

BY-LAW NUMBER 133-2018

A BY-LAW TO ESTABLISH A MUNICIPAL ACCOMMODATION TAX IN THE CITY OF WINDSOR

Passed the 17th day of September, 2018.

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 Ontario Regulation 435/17, the Council of the Corporation of the City of Windsor has approved the imposition of a new Municipal Accommodation Tax on the purchase of transient accommodation in the City of Windsor;

THEREFORE the Council of The Corporation of the City of Windsor enacts as follows:

DEFINITIONS

1. In this by-law,

"Accommodation" means Lodging, and the right to use Lodging, that is provided for monetary compensation, whether or not the lodging is actually used, for a continuous period of thirty days or less;

"Bed and Breakfast" means a home-based business for the temporary Accommodation of the traveling public located within a single detached dwelling which is occupied on a full-time basis by the owner of such single detached dwelling or the principal shareholder (or one of them if more than one shareholder holds the greatest number of shares) of the corporation registered as the legal owner of the building, including during the time the Bed and Breakfast is in operation, and contains at least one bedroom for the exclusive use of the owner and at least two accessory guest rooms for use in the Bed and Breakfast;

"Chief Financial Officer" means the Chief Financial Officer for The Corporation of the City of Windsor;

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

"Council" means the Council of The Corporation of the City of Windsor unless the context requires otherwise;

"Holiday" means New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day;

"Lodging" includes:

- (a) the provision of a bedroom, a suite of rooms containing a bedroom, or a bed within a room;
- (b) the provision of one or more additional beds or cots in a bedroom or suite; and
- (c) the provision of a boat slip.

“Municipal Accommodation Tax” means the tax imposed under this By-law;

“Person” includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust and a corporation;

“Provider” means a Person that sells, offers for sale or otherwise provides Accommodation, and includes agents, hosts or others who sell, offer for sale or otherwise provide Accommodation;

“Purchaser” means a Person that purchases Accommodation;

“Purchase Price” means the price for which Accommodation is purchased including all fees and surcharges for additional occupants but does not include taxes imposed by the Government of Canada or the Province of Ontario, or fees for ancillary services including food, beverages, entertainment, internet usage, telephone usage and similar charges if separately itemized on a receipt or invoice;

“Remittance Report” means the form established by the Chief Financial Officer for reporting Municipal Accommodation Tax collected and remitted to the City;

“Short-Term Rental” means all or part of a dwelling unit used to provide Lodging through an online platform for any rental period that is thirty continuous days or less in exchange for monetary compensation;

“Short-Term Rental Company” means a Person that acts as a booking agent for a Short-Term Rental owner or otherwise facilitates the purchase of Short-Term Rental reservations over an internet platform and who,

(a) receives payment, compensation, or any other financial benefit as a result of, or in connection with, a Purchaser making or completing a booking of a Short-Term Rental; or

(b) collects, accesses or holds information on the number of nights purchased using the internet platform.

INTERPRETATION BULLETINS AND GUIDELINES

2. In administering this By-law, the Chief Financial Officer may issue such interpretation bulletins, guidelines, procedures and policies as the Chief Financial Officer, from time to time, determines necessary or advisable.

FORMS

3. The Chief Financial Officer may approve the use and format of forms for any purpose of this By-law and the forms may require the provision of such information as the Chief Financial Officer deems necessary for the enforcement and proper administration of this By-law.

APPLICATION

4. Every Purchaser shall, at the time of purchasing Accommodation, pay a Municipal Accommodation Tax in the amount of four percent (4%) of the Purchase Price of any Accommodation provided for a continuous period of thirty days or less in a hotel, motel, inn, Bed and Breakfast, resort, hostel, dwelling unit, or any other place in which Accommodation is purchased.

5. For greater certainty, the continuous period referred to in section 4 is not disrupted by the purchase of different rooms, suites, beds or other Lodging by the same Purchaser in the course of the continuous period.

EXEMPTIONS

6. 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*;
 - (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 Hospital Acts* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;
 - (e) Every long-term care home as defined in subsection 2(1) of the *Long-Term Care Homes Act, 2007* and hospices;
 - (f) Such other persons and entities as may be prescribed by the *Act* or Ontario Regulation 435/17;
 - (g) Every care and treatment center that receives financial aid from federal, provincial or municipal governments;
 - (h) Every house of refuge or lodging for the reformation of offenders;
 - (i) Every charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for emergency services;
 - (j) Short-term shelters for the relief of the poor and/or emergency accommodations provided by or arranged for by the City, the City's agencies or other charitable, non-profit philanthropic corporations, at contracted hotels or motels and for which there is funding received from the federal, provincial or municipal government;
 - (k) Accommodations provided for volunteers paid for by charitable, non-profit philanthropic corporations where said volunteers are providing relief to the poor or providing emergency services;
 - (l) Complimentary rooms where no fee is charged by the Provider or Short-Term Rental Company and includes rooms acquired by the Purchaser for no fee through the use of the Provider's loyalty or reward program; and

- (m) Any other emergency Accommodation as approved jointly by the Chief Financial Officer and Commissioner of Community Development and Health.

COLLECTION

- 7. Every Provider shall collect the Municipal Accommodation Tax from the Purchaser at the time the Purchase Price is paid for the Accommodation.
- 8. Every Short-Term Rental Company shall collect the Municipal Accommodation Tax from the Purchaser as agent for the City at the time the Purchase Price is paid for the Accommodation.
- 9. Where a Short-Term Rental Company collects the Municipal Accommodation Tax from a Purchaser at the time the Purchase Price is paid for the Accommodation, the Provider of the Short-Term Rental is relieved of the obligation to collect the Municipal Accommodation Tax from the Purchaser.
- 10. Every Provider and Short-Term Rental Company shall include on every invoice or receipt for the purchase of Accommodation a separate item for the amount of the Municipal Accommodation Tax imposed on the purchase, and the item shall be identified as "Municipal Accommodation Tax".
- 11. Every Provider and Short-Term Rental Company shall separately itemize on every invoice or receipt the fees for all ancillary services including food, beverages, entertainment, internet and telephone usage and other similar charges.
- 12. The entire amount of the invoice or receipt, not including the taxes imposed by the Government of Canada or the Province of Ontario, shall be deemed to be the fee for the Accommodation if the fees for ancillary services are not separately itemized by the Provider or Short-Term Rental Company.

REMITTANCE

- 13. Every Provider and Short-Term Rental Company shall remit to the City the amount of the Municipal Accommodation Tax collected and the remittance shall be in the form and by the method required by the Chief Financial Officer.
- 14. All remittances of tax shall be accompanied by a Remittance Report, in the form required by the Chief Financial Officer, containing information regarding the number of Accommodations purchased, the Purchase Price, the total amount of Municipal Accommodation Tax collected and remitted and any additional information as may be required by the Chief Financial Officer.
- 15. Every Provider and Short-Term Rental Company shall make remittances with accompanying Remittance Reports in accordance with the following remittance schedules:
 - (a) A Provider or Short-Term Rental Company with annual gross revenue exceeding six million dollars (\$6,000,000.00) shall, before the last day of every month, remit to the City the amount of the Municipal Accommodation Tax collected for the previous month; or

- (b) A Provider or Short-Term Rental Company with annual gross revenue of six million dollars (\$6,000,000.00) or less shall, within thirty (30) days of the last day of the first quarter, second quarter, third quarter and fourth quarter, remit to the City the amount of the Municipal Accommodation Tax collected during the previous quarter;
 - (c) In paragraph (b),
 - (i) First quarter means January 1 to March 31, both dates inclusive;
 - (ii) Second quarter means April 1 to June 30, both dates inclusive;
 - (iii) Third quarter means July 1 to September 30, both dates inclusive;
 - (iv) Fourth quarter means October 1 to December 31, both dates inclusive;
 - (d) Where the deadline for making a remittance falls on a Saturday, Sunday or Holiday, the deadline shall be extended to the next business day;
 - (e) Such other remittance schedule as the Chief Financial Officer may require.
16. Every Provider and Short-Term Rental Company shall submit a Remittance Report to the City even if no Municipal Accommodation Tax was due, owing or collected during the remittance period.

PENALTY AND INTEREST

17. Every Provider and Short-Term Rental Company that submits a Remittance Report but fails to remit the full amount of the Municipal Accommodation Tax that is due and owing in accordance with this By-law shall be assessed the following penalty and interest charges:
- (a) Penalty calculated as 1.25% on the amount of any Municipal Accommodation Tax due and owing under this By-law on the first day of default; and
 - (b) Interest calculated as 1.25% per month on the amount of any Municipal Accommodation Tax due and owing under this By-law from the first day of each month subsequent to the date of default up to and including the month in which the tax is paid in full.
18. Every Provider and Short-Term Rental Company that fails to submit a Remittance Report as required by section 14 shall be assessed a Municipal Accommodation Tax in accordance with section 28.

AUDIT AND INSPECTION

19. Every Provider and Short-Term Rental Company shall retain all books of account, records and other documents sufficient to furnish the City with the necessary particulars of the sale of Accommodation and the amount of Municipal Accommodation Tax collected and remitted for a period of not less than seven (7) years.

20. Any person authorized by the Chief Financial Officer for any purpose related to the administration or enforcement of this By-law may at all reasonable times enter into the business premises and inspect and audit any document or record of every Provider and Short-Term Rental Company and may demand the production of copies of such documents or records as may be required to determine compliance with this By-law.
21. The Chief Financial Officer may, for any purpose relating to the administration or enforcement of this By-law, serve or cause to be served on any Provider or Short-Term Rental Company, by electronic communication, registered mail or by a courier service, to the last known address of the Provider or Short-Term Rental Company, a written demand for information or for the production on oath or otherwise of any record or document that the Chief Financial Officer considers necessary to determine compliance with this By-law.
22. A Provider or Short-Term Rental Company in receipt of a demand under section 21 shall comply with the demand within the time specified in the demand.
23. Every Provider and Short-Term Rental Company shall cooperate with the City and provide reasonable assistance in the conduct of an inspection, audit or demand and shall cause its employees, agents and contractors to comply as requested by the City.

REFUNDS

24. Where a Provider or Short-Term Rental Company has paid or remitted an amount that is not payable under this By-law, the Chief Financial Officer may, upon receipt of satisfactory evidence, make a determination that the amount was wrongly paid or remitted, and if such determination is made, the Chief Financial Officer 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 twenty four (24) months after the payment date.
25. An application for a refund under section 24 shall be in the form and in the manner required by the Chief Financial Officer.

ASSESSMENT AND REASSESSMENT

26. The Chief Financial Officer may assess or reassess any Provider or Short-Term Rental Company for any Municipal Accommodation Tax payable under this By-law within six years from the day the tax was remittable, except that where the Chief Financial Officer determines that the Provider or Short-Term Rental Company has made any misrepresentation or has committed any fraud in supplying any information under this By-law, or has omitted to disclose any required information, then the Chief Financial Officer may assess or reassess, at any time the Chief Financial Officer considers reasonable, the tax payable by such Provider or Short-Term Rental Company.
27. Where it appears from an inspection, audit or examination of the documents and records of the Provider or Short-Term Rental Company that this By-law has not been complied with, the Chief Financial Officer shall calculate the amount payable in such manner and form and by such procedure as the Chief Financial Officer considers adequate and expedient.

28. Where a Provider or Short-Term Rental Company fails to submit a Remittance Report or fails to provide any other information required by this By-law that is necessary for the City to determine the amount of Municipal Accommodation Tax owing, the Chief Financial Officer may assess an amount payable based upon the average Accommodation rate charged in the municipality or by such other calculation method as the Chief Financial Officer may determine to be reasonable.
29. The Chief Financial Officer is not bound by any information submitted by a Provider or Short-Term Rental Company and may, notwithstanding any information that has been submitted or if no information has been submitted, assess the amount of the Municipal Accommodation Tax payable.
30. Every Provider and Short-Term Rental Company shall remit the amount of the Municipal Accommodation Tax assessed or reassessed by the Chief Financial Officer within the time required by the Chief Financial Officer.

OBJECTIONS

31. A Provider or Short-Term Rental Company that objects to the amount of Municipal Accommodation Tax that has been assessed or reassessed by the City, may file a notice of objection, in a form and method approved by the Chief Financial Officer, within sixty (60) days from the date indicated on the City's notice of assessment.
32. The notice of objection shall clearly describe each issue raised by way of objection and fully set out the facts and reasons relied upon in respect of each issue.
33. Upon receipt of a notice of objection, the Chief Financial Officer shall reconsider the assessment or reassessment and may vacate, confirm or vary the assessment or reassessment, and any penalties or interest that were imposed, and provide notice thereof to the Provider or Short-Term Rental Company.
34. The filing of an objection does not relieve a Provider or Short-Term Rental Company from remitting the Municipal Accommodation Tax to the City within the time periods required by this By-law.
35. Notwithstanding sections 31, 32 and 33, the Chief Financial Officer may establish or use any other dispute resolution mechanism as the Chief Financial Officer considers appropriate in the circumstances.

OFFENCES AND FINES

36. Every Person is guilty of an offence under this By-law who:
 - (a) Makes, participates in, assents to or acquiesces in the making of a false or deceptive statement in a report, statement, form or other document prepared, submitted or filed under or for the purposes of this By-law;
 - (b) Destroys, alters, mutilates, hides or otherwise disposes of any record, book of account or other document, in order to evade payment or remittance of the Municipal Accommodation Tax;

- (c) Makes, assents to or acquiesces in the making of false or deceptive entries, or assents to or acquiesces in the omission to enter a material fact, in any record, book of account or other document;
 - (d) Fails to comply with or interferes with an audit or inspection;
 - (e) Hinders or obstructs any person who is exercising a power or performing a duty under this By-law;
 - (f) Neglects or refuses to produce any information or thing or provide any information required under this By-law;
 - (g) Evades or attempts to evade:
 - (i) Paying Municipal Accommodation Tax or
 - (ii) Remitting Municipal Accommodation Tax.
 - (h) Conspires with any Person to commit an offence described in this section; or
 - (i) Fails to comply with any other requirement of this By-law.
37. Every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence.
38. Every Person who contravenes any provision of this By-law is guilty of an offence as provided for in subsection 425(1) of the *Act* and all such offences are designated as continuing offences as provided for in subsection 429(2)(a) of the *Act*.
39. A person who is convicted of an offence under this By-law is liable to a minimum fine of five hundred dollars (\$500.00) and a maximum fine of one hundred thousand dollars (\$100,000.00) as provided for in subsection 429(3) paragraph 1 of the *Act*.
40. 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 five hundred dollars (\$500.00) and a maximum fine of ten thousand dollars (\$10,000.00) and the total of all of the daily fines for the offence is not limited to one hundred thousand dollars (\$100,000.00) as provided for in subsection 429(3) paragraph 2 of the *Act*.
41. In addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the Person convicted as provided for in section 431 of the *Act*.

RECOVERY OF TAX

42. Upon default of payment of an amount owing under this By-law, the Chief Financial Officer may bring an action for the recovery of the amount 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 City.
43. The use of any of the remedies provided by this By-law does not bar or affect any of the other remedies herein provided, and the remedies provided by this By-law for the recovery and enforcement of the payment

of any amount required under this By-law 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 or at law in favour of the City.

44. The Chief Financial Officer may refer the collection of any Municipal Accommodation Tax payable or required to be remitted to a bailiff or collection agency.
45. The Chief Financial Officer may garnish any amount of tax payable from amounts owing to a Provider or Short-Term Rental Company by a third party.
46. All Municipal Accommodation Tax owing, including 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 City of Windsor registered in the name of the Provider or Short-Term Rental Company.

GENERAL

47. This By-law shall come into force and take effect on October 1, 2018.
48. The Chief Financial Officer shall be responsible for the administration and enforcement of this By-law and may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke such delegation and may continue to exercise any function delegated during the delegation.
49. If any section or portion of this By-law is found to be invalid by a court of competent jurisdiction, all remaining sections and portions of the By-law continue in full force and effect.
50. This By-law may be referred to as the "Municipal Accommodation Tax By-law".

This by-law shall come into force and take effect on the day of the final passing thereof.


DREW DICKENS, MAYOR



CITY CLERK

First Reading - September 17, 2018
Second Reading - September 17, 2018
Third Reading - September 17, 2018