

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2023-68

A BY-LAW TO ENACT A MUNICIPAL ACCOMMODATION TAX IN THE TOWN OF LINCOLN

WHEREAS:

1. Section 400.1 of the *Municipal Act, 2001*, S.O. 2011, c. 25 ("*Municipal Act, 2001*") provides that the Council of a local municipality may, by by-law, impose a tax in respect of the purchase of transient accommodation within the municipality; and,
2. Pursuant to Section 400.1 of the *Municipal Act 2001* and Ontario Regulation 435/17, the Council of the Corporation of the Town of Lincoln wishes to establish a municipal transient accommodation tax rate to levy on the purchase of transient accommodation within the Town of Lincoln; and,
3. Pursuant to Section 400.1 (3) and 400.4 of the *Municipal Act, 2001*, the Council may establish such enforcement measures as Council considers appropriate if an amount assess for outstanding tax, penalties, or interest remains unpaid after it is due;
4. Council wishes to add the arrears of MAT, interest and penalties to the tax roll for the properties in the Town of Lincoln 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 *Municipal Act, 2001*, such lien shall not be a priority lien for the purposes of subsection 1 (2.1), (2.2) and (3) of the *Municipal Act, 2001*, and such lien will not have a higher priority that 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 LINCOLN ENACTS AS FOLLOWS:

1. Short Title

This By-law shall be known as the "Municipal Accommodation Tax By-law."

2. Definitions in this By-law

- 2.1 "Apartment Dwelling" means a building containing five or more Dwelling Units, which has a common entrance from the street level and where occupants have the right to use common halls, elevators, stairs, yards and/or accessory buildings.
- 2.2 "Accommodation" means lodging, whether in a hotel, motel, motor hotel, lodge, inn, resort, bed and breakfast, licensed short-term accommodation providing lodging, and the right to use lodging, that is provided for consideration, whether or not the lodging is actually used.
- 2.3 "Agent" means a third-party organization the Town designates as its administration and collection agency for the MAT, should it choose to do so under the authority of this By-law.
- 2.4 "Bed and Breakfast Establishment" means a single detached dwelling, semi-detached dwelling or townhouse dwelling, which is owned by and is the principal residence of the proprietor and which provides sleeping accommodation for the travelling public, and may include the provision of breakfast, but shall not include a "Hotel/Motel" or "Inn".
 - a) "By-law" means this Municipal Accommodation Tax By-law, and any future amendments made to it.

- b) "Chief Administrative Officer" or "CAO" means the Chief Administrative Officer of the Town and includes his or her designate.
- 2.5 "Commercial Vacation Dwelling Unit" means a "Dwelling Unit" above a business on a property which is zoned as a Commercial Zone or a Mixed-Use Zone in the Town's Zoning By-law that is rented for periods up to 28 consecutive days for use as temporary accommodation but is not occupied continuously as a principal residence. A "Commercial Vacation Dwelling Unit" shall not include an "Apartment Dwelling".
- 2.6 "Council" means the Council of The Corporation of the Town of Lincoln.
- 2.7 "Dwelling Unit" means one room or a group of rooms in a building used or designed or intended to be used as a single, independent and separate housekeeping units, in which a food preparation area and sanitary facilities are provided for the exclusive use of the housekeeping unit and which has a private entrance from outside the building or from a common hallway or stairway inside the building.
- 2.8 "Eligible Tourism Entity" has the meaning given to it in the Ontario Regulation 435/17, as amended from time to time.
- 2.9 "Establishment" means the physical location, a building, or part of a building that provides Accommodation.
- 2.10 "Hospice" means a premises used to provide palliative care.
- 2.11 "Hotel" or "Hotel/Motel" means a separate building, or two or more connected buildings, used mainly for the purpose of catering to the needs of the travelling public by the furnishing of sleep accommodation, with or without the supply of food, which may include accessory uses such as personal service uses, eating establishments, and banquet and/or convention facilities, but does not include an "Inn".
- 2.12 "Inn" means a building used for the purpose of supplying sleeping accommodation to the travelling public and may include the provision of meals but does not include a "Hotel" or "Hotel/Motel".
- 2.13 "Lodging" includes:
- a) The use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom; and
 - b) The use of one or more additional beds or cots in a bedroom or suite.
- 2.14 "Municipal Accommodation Tax" or "MAT" means the tax imposed under this By-law.
- 2.15 "Provider" means a person or 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.
- 2.16 "Purchaser" means a person who purchases Accommodation.
- 2.17 "Purchase Price" means the price for which Accommodation is purchased, including the price paid, and/or other consideration accepted provided 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 and does not include the price paid for any food or beverage or services purchased from the Provider.

- 2.18 "Rural Tourist Accommodation" means a building that is classified as an On-Farm Diversified land use, as defined by the Zoning By-law, that is used for the purposes of supplying sleeping accommodation to the travelling public. Rural Tourist Accommodation shall not include hotel/motel, commercial vacation dwelling unit, bed and breakfast establishment, boarding house dwelling or similar commercial or institutional use.
- 2.19 "Short Term Accommodation" or "STA" means the use of a portion or all of a dwelling unit or an accessory structure to provide temporary accommodation to members of the travelling public for a maximum of 28 consecutive days. A Short-Term Accommodation shall include Residential Short Term Accommodations, Commercial Vacation Dwelling Units and Rural Tourist Accommodations. Short Term Accommodations shall not include hotel/motel, boarding house dwelling or similar commercial or institutional use.
- 2.20 "Town" means The Corporation of the Town of Lincoln.
- 2.21 "Treasurer" means the Town's Director of Financial Management Services, or his or her designate.
- 2.22 "Zoning By-law" means the Town's Zoning By-law No. 2022-50, as amended.

3. Application of the Municipal Accommodation Tax

- 3.1 Subject to the exemptions set out in section 4 of this By-law, every Purchaser is liable for the payment of tax on the purchase of Accommodation in the amount of four (4) percent of the Purchase Price of Accommodation provided for a period of 29 days or less provided in a hotel, motel, lodge, inn, short term accommodation, bed and breakfast, dwelling unit, or any place in which Accommodation is provided, and shall pay such tax at the time of purchasing Accommodation.
- 3.2 For greater certainty, the continuous period referred to above is not disrupted by the purchase of different rooms, suites, beds, or other lodging in the same Establishment in the course of the continuous period.
- 3.2 Subject to section 4, this By-law shall apply to all Accommodations within the geographic boundaries of the Town.

4. Exemptions

- 4.1 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 Canada, 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 of a member of the Executive Council;
 - b) Every board as defined in subsection 1(1) of the *Education Act*, R.S.O. 1990, c. E.2;
 - c) Every university or a college of applied arts and technology or post-secondary institution whether or not affiliated with a university, the

enrolments or 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*, R.S.O. 1990, c. P.40, and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, R.S.O. 1990, c. P.24;
- e) Every long-term care home as defined in Subsection 2(1) of the *Fixing Long-Term Care Act, 2001*, S.O. 2021, c. 39, Sched. 1;
- f) Every Hospice;
- g) A hotel or motel being used by the Town of the Regional Municipality of Niagara, or an agent of either of them, for shelter purposes;
- h) A treatment center that received private funding, or provincial aid under the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20;
- i) A house of refuge, or lodging for the reformation of offenders;
- j) A charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for an emergency;
- k) A tent or trailer site supplied by a campground, tourist camp or trailer park which is purchased for a period of 28 days or more;
- l) Lodging provided by employers to their employees on a premises operated by the employer;
- m) A hospitality room in an establishment that may or may not contain a bed and is used for displaying merchandise, holding meetings, or entertaining; and
- n) Accommodation bookings with signed contracts prior to the date that this By-law takes effect, whether paid partially or in-full.

5. Tax Collection and Remittance

- 5.1 Every Provider shall collect the MAT from every Purchaser at the time the Accommodation is purchased.
- 5.2 Every Provider shall include of every receipt, invoice, or similar document issued by the Provider in respect of the Accommodation a separate item or charge identified as "Municipal Accommodation Tax" for the amount of the MAT imposed on the purchase.
- 5.3 A Provider shall, on or before the last day of the month following each quarter, remit to the Town, or its Agent, the amount of the MAT collected for the previous quarter and submit the quarterly statements in the form required by the Town, detailing the number of the Accommodation sold, the purchase price of each Accommodation, the amount of MAT collected, and any other information as required by the Town, for the purposes of administrating and enforcing this By-law.

- 5.4 Notwithstanding 5.3, the Town may, at its sole discretion, change the remittance schedule for some or all Providers within the Town providing that at least 60 days notice as been provided.
- 5.5 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.

6. Interest

Interest at a rate of 1.25 per cent per month shall be charged on the amount of the MAT payable or remittable under this By-law for the non-payment or non-remittance of MAT from the first day of default to and including the date on which such tax is paid or remitted in full, and shall be based on the full occupancy of the Establishment, unless the actual amount of the MAT owing can be determined by the Town, in which case the percentage charge of 1.25 per cent of the actual amount of the MAT will be imposed.

7. Liens and Recovery of MAT

- 7.1 Any MAT, including interest and penalties, that is past due shall be deemed to be in arrears and may be added to the tax roll for any real property. The Treasurer may and is hereby authorized to register a lien on any real property on which Accommodation has been provided and for which MAT remains owing.
- 7.2 Any MAT, including interest and penalties, in arrears shall constitute a lien upon the lands and may be collected in like manner as property taxes and, provided that 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.
- 7.3 Upon a default of payment of an amount payable or remittable under this By-law, in addition to any other remedies, the Treasurer may and is hereby authorized to bring an action for the recovery of any MAT, including interest and penalties, in any court in which a debt or money demand of a similar amount may be collected and every such action shall be brought and executed in and by the name of the Town.
- 7.4 The Treasurer may and is hereby authorized to refer the collection of any MAT payable or remittable under this By-law to a bailiff or collection agency.
- 7.5 The use of any remedy by the Town for the recovery of MAT, including interest and penalties, does not bar or affect any other remedy, and the remedies provided in this By-law for the recovery and enforcement of MAT are in addition to any other remedies existing at law, and no action or other proceeding in any way prejudices, limits or affects any lien, charge or priority existing under this By-law in favour of the Town.

8. Audit and Inspection

- 8.1 Every Provider shall keep books of account, records, and documents in respect of Accommodations sufficient to furnish the Town, or its Agent, with the necessary particulars of sales of Accommodations, amount of MAT collected and remittance, for a period of no less than seven years.
- 8.2 The Town, or its Agent, may inspect and audit all books, documents, transactions, and accounts of a Provider and require a Provider to produce

copies of any documents or records required for the purposes of administering and enforcing this by-law, as required.

- 8.3 Any person authorized by the Town 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 any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records 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 or remittable under this By-law;
 - b) require a person who is liable or possibly liable to pay or remit MAT under this By-law or an officer, director, agent or representative of such a person or any person on the premises:
 - i. to give him or her all reasonable assistance with his or her audit or examination;
 - ii. to answer all questions relating to the audit or examination either orally or, if required, in writing, under oath or by statutory declaration; and
 - iii. attend at the premises or place for the purpose of giving reasonable assistance and answering questions relating to the audit or examination; and
 - c) remove documents or things relevant to the audit or examination for the purpose of making copies or extracts, and promptly return the same, together with a receipt, after the copy or extract has been made.
- 8.4 The Treasurer may, for any purpose relating to the administration or enforcement of this By-law, serve on any person personally, by electronic communication, registered mail or by courier, a written demand for information or for the production on oath or otherwise books, letters, accounts, invoices, financial statements, electronic and such other documents as the Treasurer considers necessary to determine compliance with this By-law.
- 8.5 A person in receipt of a demand made pursuant to Section 8.4 shall comply with the demand within the time specified therein, or such other time as the Treasurer may accept.
- 8.6 No person shall hinder, interfere with, or obstruct any person doing anything that is authorized by this Section 8 to do or shall prevent or attempt to prevent any person doing any such thing, and every person shall, unless the person is unable to do so, do everything the person is required by this Section 8 to do.

9. Determination of Amount

- 9.1 The Town may make a determination of an amount of MAT required to be remitted, together with any interest imposed upon any MAT outstanding, if a Provider responsible for the payment or remittance of tax fails to pay or remit as required by this By-law.
- 9.2 The Town may assess or reassess for any MAT payable by the Provider within three years from the day the MAT was payable or remittable, except that where the Town establishes that a Provider has made any misrepresentation that is attributable to neglect, carelessness or willful default, or has committed any fraud in supplying any information under this By-law, or in omitting to disclose any information, then the Town may assess or reassess, for any time the Town considers reasonable, the MAT payable.

- 9.3 The Town shall send by mail or registered mail or deliver by hand, a notice of the calculation made under Section 9.1 herein to the Provider at the Providers' last known address, and the amount determined therein is payable within 30 days from the date of mailing or delivering of the notice.
- 9.4 Liability to pay an amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
- 9.5 The Town is not bound by any information delivered by or on behalf of a Provider responsible for the payment or remittance of MAT and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the MAT payable.

10. Other Penalties

- 10.1 The Accommodation Provider shall provide proof that all outstanding MAT has been paid or remitted to the Town prior to qualifying for the renewal of a Short-Term Accommodation License.
- 10.2 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 Sections 10 and 11, is liable to a fine and such other penalties as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 22 and the *Municipal Act*, 2001, S. O. 2001. c. 25, as follows:
- a) A Person who is convicted of an offence under this By-law is liable, for each date or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 as provided for in paragraph 429(3) 2. of the *Municipal Act*, 2001.
 - b) When a Person has been convicted of an offence under this By-law, the court in which the conviction is entered, or any court of competent jurisdiction thereafter, may, in addition to and penalty imposed on the person convicted, issue an order prohibiting the continuation of the or repetition of the offence by the person convicted.
- 10.3 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 remain 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.

11. Refunds

- 11.1 Where a person has paid or remitted an amount that is not payable under this By-law, the Town may, upon receipt of satisfactory evidence, make a determination that the amount was wrongly paid or remitted, and if such 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.
- 11.2 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 reasons.

12. Delegation of Authority

- 12.1 The Chief Administrative Officer 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, administration, and collection of the Municipal Accommodation Tax, all in a form satisfactory to the Town's solicitor, and the Mayor and Clerk are hereby authorized to execute said agreements.
- 12.2 The Chief Administrative Officer is hereby delegated the authority to enter into agreement, including all necessary documents ancillary thereto, with Eligible Tourism Entity(ies) that receive(s) 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, and the Mayor and Clerk are hereby authorized to execute said agreements.
- 12.3 The Treasurer 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.
- 12.4 The Treasurer may approve the use and format of forms for any purpose under this By-law, and such form may require such information to be furnished as the Treasurer may require for the proper administration and enforcement of this By-law.

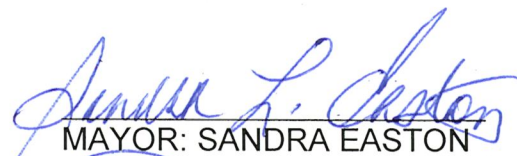
13. General

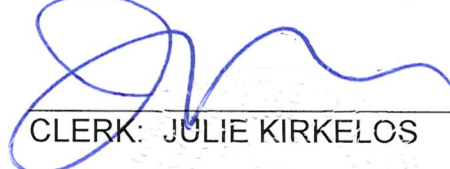
- 13.1 Notwithstanding section 13.1, the MAT shall not apply to a Short-Term Accommodation, Bed and Breakfast Establishments, or campground or RV park until July 1st, 2024.
- 13.2 If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, it is the intent of Council for the Town that all remaining section and portions of this By-law continue in force and effect.
- 13.3 All references in this By-law to any legislation or by-law shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor legislation or by-law.

14. Effective Date

- 14.1 That this By-law shall come into force and take effect on the date of its final passing.

PASSED AND ENACTED on the 13th day of December 2023.


MAYOR: SANDRA EASTON


CLERK: JULIE KIRKELOS