementation of the Purchase Price of Accommodation provided for a continuous period of thirty (30) days or less provided in a hotel, motel, motor hotel, lodge, inn, bed and breakfast, short-term rental, dwelling unit or any place in which Accommodation is provided.

- a) For greater certainty, the continuous period referred above is not disrupted by the purchase of different rooms, suites, beds or other lodging in the same Establishment or short-term rental in the course of the continuous period.

Exemptions

3. The Municipal Accommodation Tax imposed under this By-law 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 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 license 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 hospices;
 - f) A hotel or motel used by The County or its agents for shelter purposes;
 - g) A treatment center 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 charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for emergency;

- j) A tent or trailer site supplied by a campground, tourist camp or trailer park;
- k) Every boat or water vessel moored at a marina;
- l) Employers to their employees in premises operated by the employer; and
- m) A hospitality room in an establishment that may or may not contain a bed and is used for displaying merchandise, holding materials, or entertaining.

Collection and Remittance

4. A Provider shall collect the MAT from the Purchaser at the time the Accommodation is purchased.
5. The amount of the MAT shall be identified as a separate item or charge on a bill, receipt, invoice or similar document issued by the Provider in respect of the Accommodation on which the tax is imposed and the item shall be identified as "Municipal Accommodation Tax."
6. A Provider shall, on or before the fifteenth (15) day of every following month, remit to the Town, or its agent, for the amount of the MAT collected for the previous month and submit the monthly statements in the form required by the Town, or its agent, detailing the number of Accommodations sold, the purchase price of each Accommodation, the MAT amount collected and any other information as required by the Town, or its agent, for the purposes of administering and enforcing this By-law. Collection dates for Short Term Rentals will be on a quarterly basis.
7. When a 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.
8. Should a Provider not provide proper accounts, records and documentation, then the MAT owing will be based on the Accommodation's full occupancy and will be collected as per Section 6.
9. The Town may enter into agreements with designated collection agents who will collect the MAT from the Providers of transient Accommodations as agents for the Town and who will administer the tax and remit to the Town.
10. The Treasure or Clerk and Director or designate may enter into agreements with designated collection agents.
11. The collection agent(s) must keep all records of collection for a period of not less than seven (7) years.

Interest Penalties

12. A percentage charge of 1.25 per cent of the amount of the MAT due and unpaid shall be imposed as a penalty for the non-payment of taxes on the first day of default based on the full occupancy of the Establishment unless the actual amount of the MAT owing can be determined by the Town, in that case, the percentage charge of 1.25 per cent of the actual amount of the MAT will be imposed.
13. An interest charge of 1.25 per cent each month of the amount of the MAT due and unpaid, shall be imposed for the non-payment of taxes on the first day of each month and subsequent months following the first day of default.
14. The Town, at its discretion, may automatically assess the MAT collected for the Provider for the purpose of determining the amounts owing and the interest to be charged in the event that Provided has not provided statements in accordance under "Collection and Remittance." This will be determined on the basis of the following formula:

$$A \times 4\% = B$$

Where,

"A" is the amount of revenue that would have been generated had that establishment experienced full occupancy for the period; and,

"B" is the amount deemed to be the Municipal Accommodation Tax which should have been collected and remitted and deemed and remains unremitted as of the first day of default.

Liens

15. All MAT charges, penalties and interest that are past due shall be deemed to be in arrears, and may be added to the tax roll for any real property in the Town of Midland registered in the name of the Provider to be collected in like manner as property taxes and shall constitute a lien upon the lands, but such lien shall not be a priority lien for the purposes of subsections 1(2.1), (2.2) and (3) of the Municipal Act, 2001, as amended, and such lien will not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances.

Audit and Inspection

16. Each Provider shall keep books of account, records, and documents sufficient to furnish the Town, or its agent, with the necessary particulars of sales of Accommodations, amount of MAT collected and remittance and will retain these

records of collection for a period of no less than seven (7) years. The Provider shall provide the books of account, records and documents to the Town within five (5) days upon request.

17. The Town, or its agent, may inspect and audit all books, documents, transactions and accounts of the Providers and require the Providers to produce copies of any documents or records required for the purposes of administering and enforcing this by-law, as required.
18. 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 Town in the exercise of a power or the performance of a duty under this By-law.
19. Town employees and 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 Section 435 and 436 of the Municipal Act, 2001.

Administrative Penalties

20. Every person who contravenes any of the provisions of this By-law and every director of a corporation who concurs in such contravention by the corporation is guilty of an offence and may be subject to an Administrative Penalty or as an offence and conviction liable to a fine in keeping with the provisions of the Provincial Offences Act.
21. An Officer who finds that a person has contravened any provision of this By-law may issue a penalty notice addressed to that person.
22. Any person who contravenes any provision of this By-law shall, upon issuance of a penalty notice pursuant to Section 20, be liable to pay to the Municipality an administrative penalty in the amount as noted within the Fees and Charges By-law.
23. The penalty notice shall be given to the person to whom or to which it is addressed as soon as reasonably practicable and shall include the following information: (a) Particulars of the contravention, including to which property it applies; (b) The amount of the administrative penalty; (c) A statement advising that an administrative penalty will constitute a debt to the Municipality.
24. A person who has been issued a penalty notice shall pay the administrative penalty within fifteen (15) days from the date that notice was issued.
25. An administrative penalty that is deemed to be confirmed constitutes a debt to the Municipality and may be added to the tax roll of the property on which the offence occurred.

Other Penalties

26. Every Person who contravenes any provision of this By-law is guilty of an offence and, in addition to being liable for payment of the penalty imposed by Section 11-24, is liable to a fine and such other penalties as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33 and the Municipal Act., 2001 S.O. 2001 c. 25, each as amended:
- a) 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, 2001.
 - b) When a person has been convicted of an offence under this by-law, the Superior Court of Justice or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the person convicted, issue an order:
 - i. prohibiting the continuation or repetition of the offence by the person convicted; and
 - ii. requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
27. Without limiting the foregoing, the Town 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, the seizure and sale of property and the creation and registration of liens as it considers appropriate.

Refunds

28. Where a person has paid or remitted an amount that is not payable under this By-law, the municipality may, upon receipt of satisfactory evidence, make determination that the amount was wrongly paid or remitted, and if such a determination is made, the Town shall refund or credit all or part of the amount, but no refund shall be made unless an application for such refund is made within 24 months after the payment date.
29. Where a person has, in accordance with this By-law, applied for a refund under this By-law and the person's claim is in whole or in part denied, the Town shall deliver to such person by mail, a statement as such and the statement shall specify the denied amount and the reasons.

Delegation of Authority

- 30. Per the Delegation of Authority By-law, the Clerk, Treasurer, and/or designate, is hereby delegated the authority to enter into agreements, including all necessary documents ancillary thereto, with another person or entity as agent for the Town, providing for the implementation and collection of the Municipal Accommodation Tax, all in a form satisfactory to the Town's Solicitor.
- 31. Per the Delegation of Authority By-law, the Clerk, Treasurer, and/or designate, is hereby delegated the authority to enter into agreements, including all necessary documents ancillary thereto, with the Eligible Tourism Entity that receives an amount of the MAT respecting reasonable financial accountability matters in order to ensure that amount paid to the entity is used for the exclusive purpose of promoting tourism, and the agreements may provide for other matters, all in a form satisfactory to the Town's Solicitor.
- 32. The Chief Financial Officer or designate, shall be responsible for the administration of this By-law, including but not limited to approvals, appeals, enforcement, collection, and for instructing the Town's Solicitor to take such legal action as may be considered appropriate.

Validity

- 33. If a court of competent jurisdiction declares any provision, or any part of a provision, of the 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.

Commencement

- 33. This By-law shall come into force and take effect on the 1st of January, 2024.

BY-LAW PASSED AND ENACTED THIS 18th DAY OF OCTOBER, 2023.

THE CORPORATION OF THE TOWN OF MIDLAND



BILL GORDON – MAYOR



SHERRI EDGAR - CLERK

