

THE CORPORATION OF THE TOWN OF MARATHON

BY-LAW NO. 1943

A By-law to establish a Municipal Accommodation Tax within the boundaries of the Town of Marathon, in the District of Thunder Bay.

WHEREAS Section 400.1 of *the Municipal Act*, 2001, SO 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 Council considers it desirable to establish a Municipal Accommodation Tax to be imposed on the purchase of Transient Accommodations within the Town of Marathon, in the District of Thunder Bay.

AND WHEREAS Sections 400.1, 400.4, 420, and 430 of the *Act*, provides that a Municipality 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 the Council of The Corporation of the Town of Marathon feels it is important to provide fire protection to areas otherwise unprotected.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARATHON ENACTS AS FOLLOWS:

DEFINITIONS

1. THAT this by-law may be referred to as the “Municipal Accommodation Tax By-law”.
2. THAT wherever a term set out below appears in the text of this by-law with its first letter capitalized, the term is intended to have the meaning set out for it in this Section. Where any word appears in ordinary case, it is intended to have the meaning ordinarily attributed to it in the English language.

“**Accommodation**” means Lodging that is provided for consideration whether or not that Lodging is actually used;

“**Council**” means the Council of The Corporation of the Town of Marathon;

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

“**Establishment**” means a physical location, a building, or part of a building that provides Accommodation;

“**Lodging**” includes:

- a) the use of a bedroom, a suite of rooms containing 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 the tax imposed under this By-Law;

“**Point of Purchase**” means the time at which payment for Accommodation is made by the Purchaser;

“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 provides Accommodation;

“Purchaser” means a person who gives money or other consideration in exchange for Accommodation;

“Purchase Price” means the price for which Accommodation is purchased, including the price paid and/or other considerations accepted by the Provider in return for the Accommodation, excluding Harmonized Sales Tax (HST);

“Transient Accommodation” means Accommodation for a continuous period of less than thirty (30) days; this continuous period is not disrupted by the purchase of different rooms, suites, beds or lodging in the same Establishment;

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

3. THAT in this By-Law, a word identified in the singular has a corresponding meaning when used in the plural. Definitions of verbs apply to all tenses of the verb in the text.
4. THAT the captions, articles and section names appearing in this By-Law are for convenience of reference only and have no effect on its interpretation.
5. THAT this By-Law is to be read with all changes of gender required by the context.

ADMINISTRATION

6. THAT the Municipal Treasurer shall be responsible for the general administration of this By-Law.
7. THAT the CAO/Clerk, or designate, is delegated the authority to enter into agreements, including any necessary documents ancillary thereto, with any person or entity providing for the implementation, collection, and remittance of the Municipal Accommodation Tax.
8. THAT the CAO/Clerk, or designate, is delegated the authority to develop agreements, including all necessary documents ancillary thereto, with any Eligible Tourism Entity that is designated to receive any portion of the revenue generated through the Municipal Accommodation Tax which agreements shall:
 - a) Provide terms respecting reasonable financial accountability;
 - b) Ensure amounts paid to the Eligible Tourism Entity are used for the exclusive purpose of promoting tourism; and,
 - c) Provide for any other provisions deemed by the CAO/Clerk to be appropriate.

EXEMPTIONS

9. THAT the Municipal Accommodation Tax does not apply to the following types of Accommodations:
 - a) Accommodations provided by the Crown in right of Canada, the Crown in right of Ontario, every agency or 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 an Order in Council or the Lieutenant Governor in Council

- or a member of the Executive Council, as the case may be;
- b) Accommodations provided by every board as defined in section 1(1) of the *Education Act*, R.S.O. 1990, c. E.2;
 - c) Accommodations provided by 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 the purpose of calculating operating grant entitlements from the Crown in right of Canada or the Crown in right of Ontario;
 - d) Accommodations provided by a 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 license issued under the *Private Hospitals Act*, R.S.O. 1990, c. P.24 or 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*, as the case may be;
 - e) Accommodations provided by a long-term care home as defined in section 2(1) of the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8 or hospice and palliative care centres;
 - f) Accommodations provided by a treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20;
 - g) Accommodations provided for the reformation of offenders;
 - h) Accommodations provided by charitable or non-profit philanthropic organizations that are organized as shelters for the relief of the poor or for emergency;
 - i) Accommodations consisting of a tent or trailer site supplied by a campground, tourist camp, or trailer park; and,
 - j) A room in an Establishment that does not contain a bed, which is used for displaying merchandise, holding meetings, or entertaining.

REGISTRATION OF ACCOMMODATION ESTABLISHMENT

- 10. THAT providers who operate an Establishment prior to the enactment of this By-Law shall register their Establishment with the Town by submitting a completed Accommodation Establishment Information Form (Schedule A) to the Town before June 1, 2019.
- 11. THAT providers who begin to operate an Establishment shall register their Establishment with the Town by submitting a completed Accommodation Establishment Information Form (Schedule A) within thirty (30) days of the date of commencement for their operation.
- 12. THAT where there are any changes to the information provided, Providers shall update and submit the Accommodation Information Form (Schedule A) to the Town within thirty (30) days of the change.

APPLICATION OF THE MUNICIPAL ACCOMMODATION TAX

- 13. THAT the amount of four (4) per cent shall be established as the tax rate for the Municipal Accommodation Tax to be imposed on the Purchase Price of any Transient Accommodation.
- 14. THAT a Purchaser shall pay the Provider the total amount of the Municipal Accommodation Tax at the Point of Purchase of the Accommodation.

15. That a Provider who collects an amount as or on account of tax under this By-Law is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for the Town, separate and apart from the property of the Provider and from property held by any secured creditor of the Provider that, but for a security interest, would be property of the Provider, until the amount is remitted to the Town.
16. THAT a Provider shall clearly indicate as a separate item on every invoice and receipt the value of the Municipal Accommodation Tax that was imposed and collected for the purchase of Transient Accommodation and shall identify such amount as the "Municipal Accommodation Tax".
17. THAT the Provider shall remit to the Town the Municipal Accommodation Tax collected as outlined below through the Municipal Accommodation Tax Return Form (Schedule B):
 - a) Providers who remit the Harmonized Sales Tax (HST) monthly shall remit the amount of the Municipal Accommodation Tax that is collectible on a monthly basis; the Provider shall remit the Municipal Accommodation Tax that is collectible for the previous month on or before the last day of every month, and shall submit the Municipal Accommodation Tax Return Form (Schedule B) as required for the purposes of administrating and enforcing this By-Law; and,
 - b) Providers who remit HST quarterly, annually, or who are not registered to remit HST, shall remit the amount of the Municipal Accommodation Tax that is collectible on a quarterly basis; the Provider shall remit the Municipal Accommodation Tax that is collectible for the previous quarter on or before the last day of the month following the end of the quarter and shall submit the Municipal Accommodation Tax Return Form (Schedule B) to the Town as required for the purposes of administrating and enforcing this By-Law;
18. THAT where a Provider fails to submit a Municipal Accommodation Tax Return Form (Schedule B) on or before the due date prescribed at section 17 above, the amount that is determined on the basis of the following calculation shall be deemed to be the amount that is due and unremitted and this amount shall be assessed on the first day of default;

Where,

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

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

"B" is the amount deemed to be the amount of the Municipal Accommodation Tax that should have been collected and remitted and this amount shall be deemed to be the amount that is due and that remains unremitted on the first day of default.

19. THAT That a Provider who fails to collect any amounts owing for the Municipal Accommodation Tax from the Purchaser at the Point of Purchase, or otherwise fails to remit such amounts to the Town on or before the due date prescribed at section 17 above, shall be personally liable for such amounts as should have been collected and remitted.

INTEREST PENALTIES

20. THAT where a Provider has submitted a Municipal Accommodation Tax Return Form (Schedule B) that allows for the determination of the actual amount of the Municipal Accommodation Tax that should have been collected and is owing, the prescribed interest and penalties shall be assessed as of the

first day of default in addition to the amount of the Municipal Accommodation Tax that is due and that remains unremitted.

21. THAT where a Provider has not submitted a Municipal Accommodation Tax Return Form (Schedule B) on or before the due date prescribed at section 17 above, the interest and penalties prescribed shall be assessed in addition to the amount that is determined on the basis of the following formula;

Where,

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

“A” is the amount of revenue that would have been generated had the 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 to be the amount of the Municipal Accommodation Tax that is due and remains unremitted as of the first day of default.

22. THAT the prescribed interest and penalties shall be assessed on the first day of each month, and for all subsequent months, following the first day of default for any amount of the Municipal Accommodation Tax that is owing and that remains unremitted.

LIENS

23. THAT all Municipal Accommodation Tax penalties and interest owing under the By-Law 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 registered in the name of the Provider to be collected in a 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 sections 1 (2.1), (2.2) and (3) of the *Act*, and such lien will not have higher priority than it would otherwise have in law in relation to other claims, liens, or encumbrances.

AUDIT AND INSPECTION

24. THAT the Provider shall keep books of account, records, and documents sufficient to provide the Town or its agent with the necessary particulars of sales of Accommodations and the amount of Municipal Accommodation Tax which should have been collected and remitted.
25. THAT the Town or its agent may inspect and audit all books, documents, transactions, and accounts of the Provider and require the Provider to produce copies of any documents or records required to be kept for the purposes of administering and enforcing this By-Law.

OTHER PENALTIES

26. THAT every person who contravenes any provision of this By-Law is guilty of an offence and is liable to a fine and such other penalties as may be provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33 and the *Act*, each as amended.
27. THAT 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.
28. THAT 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, issue an order;

- a) Prohibiting the continuation or repetition of the offence by the person; and,
- b) Requiring the person to correct the contravention in the manner and within the period that the court considers appropriate.

GENERAL

- 29. THAT 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.
- 30. THAT this by-law shall come into force and take effect upon the date of its passing.

READ A FIRST AND SECOND TIME THIS 14TH DAY OF JANUARY, A.D., 2019.

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Mayor

(SEAL)

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Clerk

READ A THIRD TIME AND FINALLY PASSED THIS 14TH DAY OF JANUARY, A.D., 2019.

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Mayor

(SEAL)

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Clerk

Schedule A Accommodation Establishment Information

Adopted Pursuant to By-Law No. 1943

Schedule B Municipal Accommodation Tax Return Information

Adopted Pursuant to By-Law No. 1943