

Corporation of the Town of Newmarket

By-law 2024-68

A By-law to establish the 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 Town of Newmarket wishes to establish the tax rate and to levy the tax on the purchase of transient accommodation within the Town of Newmarket;

AND WHEREAS pursuant to section 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;

AND WHEREAS Council wishes to add the outstanding tax including interest, penalties and administrative fees to the tax roll for the properties in the Town of Newmarket registered in the name of the Provider to be collected in like manner as property taxes.

Therefore, be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

DEFINITIONS:

1. For the purposes of this By-law:

“**Accommodation**” means Lodging, and the right to use Lodging, that is provided for consideration, whether or not the lodging is actually used and includes Hotel Accommodation and Short-Term Rental Accommodation;

“**Ancillary Charges**” means charges related to the purchase of Accommodation including, but not limited to the purchase of food, room service, mini bar products, internet, movie rentals, and phone charges;

“**CAO**” means the person appointed by Council from time to time as the Chief Administrative Officer for the Town and includes their authorized designate;

“**Council**” means the Council of the Corporation of the Town of Newmarket;

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

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

“Hotel Accommodation” means lodging in a room containing one or more beds in a hotel, motel, hostel, motor hotel, lodge, bed and breakfast, club, condo hotel, or portion of a large multi-use complex used as a hotel, for a period of a minimum of 4 hours and a maximum of 29 consecutive days;

“Lodging” includes:

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

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

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

“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;

“Purchaser” means a person who purchases Accommodation;

“Purchase Price” means the price for which Accommodation is purchased, including the price paid, and/or other consideration accepted 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. Purchase price also does not include fees and surcharges for ancillary services including cleaning, food beverages, entertainment, internet and telephone usage unless, such ancillary services have not been separately itemized on the invoice for Accommodation;

“Short-Term Rental Accommodation” means all or part of a Dwelling Unit used to provide temporary sleeping accommodations for any rental period that is less than 28 consecutive days in exchange for payment. This includes a bed and breakfast but excludes hotels, motels and accommodations where there is no exchange for remuneration;

“Town” means the geographic area of the Town of Newmarket or the Corporation of the Town of Newmarket as the context requires;

“Treasurer” means the person appointed by Council from time to time as the Treasurer for the Town and includes their authorized designate;

APPLICATION OF TAX

2. A Purchaser shall, at the time of purchasing a Hotel Accommodation or a Short-Term Rental Accommodation pay the MAT in the amount of four percent (4%) of the Purchase Price of the Accommodation(s).
3. For greater certainty, the continuous period referred to above, is not disrupted by the purchase of different rooms, suites, beds or other Accommodation in the same Establishment by the same Purchaser from the same Provider in the course of the continuous period.
4. Notwithstanding section 2, MAT shall only apply to Accommodations commencing on or after January 1, 2025 and shall not apply to any

Accommodation commencing prior to January 1, 2025, even if the Accommodation extends to or past January 1, 2025.

EXEMPTIONS

5. The Municipal Accommodation Tax imposed under this By-law does not apply to:

- a. The Crown, any agency of the Crown in right of Ontario or any 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. Any board as defined in subsection 1(1) of the *Education Act*;
- c. Any university in Ontario or any college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrollments of which are counted for purposes of calculating operating grants entitlements from the Crown;
- d. Any 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* and every private hospital operated under the authority of a license issued under the *Private Hospitals Act*.
- e. Any long-term care home as defined in subsection 2 (1) of the *Fixing Long-Term Care Act, 2021*;
- f. Any retirement home as defined in the *Retirement Home Act, 2010*;
- g. Any home for special care within the meaning of the *Homes for Special Care Act*;
- h. Any 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*;
- i. Any Person or entity as prescribed by regulation under the *Municipal Act, 2001* as exempt from payment of Municipal Accommodation Tax;
- j. Any treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*;
- k. 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 Town 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;
 - v. In premises owned or operated by the Town of Newmarket.

I. Any hospitality room in an establishment that does not contain a bed and is used for displaying merchandise, holding meetings, holding hearings, or entertaining.

ADMINISTRATION & DELEGATION OF AUTHORITY

6. The CAO, or their designate, is hereby delegated the authority to enter into agreements, including all necessary documents ancillary there to, with an Eligible Tourism Entity that receives an amount of the MAT, respecting reasonable financial accountability matters, in order to ensure that the 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 Solicitor.

7. The CAO, Treasurer or their designate be given delegated authority to establish all necessary policies and procedures for the collection of the MAT including the procurement or development of a remittance portal.

8. The CAO, Treasurer or their designate, shall be responsible for the administration of this By-law, including but not limited to approvals, audits, appeals, enforcement, collection, refunds and for instructing legal counsel to take such legal action as may be considered appropriate.

9. The CAO, Treasurer or their designate may approve the use and format of forms for any purpose of this Bylaw and the forms may provide for such information to be furnished as the CAO, Treasurer or designate may require for the enforcement and proper administration of the tax.

TAX COLLECTED AND STATEMENT SUBMITTED

10. The CAO or their designate may enter into an agreement(s) in writing designating a tax collection agent to collect the remittance of the MAT Tax and information required in the administration of this Bylaw on behalf of the Town of Newmarket.

11. A Provider shall collect the MAT from the Purchaser at the time the Accommodation is purchased.

12. A Provider shall have the amount of the MAT be identified as a separate item or charge on a bill, receipt, invoice, or similar document issued in respect of the Accommodation on which the tax is imposed and the item shall be identified as "Municipal Accommodation Tax".

13. Remittance of tax shall be made to the Town or their tax collection agent in the following frequency and by the following deadlines, or in such frequency and by such deadlines as may be determined by the CAO, Treasurer or their designate:

(1) monthly for Hotel Accommodation Providers, within 15 days of the end of the previous calendar month, and;

(2) quarterly for Short-term Rental Accommodation Providers, within 15 days of the end of the previous quarter.

14. All remittances of tax shall be accompanied by a monthly/quarterly report, in a form prescribed by the CAO and Treasurer, or designate. The report shall contain information pertaining to the previous month/quarter and any other information required for the purposes of administering and enforcing this Bylaw.

a) Hotel Accommodation providers shall submit the following information:

- i. The number of rooms sold;
- ii. The purchase prices of the rooms sold;
- iii. The number of rooms that were exempt under the By-law and proof the Provider relied on; and
- iv. The Municipal Accommodation Tax Collected

b) Short-term Rental Accommodation Providers shall submit the following information:

- i. The Municipal Accommodation Tax Charged;
- ii. The purchase prices of the Accommodations sold;
- iii. The number of accommodations that were exempt under the By-law and proof the Provider relied on; and
- iv. The Municipal Accommodation Tax Collected

15. Every Provider shall file a MAT Remittance Report with the Town or tax collection agent for a reporting period whether any MAT was collected during the reporting period.

INTEREST, PENALTIES AND FEES

16. A charge of 1.25 per cent of the amount of the MAT due and unpaid shall be imposed as a penalty for the non-payment of taxes 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 Town, in which case, the charge of 1.25 per cent of the actual amount of the MAT owing to the Town shall be imposed.

17. Interest at the rate of 1.25 per cent of the amount of the MAT due and unpaid, shall be imposed monthly for the non-payment of taxes on the first day of each and every month and subsequent months following the first day of default until the MAT, including all charges and interest owing, is paid in full.

18. The Provider shall pay any fee or charge established in accordance with the Town of Newmarket Corporates Service Fees and Charges Bylaw, as amended, for any late filings, dishonoured payments or other matters.

ENFORCEMENT AND LIENS

19. All MAT assessed or adjusted under this Bylaw and related penalties and interest that are past due shall be deemed to be in arrears and a debt owing to the Town. The Treasurer, or designate is authorized to take any one or more steps available to the Town to collect any such amount including without limitation:

- a. Adding the amount to the tax roll for any real property in the Town registered in the name of the Provider to be collected in a manner as property taxes and constituting a lien upon the lands; 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, 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;
- b. Bringing an action in the name of the Town for the recovery of the amount in the court of appropriate jurisdiction;
- c. Referring the collection of the amount to a bailiff or collection agency; and
- d. Exercising any other remedy available pursuant to *the Municipal Act, 2001* or otherwise available at law.

20. The remedies provided 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.

AUDIT AND INSPECTION

21. Every Provider shall keep books of account, records, and documents sufficient to furnish the Town or its agent with the necessary particulars of sales of Accommodation, amount of MAT collected, and remittance. Providers will be required to produce copies of any documents or records required for the purposes of administering and enforcing this By-law, for a period of time of no less than seven years.

22. 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; and

b. Require a designated collector, an officer, director, agent or representative of a designated collector, a person who is liable or possibly liable to pay or remit tax under this chapter, an officer, director, agent or representative of that person or any person on the premises:

(1) to give them all reasonable assistance with the audit or examination;

(2) to answer all questions relating to the audit or examination either orally or, if they require, in writing, on oath or by statutory declaration; and

(3) to attend at the premises or place with them for the purposes of giving reasonable assistance and answering questions relating to the audit or examination.

23. The CAO, Treasurer or designate may for any purposes relating to the administration or enforcement of this By-law serve on any Provider personally, by mail or courier service, a written demand for information and the production on oath or otherwise of books, records and documents as the Treasurer or any person authorized by the Town to make the demand, considers necessary to determine compliance with the By-law.

24. Every Provider served with a demand under section 23 shall comply with the demand within the time specified in the demand.

25. No person shall hinder or molest or interfere with any person doing anything that is authorized by this article to do or shall prevent or attempt to prevent any person doing any such thing, and despite any other by-law of the Town to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this article to do.

DETERMINATION OF AMOUNT

26. The Town may make a determination of an amount of tax required to be remitted, together with any charge or interest imposed upon any tax outstanding,

if a Provider responsible for the payment or remittance of tax fails to pay, as required.

27. Where a Provider has failed to file a MAT Remittance Report, the Treasurer, or their designate, may assess the amount of MAT payable to the Town by multiplying the MAT rate of 4% by the total of:

a) The average daily Purchase Price for Accommodations for the prior year, as disclosed in the monthly/quarterly report filed by the Provider, or where this is not available, as determined by or estimated by the Treasurer, or their designate; multiplied by;

b) The number of Accommodations the Provider has available for purchase as disclosed in the monthly/quarterly report filed by the Provider, or where this is not available, as determined by or estimated by the Treasurer, or their designate; multiplied by

c) The number of days in the period assessed by the Treasurer, or their designate.

28. The Town may assess or reassess for any tax payable by the Provider within three years from the day the tax was 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 chapter, or in omitting to disclose any information, then the Town may assess or reassess, for any time the Town considers reasonable, the tax payable.

29. The Town shall send electronically, by mail or registered mail or deliver by hand, a notice of the calculation made under sections 26 to 28 to the Provider at the Providers' last known address, and that the amount determined is payable within 30 days from the date of mailing or delivery of the notice.

30. Liability to pay an amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

31. The Town is not bound by any information delivered by or on behalf of a Provider responsible for the payment of tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable.

32. This calculation, subject to being varied or adjusted due to an objection or appeal and subject to a recalculation, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding related to it.

APPEALS TO ASSESSMENTS

33. A Provider may apply in writing to the CAO, Treasurer or their designate for a re-assessment of MAT owing to the Town under sections 26 to 28, within 60 days from the day of receiving a notice of calculation. No request for a re-assessment will be considered by the Treasurer unless the Provider also:

a. Submits or has submitted a completed MAT Remittance Report for the period to which the assessment applied;

b. Pays or has paid the amount of the MAT assessed by the Treasurer or their designate in accordance with sections 26 to 28 and set out in the notice of calculation.

c. Pays or has paid any applicable interest or penalties on the amount of MAT assessed in accordance with sections 16 to 18;

34. Upon a re-assessment by the CAO, Treasurer or their designate based on the MAT Remittance Report for the period, the Treasurer or their designate shall adjust the Town records, if necessary, to reflect the re-assessment of the MAT and of any interest or penalties thereon.

35. Where a Provider who is entitled to do so, fails to apply for a reassessment in accordance with section 33, the amount assessed by the Treasurer, or their designate in accordance with sections 26 to 28 shall be final, except as may be determined to the contrary by way of audit.

36. In the event that the re-assessment by the Town reveals an overpayment by the Provider, the Treasurer or designate will notify the Provider in writing. At the discretion of the Treasurer or designate, the Town will provide: a refund of the amount overpaid, a credit against future obligations to pay MAT; or a credit against any debt then owing to the Town by the Provider, whether or not related to MAT. No interest shall be paid on the amount of the overpayment.

OFFENCES AND PENALTIES

37. Every person is guilty of an offence under this By-law who:

a. Makes, participates in, assents to or contributes in the making of false or deceptive statements 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 records or books of account, in order to evade payment or remittance of tax;

c. Makes, assents to or contributes in the making of false or deceptive entries, or assents to or contributes in the omission to enter a material, in any records or books of account;

d. Willfully, in any manner, evades or attempts to evade:

i. Paying tax;

ii. Remitting tax; or

iii. Otherwise complying with this By-law; or

e. Conspires with any person to commit an offence described in subsections (a) through (d).

38. Any Provider who contravenes or fails to comply with any provision of this By-law, is guilty of an offence.

39. Any Provider who is guilty of an offence is liable as follows:

a) Upon a first conviction, to a fine of not less than \$300 and not more than \$50,000 if the Provider is an individual, and \$500 and not more than \$100,000 if the Provider is a corporation.

b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$100,000.

c) Upon conviction for a continuing offence, to a fine of not less than \$100 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may not exceed \$100,000.

d) Upon conviction for multiple offences, for each offence included in the multiple offences to a fine of not less than \$100 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.

REFUNDS

40. 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 determination that the amount was wrongly paid or remitted, and if such a determination is made, the Town shall refund or credit all or part of the amount, but no refund shall be made unless an request in writing for such refund is made within 24 months after the payment date.

41. Where a person has, in accordance with this By-law, made a request in writing 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 the reasons.

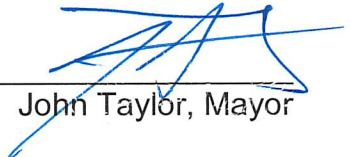
GENERAL

42. This By-law shall come into force and effect on January 1st, 2025.

43. 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 sections and portions of this By-law continue in force and effect.

44. This By-law may be referred to as "The Municipal Accommodation Tax By-law".

Enacted this 9th day of December, 2024



John Taylor, Mayor



Lisa Lyons, Town Clerk