

BY-LAW NO. 2022-XXX

A by-law to establish 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, by by-law, impose 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 City of Burlington wishes to establish the tax rate and to levy the tax on the purchase of transient accommodation within the City of Burlington;

AND WHEREAS pursuant to sections 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;

NOW THEREFORE the Council of The Corporation of the City of Burlington hereby enacts as follows:

PART 1: DEFINITIONS

1.1 For the purposes of this by-law, the following definitions shall apply:

"accommodation" means the use or possession, for dwelling, lodging or sleeping purposes in a room or suite, whether in a hotel, motel, motor hotel, lodge, inn, resort or other establishment providing lodging in the City, acquired for a purchase price for a continuous period of less than 30 days;

"Chief Financial Officer" or **"CFO"** means the Chief Financial Officer of The Corporation of the City of Burlington, and includes the Chief Financial Officer's designate;

"City" means The Corporation of the City of Burlington;

"Council" means the Council of The Corporation of the City of Burlington;

"establishment" means the physical location, a building or part of a building that provides accommodation;

"provider" means a person or an entity that sells, offers for sale, or otherwise provides accommodation, and includes agents, hosts or others who sell, offer for sale or otherwise provide accommodation. Where the provider cannot be determined, the owner of an establishment providing accommodation is deemed to be the provider of accommodation.

“**purchaser**” means a person who for a purchase price, uses, possesses or has the right to use or possess any accommodation;

“**purchase price**” means the price for which accommodation is purchased, including the price paid, and where applicable, any other consideration accepted by the provider in return for the accommodation provided. Purchase price does not include the harmonized sales tax imposed by the Government of Canada or by the Province of Ontario. Purchase price also does not include fees and surcharges for ancillary services including food, beverages, entertainment, internet and telephone usage, hospitality rooms unless such ancillary charges have not been separately itemized on the invoice for accommodation;

“**municipal accommodation tax**” or “**MAT**” means the tax imposed under this By-law.

PART 2: APPLICATION

- 2.1 Except as provided in section 3.1, a purchaser shall, at the time of purchasing accommodation, pay to the provider the municipal accommodation tax in the amount of four (4%) per cent of the purchase price of the accommodation.

PART 3: EXEMPTIONS

- 3.1 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*, R.S.O. 1990, c E.2, as amended;
 - (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 the 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, as amended, and every private hospital operated under the authority of a license issued under the *Private Hospitals Act*, R.S.O. 1990, c P. 24, as amended;

- (e) every long-term care home as defined in subsection 2(1) of the *Long-Term Care Homes Act, 2007*, S.O. 2007, c 8;
- (f) every retirement home as defined in the *Retirement Home Act, 2010*, S.O. 2010, c 11, as amended;
- (g) every home for special care within the meaning of the *Homes for Special Care Act*, R.S.O. 1990, c H.12;
- (h) every non-profit hospice occupying land for which there is an exemption from taxation determined in accordance with section 23.1 of Ontario Regulation 282/98 made under the *Assessment Act*, R.S.O. 1990, c A.31;
- (i) every person or entity as prescribed by regulation under the Act as exempt from payment of municipal accommodation tax;
- (j) every treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*, R.S.O. 1990, c M.20, as amended; and
- (k) every accommodation provided:
 - (i) in a house of refuge or lodging for the reformation of offenders;
 - (ii) by charitable or not-for-profit corporations 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 the benefit of persons who are fleeing situations of physical, financial, emotional or psychological abuse; or for other persons who are suffering from homelessness;
 - (iii) as a tent site or a trailer site;
 - (iv) by an employer to its employees in premises operated by the employer; or
 - (v) in premises owned or operated by the City.

PART 4: TAX COLLECTED AND STATEMENT SUBMITTED

- 4.1 A provider of accommodation shall collect the MAT from the purchaser at the time the purchase price is paid, and remit the MAT to the tax collection agent designated by the City.
- 4.2 Providers of accommodation shall include on every invoice or receipt for the purchase of accommodation a separate item identified as “Municipal Accommodation Tax” for the MAT imposed on the purchase.

- 4.3 A provider shall, on or before the 20th day of every month, remit to the tax collection agent designated by the City the amount of the MAT collected by the provider for the previous month. Each remittance must be made in the manner prescribed by the tax collection agent and each such remittance must include a monthly statement in the form prescribed by the tax collection agent which shall include:
- (a) The total number of nights for which each unit of accommodation was provided;
 - (b) The total municipal accommodation tax collected;
 - (c) The purchase price and total municipal accommodation tax collected for each unit of accommodation;
 - (d) For each unit of accommodation, particulars of each exemption from the payment of municipal accommodation tax, including the exemptions under Part 3 of this By-law and the proof upon which the provider relied in applying the exemption; and
 - (e) Any other information as required by the City for the purposes of administrating and enforcing this By-law.

PART 5: TAX COLLECTION AGENT

- 5.1 The Ontario Restaurant Hotel & Motel Association (“ORHMA”) is designated as the tax collection agent for the City.
- 5.2 OHRMA shall collect and administer the municipal accommodation tax as agent for the City in accordance with the agreement between the City and ORHMA and this By-law.

PART 6: INTEREST, PENALTIES AND FEES

- 6.1 That a percentage charge of 1.25 per cent of the amount of the MAT due and unpaid be imposed as a penalty for the non-payment of the MAT 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 City, in that case, the percentage charge of 1.25 per cent of the actual amount of the MAT will be imposed.
- 6.2 That an interest charge of 1.25 per cent each month of the amount of the MAT due and unpaid, be imposed for the non-payment of the MAT on the first day of each month and subsequent months following the first day of default.

PART 7: AUDIT AND INSPECTION

- 7.1 Every provider of accommodation shall keep, for a period of no less than six (6) years, books of account, records, and documents sufficient to furnish the City or its agent with the necessary particulars, to verify the accuracy and completeness of the amount of MAT collected and paid to the City.
- 7.2 The City or its agent may inspect and audit all books, documents, transactions and accounts of accommodation providers and providers of accommodation must produce copies of any documents or records requested by the City or its agent for the purposes of administering and enforcing this By-law, as required.

PART 8: COLLECTION OF ARREARS

- 8.1 All MAT and related penalties and interest that are past due shall be deemed to be in arrears and a debt owing to the City. The Chief Financial Officer is authorized to take any one or more steps available to the City to collect any such amount including without limitation:
- (a) adding the amount to the tax roll for any real property in the City registered in the name of the provider to be collected in a manner as municipal property taxes and shall constitute 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 debt collection agency; or
 - (d) exercising any other remedy available to the City otherwise available in law.

PART 9: OFFENCE AND PENALTIES

- 9.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 9.2 All contraventions of any provision of this By-law are designated as multiple offences and continuing offences pursuant to section 429(2) and (5) of the *Municipal Act, 2001*.
- 9.3 Upon conviction of an offence under this By-law, every person is liable to a fine as follows:

- (a) a person other than a corporation, is liable for every day or part thereof upon which such offence occurs or continues to a fine not less than \$500 and not more than \$100,000 for a first offence and not less than \$1,000 and not more than \$100,000 for a subsequent offence;
 - (b) a person that is a corporation, is liable for every day or part thereof upon which such offence occurs or continues to a fine of not less than \$1000 and not more than \$100,000 for a first offence and not less than \$5000 and not more than \$100,000 for a subsequent offence;
 - (c) in the case of multiple offences, for each offence included in the multiple offence, a fine of not less than \$1,000 and no more than \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- 9.4 Any person who contravenes this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$5,000 for each day or part of a day that the offence continues, and despite section 9.3, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.
- 9.5 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 9.1-9.4, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law.
- 9.6 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, 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.
- 9.7 Any costs payable or associated with an order of the court are in addition to, and not in substitution for, the payment of any penalty imposed by the court for the commission of an offence under this by-law or any other applicable legislation.

PART 10: AUTHORITY

- 10.1 The Chief Financial Officer is authorized to administer this By-law, and to:
 - (a) establish and amend from time to time, such interpretation guidelines, protocols procedures, forms, documents and agreements, as the Chief Financial Officer may determine are required to implement and administer this By-law;
 - (b) perform all administrative functions and conduct all enquiries, audits, assessments, approvals, referred to herein and those incidental to and necessary for the due administration and enforcement of this By-law and collection of monies owing hereunder;
 - (c) enter into agreements, including any necessary documents ancillary thereto, with any person or entity providing for the implementation, collection, and remittance of the MAT; and
 - (d) carry out all duties as assigned to the Chief Financial Officer under this By-law.

PART 11: GENERAL

- 11.1 This By-law shall be referred to as the “Municipal Accommodation Tax By-law”.
- 11.2 If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, that section shall be severed, and all remaining portions of this By-law shall continue in force and effect.

PART 12: EFFECTIVE DATE

12.1 This By-law shall come into force and take effect on _____

Enacted and passed this _____ day of _____, 2022

Passed this _____ day of _____ 2022

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____