

# The Corporation of the City of Guelph

## By-law Number (2022) – 20691

A by-law to impose a tax in respect of the purchase of transient accommodation.

**WHEREAS** section 400.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “**Municipal Act**”) provides that a local municipality may, by by-law, impose a tax in respect of the purchase of transient accommodation in the municipality;

**The Council of the Corporation of the City of Guelph enacts as follows:**

### DEFINITIONS

1. For the purposes of this By-law:

“**City**” means The Corporation of the City of Guelph;

“**City Solicitor**” means the City’s General Manager of Legal, Realty and Court Services / City Solicitor, his or her successor, or his or her designate;

“**Council**” means the Council of the City;

“**Deputy CAO, Public Services**” means the City’s Deputy CAO, Infrastructure, Development and Enterprise, his or her successor, or his or her designate;

“**Eligible Tourism Entity**” has the meaning given to it in the Regulation;

“**Establishment**” means a physical location, building, or part of a building in which Transient Accommodation is provided;

“**Lodging**” includes:

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

“**Municipal Accommodation Tax**” means a direct tax of 4% of the Purchase Price, imposed under this By-law;

“**Provider**” means, subject to the exclusions provided in this By-law, a person or an entity that sells, offers for sale, or otherwise provides Transient Accommodation, and includes any agent, host or other who sells, offers for sale, or otherwise provides Transient Accommodation;

“**Provincial Offences Act**” means the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended;

“**Purchaser**” means, subject to the exclusions provided in this By-law, a person who purchases Transient Accommodation;

“**Purchase Price**” means the price for which Transient Accommodation is purchased, including the price paid to, and/or other consideration accepted by, the Provider in return for the Transient Accommodation, but does not include any Harmonized Sales Tax (HST);

“**Regulation**” means Ontario Regulation 435/17 (Transient Accommodation Tax), as amended, under the Municipal Act;

“**Tax Collection Agent**” means a person with whom the City has an agreement in respect of collecting the Municipal Accommodation Tax on behalf of the City;

“**Transient Accommodation**” means Lodging, and the right to use Lodging, that is provided for consideration, whether or not the Lodging is actually used, if the Lodging is in respect of a continuous period of fewer than 30 consecutive nights in a hotel, motel, motor hotel, lodge, inn, bed and breakfast, dwelling unit, shared unit, such as an Airbnb unit, or any other place in which Lodging is provided, even if the continuous period includes the

purchase of different rooms, suites, beds, or Lodging in the same Establishment; and

**"Treasurer"** means the City's Treasurer or his or her designate.

#### COLLECTING AND PAYING THE TAX

2. Every Provider shall include, on every invoice or receipt for the purchase of Transient Accommodation, a separate item for the amount of the Municipal Accommodation Tax imposed on the purchase, and shall identify such item as "Municipal Accommodation Tax".
3. Every Purchaser shall, at the time of purchasing Transient Accommodation, pay the Municipal Accommodation Tax to the Provider.
4. Every Provider shall keep books of account, records, and documents sufficient to furnish the Tax Collection Agent and the City with the necessary particulars of sales of Transient Accommodation, amounts of Municipal Accommodation Tax collected, and amounts of Municipal Accommodation Tax remitted.

#### EXEMPTIONS FROM THE TAX

5. The Municipal Accommodation Tax does not apply to the following Purchasers:
  - (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*;
  - (e) Every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, or, when applicable, every 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*;
  - (f) Every long-term care home as defined in subsection 2(1) of the *Long-Term Care Homes Act, 2007*; and
  - (g) Every other person or entity as may be prescribed by regulation.
6. The Municipal Accommodation Tax does not apply to Transient Accommodations which are provided:
  - (a) At a university or a college of applied arts and technology or 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;
  - (b) By a treatment centre that receives Provincial aid under the *Ministry of Community and Social Services Act*;
  - (c) By a house of refuge, or lodging for the reformation of offenders;
  - (d) By a charitable or non-profit philanthropic corporation organized as a shelter for the relief of the poor or for emergency;
  - (e) By tent or trailer sites supplied by a campground, tourist camp or trailer park;
  - (f) By an employer to the employer's employees in premises operated by the employer;

- (g) As a room at an Establishment, without a bed, used for displaying merchandise, holding meetings, or entertaining.; and
- (h) By the County of Wellington as social housing support on behalf of the City.

#### REMITTING THE TAX

7. Every Provider shall, by the 15th day following the end of each calendar month, remit to the Tax Collection Agent, or, if there is no Tax Collection Agent, to the City, in respect of such calendar month:
  - (a) The amount of the Municipal Accommodation Tax collected for that calendar month; and
  - (b) Statements for that calendar month detailing:
    - i. The number of nights of Transient Accommodation sold,
    - ii. The purchase price of each night of Transient Accommodation sold,
    - iii. The amount of Municipal Accommodation Tax collected in respect of each night of Transient Accommodation sold, and
    - iv. Any other information required by the City or Tax Collection Agent for purposes of administering and enforcing this By-law.

#### FAILURE TO REMIT THE TAX: PENALTY, INTEREST AND LIEN

8. If a Provider fails to remit any Municipal Accommodation Tax by the date it is due, then a non-payment penalty is immediately imposed, effective on the date the Municipal Accommodation Tax was due. The amount of this non-payment penalty is:
  - (a) If the actual amount of Municipal Accommodation Tax owing can be determined, then the amount of the non-payment penalty is 1.25% of the amount of the Municipal Accommodation Tax that is owing; or
  - (b) If the actual amount of the Municipal Accommodation Tax owing cannot be determined, then the amount of the non-payment penalty is 1.25% of the Municipal Accommodation Tax that would be owing if the Establishment had been fully occupied for the month.
9. If a Provider fails to remit any Municipal Accommodation Tax by the date it is due, then interest is imposed monthly on the first day of every month, at the rate of 1.25% per month on the outstanding Municipal Accommodation Tax, until the full Municipal Accommodation Tax, the penalty, and all interest are paid in full.
10. All Municipal Accommodation Tax, penalties and interest that are past due and owing are deemed to be in arrears and may be added 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 shall constitute a lien upon the land, 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, and such lien shall not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances.

#### INSPECTION AND AUDIT OF TRANSIENT ACCOMMODATION PROVIDERS

11. The City and any Tax Collection Agent may inspect and audit all books of account, records, and documents of every Provider, and require every Provider to produce copies of any accounts, records and documents required for the purposes of administering and enforcing this By-law.

#### OFFENCES AND PENALTIES

12. Every person who contravenes any provision of this By-law, including failing to comply with an order made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act and the Municipal Act.
13. A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act and the Municipal Act.
14. Any person who is charged with an offence under this By-law by the laying of an information under Part III of the Provincial Offences Act and is found guilty of the offence is liable, pursuant to the Municipal Act, to the following fines:
- (a) The minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
  - (b) In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all daily fines for the offence is not limited to \$100,000; and
  - (c) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
15. If a person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order:
- (a) Prohibiting the continuation or repetition of the offence by the person convicted; and
  - (b) Requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
16. Where a person fails to pay any part of a fine for a contravention of this By-law and the fine is due and payable under section 66 of the Provincial Offences Act, including any extension of time to pay the fine provided under that section, the Treasurer may give the person a written notice specifying the amount of the fine payable and the final date on which it is payable, which date shall not be less than 21 days after the date of the notice.
17. If any part of a fine for a contravention of this By-law remains unpaid after the final date specified in the notice provided in the foregoing section of this By-law, the outstanding fine is deemed to be unpaid taxes pursuant to section 351 of the Municipal Act.

#### AGREEMENT WITH ELIGIBLE TOURISM ENTITY

18. The City's Deputy CAO, Infrastructure, Development and Enterprise, is hereby delegated the authority to negotiate, approve, and sign, with an Eligible Tourism Entity, an Agreement under section 6 of the Regulation, along with any necessary ancillary documents and amendments, all in forms satisfactory to the City Solicitor.

#### AGREEMENT WITH TAX COLLECTION AGENT

19. The Deputy CAO, Infrastructure, Development and Enterprise, is hereby delegated the authority to negotiate, approve, and sign, with persons or entities, agreements providing for the collection of the Municipal Accommodation Tax and the administration and enforcement of this By-law on the City's behalf, all in a form satisfactory to the City Solicitor.

## GENERAL

20. Except as provided in any applicable agreement with a Tax Collection Agency, the Treasurer shall be responsible for the administration of this By-law, including, but not limited to, approvals, appeals, enforcement, and collection.
21. If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, it is the intent of Council that all remaining sections and portions of this By-law continue in force and effect.
22. This By-law may be referred to as the "Municipal Accommodation Tax By-law".
23. This By-law shall come into force and take effect on September 1, 2022.

**Passed this 28th day of March, 2022.**

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**Cam Guthrie, Mayor**

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**Stephen O'Brien, City Clerk**