



City of
Peterborough

To: **Members of the General Committee**

From: **Richard Freymond**
Commissioner of Corporate and Legislative Services

Meeting Date: **December 2, 2019**

Subject: **Report CLSFS19-053**
Municipal Accommodation Tax Financial Accountability
Agreement with the Greater Peterborough Area Economic
Development Corporation

Purpose

A report to recommend the execution of a new Municipal Accommodation Tax Financial Accountability Agreement between the City and the Greater Peterborough Area Economic Development Corporation, operating as Peterborough and the Kawarthas Economic Development (PKED).

Recommendation

That Council approve the recommendation outlined in Report CLSFS19-053, dated December 2, 2019, of the Commissioner of Corporate and Legislative Services as follows:

That the Mayor and City Clerk be authorized to execute an agreement with the Greater Peterborough Area Economic Development Corporation to provide a Municipal Accommodation Tax Financial Accountability Agreement in a form acceptable to the Commissioner of Corporate and Legislative Services and the City Solicitor and substantially in the form attached as Appendix A to Report CLSFS19-053.

Budget and Financial Implications

There are no specific budget and financial implications to adopting the recommendation. It is anticipated that an amount of \$405,000, which represents 50% of the overall Municipal Accommodation Tax collected net of costs will be transferred to PKED over the next 12 months. The agreement provides an accountability framework for the appropriate use of PKED's portion of the funds.

Background

Tourism is an important sector in Peterborough and the Kawarthas. Peterborough & the Kawarthas Tourism is a division of PKED and is the official Destination Marketing Organization for the City and County of Peterborough.

In consideration of Report CLSFS19-016 dated April 8, 2019, regarding a Municipal Accommodation Tax (MAT), Council resolved to enter into an agreement with PKED. The motion read as follows:

- e) That the key principles included in Appendix C with respect to the use and monitoring of funds from the Municipal Accommodation Tax received by Peterborough Kawartha Economic Development, be endorsed, noting these key principles will be included in an agreement between the City of Peterborough and the Peterborough Kawartha Economic Development.

The key principles that Council approved and reflected in the proposed draft Agreement are as follows:

- 1) 50% of the proceeds from the Municipal Accommodation Tax, net of the reasonable costs of collecting and administering the tax, shall be deposited into an account controlled by PKED.
- 2) The monies shall be used by PKED to:
 - a) Expand opportunities for tourism in Peterborough & the Kawarthas.
 - b) Pursue the following objectives and outcomes:
 - i) increase visitations to the City of Peterborough through destination marketing of Peterborough & the Kawarthas as a destination;
 - ii) enhance Peterborough's national and international profile;
 - iii) support partnership development, product development and industry growth;

- iv) fund bid requirements for major events in consultation with the City of Peterborough; and
 - v) to become more competitive with other provincial and national cities in Canada.
- 3) The PKED Board will determine the distribution of funds and approve the associated business and strategic marketing plans.

In approving the staff Report, Council observed that the City was the first municipality within Peterborough County to approve a MAT. Sections 8 and 9 of the proposed agreement address this observation and specify that although the proceeds of the MAT are to be used exclusively to promote tourism within the City, there is nothing preventing PKED from combining MAT proceeds with funds from other sources to promote tourism in other municipalities within the County provided that the value of any joint promotion is shared in proportion to each municipality's contribution. It is anticipated that other lower tier municipalities within the County will adopt a MAT at a future date.

The City's MAT came into effect October 1, 2019. During the month of October an amount of \$61,102 has been reported to date as having been collected from patrons; once received by the City, 50% will be deposited into an account controlled by PKED and 50% will be deposited into the City's MAT Reserve.

The proposed agreement is attached as Appendix A.

Submitted by,

Richard Freymond
Commissioner of Corporate and Legislative Services

Contact Name:

Richard Freymond
Chief Financial Officer
Phone: 705-742-7777, Extension 1863
Toll Free: 1-855-738-3755
Fax: 705-876-4607
E-mail: rfreymond@peterborough.ca

Attachments:

Appendix A – Municipal Accommodation Tax Financial Accountability Agreement

Municipal Accommodation Tax Financial Accountability Agreement

THIS AGREEMENT dated this ____ day of _____, 2019

Between:

The Corporation of the City of Peterborough (“City”)

And

Greater Peterborough Area Economic Development Corporation (“GPAEDC”)

Definitions 1

Term..... 2

Payments to GPAEDC 2

Expenditures by GPAEDC 2

Records and Audit..... 3

Indemnity..... 3

Insurance 3

Remedies on Default..... 4

General 5

Appendix A – City By-law 19-063 7

Whereas:

- a) On June 24, 2019, the City passed By-law 19-063 (“By-law”) imposing a Municipal Accommodation Tax (“MAT”) pursuant to section 400.1 of the **Municipal Act, 2001**, S.O. 2001, c. 25, as amended.
- b) The By-law is attached as Appendix A to this Agreement.
- c) O. Reg. 435/17 requires a municipality collecting a MAT to make payments to an eligible tourism entity and requires those parties to enter into an agreement respecting reasonable financial accountability matters to ensure that the payments are used for the exclusive purpose of promoting tourism.
- d) GPAEDC is a non-profit non-share capital corporation incorporated pursuant to the **Corporations Act**, R.S.O. 1990, c. C.38. Its mandate includes the promotion of tourism in the City of Peterborough.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements set out herein, the parties covenant and agree as follows:

Definitions

- 1. In this Agreement:

- a) "Agreement" means this agreement and its schedule(s) and any amendments thereto.
 - b) "Core Economic Development Activities" means the activities described in Appendix A to an agreement dated **[pending approval]** between the City, GPAEDC and The Corporation of the County of Peterborough.
 - c) "GPAEDC Objects" means the objects of GPAEDC as set out in its letters patent dated November 30, 1998 as amended by supplementary letters patent dated October 11, 2005.
 - d) "MAT Account" means an account maintained by the City at a bank as defined by section 2 and described in Schedule I of the **Bank Act**, S.C. 1991, c. 46, as amended.
 - e) "MAT Proceeds" means the MAT paid by the City to GPAEDC pursuant to section 5.
 - f) "Regulation" means Ontario Regulation 435/17, as amended from time to time.
 - g) "Treasurer" means the City's Treasurer.
2. The terms defined in section 1 of the By-law apply to this Agreement.

Term

- 3. The term of this Agreement commences on October 1, 2019 and ends on September 30, 2023.
- 4. Either party may terminate this Agreement by providing not less than 120 days' written notice to the other.

Payments to GPAEDC

- 5. The City will pay MAT to GPAEDC pursuant to the Regulation.
- 6. GPAEDC will forthwith deposit to the MAT Account all MAT Proceeds.
- 7. GPAEDC will not permit the MAT Account to be used except exclusively for deposits pursuant to section 6 and expenditures by GPAEDC pursuant to this Agreement.

Expenditures by GPAEDC

- 8. GPAEDC must use MAT Proceeds exclusively to promote tourism within the City and, to the extent that they relate exclusively to the City, in accordance with the GPAEDC Objects and the Core Economic Development Activities, including to
 - a) increase visits to the City by individuals who do not reside in the City;

- b) enhance the City's national and international profile;
 - c) support partnership development, product development and industry growth;
 - d) fund bid requirements for major events in the City; and to
 - e) become more competitive with other provincial and national cities in Canada.
9. Section 8 does not prevent GPAEDC from combining MAT Proceeds with funds from other municipalities to promote tourism within the City and such other municipalities provided that, to the Treasurer's satisfaction,
- a) the value of any such joint promotion is shared ratably among the municipalities in proportion to their respective contributions; and
 - b) the joint promotion is otherwise in accordance with the GPAEDC Objects and the Core Economic Development Activities.

Records and Audit

10. GPAEDC will, to the Treasurer's satisfaction, create, maintain and preserve records respecting MAT Proceeds. GPAEDC will, forthwith upon each request by the Treasurer, permit the Treasurer to inspect such records and provide to the Treasurer copies of such records at GPAEDC's expense.
11. GPAEDC will, annually immediately following its fiscal year end permit the City's auditor to undertake at GPAEDC's expense an audit of MAT Proceeds. All audit findings, reports and summaries must be provided, unaltered and complete, to the Treasurer within ten (10) days of the day on which they are in GPAEDC's custody or control.
12. The City may engage an independent auditor to audit GPAEDC's operations as they relate to MAT Proceeds.

Indemnity

13. GPAEDC will indemnify and hold harmless the City, the members of its Council, its employees, officers, agents and volunteers from and against all liability, claims, demands, losses, costs, damages, suits, proceedings and legal costs in any way related to the negligence, acts or omissions of GPAEDC, its employees, officers, agents, volunteers and others for whom GPAEDC is responsible in law in any way related to this Agreement. GPAEDC's obligation under this section forever survive termination of this Agreement.

Insurance

14. During the term of this Agreement, GPAEDC must obtain and maintain the coverage shown below:

- a) Third party general liability insurance covering all claims for negligence, nuisance, property damage and bodily injury, including death, in any way related to this Agreement. Such policy must include the City as an additional insured with respect to this Agreement and be in an amount not less than five million dollars (\$5,000,000) per occurrence including personal injury liability, contractual liability, non-owned automobile liability, and must include a severability of interests clause and cross liability clause.
 - b) Professional errors and omissions insurance in an amount not less than one million dollars (\$1,000,000) per claim. Such policy must provide coverage for all errors and omissions by or on behalf of GPAEDC in the provision of or failure to provide professional services in relation to this Agreement.
 - c) Such other insurance as may from time to time be required by the City.
15. The insurance required by this Agreement does not limit or restrict GPAEDC's liability pursuant to this Agreement or otherwise at law.
16. The policies described in section 14 must be with insurers licensed to underwrite insurance in the Province of Ontario.
17. The policies described in section 14 must provide that they will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry.
18. GPAEDC must deliver to the City evidence of the policies described in section 14 promptly at the commencement of the term of this Agreement and thereafter prior to each insurance renewal date.
19. The City may, from time to time, reasonably request higher limits of insurance for the policies described in section 14. GPAEDC will forthwith comply with each such request at its sole cost.

Remedies on Default

20. If the City notifies GPAEDC that GPAEDC has failed to comply with any term of this Agreement ("Default") and GPAEDC has not cured the Default to the City's satisfaction within thirty (30) days of the City's notice, then the City may, at its discretion, terminate this Agreement forthwith.
21. The City's failure to exercise a remedy under this Agreement will not be construed as a waiver of such right. The partial or limited exercise by the City of a right will not prevent the City from subsequently exercising any other right or remedy under this Agreement or otherwise at law.

General

22. Neither party may assign this Agreement without the prior written consent of the other.
23. This Agreement will enure to the benefit of and be binding upon the parties' respective successors and assigns.
24. If any provision or portion of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid or illegal, such provision or portion will be severable, but all other terms and conditions of this Agreement will continue to be valid, binding and enforceable.
25. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and laws of Canada applicable in Ontario.
26. The table of contents and headings in this Agreement are for convenience and do not form part of this Agreement.
27. Time is of the essence in the performance of obligations pursuant to this Agreement.
28. Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.
29. This Agreement may be disclosed upon request pursuant to the **Municipal Freedom of Information and Protection of Privacy Act**, R.S.O. 1990 c. M.56.
30. This Agreement and any amendment, restatement, supplement, replacement, other modification or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
31. Either party may deliver an executed copy of this Agreement as a PDF document attached to an e-mail but that party shall immediately deliver to the other party an original executed copy of this Agreement.
32. Unless otherwise specified, each notice to a party must be given in writing and delivered personally or by courier, sent by prepaid registered mail or transmitted by e-mail as follows

To the City:

The Corporation of the City of Peterborough
500 George St. N., Peterborough, ON K9H 3R9
Attention: John Kennedy, Clerk
jkennedy@peterborough.ca

To GPAEDC:
Greater Peterborough Area Economic Development Corporation
270 George St. N., Suite 102 Peterborough, ON K9J 3H1
Attention: Rhonda Keenan, President and CEO
RKeenan@peterboroughed.ca

THE PARTIES HERETO have executed the Agreement effective as of the date first above written.

The Corporation of the City of Peterborough

Per: _____
Diane Therrien, Mayor

Per: _____
John Kennedy, Clerk
We have authority to bind the Municipality

Greater Peterborough Area Economic Development Corporation.

Per: _____
Rhonda Keenan, President and CEO

Per: _____
We have authority to bind the corporation

Appendix A – By-law Number 19-063



City of
Peterborough

The Corporation of the City of Peterborough

By-Law Number 19-063

Being a By-law to Establish a Municipal Accommodation Tax (MAT)

Whereas

- a) Section 400.1 of the **Municipal Act, 2001** provides that a municipality may pass a by-law imposing a Transient Accommodation Tax;
- b) Ontario Regulation 435/17 provides regulations in respect of the imposition of a Transient Accommodation Tax;
- c) Section 23.2 of the **Municipal Act, 2001** permits a municipality to delegate certain legislative and quasi-judicial powers;
- d) At its meeting on April 23, 2019, Council approved the establishment of the Transient Accommodation Tax to be imposed on the purchase of accommodations of short duration within the City of Peterborough, which will generate revenue to be shared with designated non-profit entities to promote local tourism;

Now Therefore, The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

Definitions

- 1. In this By-law:
 - a) “Ancillary Charges” means charges related to the purchase of Transient Accommodation including for food, room service, mini bar products, internet, movie rentals, and phone charges.
 - b) “By-law” means this by-law including, as applicable, its schedules and any amending by-laws.
 - c) “City” means The Corporation of the City of Peterborough.
 - d) “Council” means the Council of the City.

- e) “Municipal Accommodation Tax” or “MAT” means the tax imposed under this By-law.
- f) “Provider” means each owner of Transient Accommodation and includes a person who receives payment in consideration for Transient Accommodation and includes agents, hosts or others who sell, offer for sale or otherwise provide Transient Accommodation.
- g) “Purchaser” means the person who makes payment in consideration for Transient Accommodation.
- h) “Tax Collection Agent” means the person or persons from time to time appointed by Council or by the City’s Chief Administrative Officer pursuant to section 15 to collect from Providers the Municipal Accommodation Tax.
- i) “Transient Accommodation” means accommodation for one or more individuals for a continuous period of less than thirty (30) nights in each place or part or unit of a place in which such accommodation is provided including a hotel, motel, inn, resort or hostel.

Application of MAT

- 2. A Purchaser must pay, at the time of purchase, a Municipal Accommodation Tax in the amount of four percent (4%) of the purchase price for the Transient Accommodation.
- 3. Subject to section 4, the Municipal Accommodation Tax does not apply to Ancillary Charges that are itemized separately on the Purchaser’s receipt.
- 4. Where the Provider of Transient Accommodation fails to separately itemize Ancillary Charges, the Municipal Accommodation Tax will apply to the total amount of the purchase price.

Exemptions

- 5. The Municipal Accommodation Tax 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) The purchase of Transient Accommodation at an institution described in paragraph c);

- e) 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** and every private hospital operated under the authority of a licence issued under the **Private Hospitals Act**;
- f) Every long-term care home as defined in subsection 2(1) of the **Long-Term Care Homes Act, 2007**;
- g) Every treatment centre that receives provincial aid under the **Ministry of Community and Social Services Act**;
- h) Every house of refuge, or lodging lawfully used for the reformation of offenders;
- i) Every charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for emergency;
- j) Every hotel or motel room used by the City or its agents for shelter accommodation purposes;
- k) Every tent or trailer site lawfully supplied by a campground, tourist camp, or trailer park;
- l) Every accommodation lawfully supplied by employers to their employees in premises operated by the employer;
- m) Every hospitality room in an establishment that does not contain a bed and is used exclusively for displaying merchandise, holding meetings, holding hearings, or entertaining;
- n) Every Bed and Breakfast Establishment lawfully used in accordance with the City's Zoning By-law 97-123, as amended;
- o) Transient Accommodation advertised on the internet platforms known as Airbnb and Vacation Rentals by Owner (VRBO) and lawfully used in accordance with applicable law including the City's Zoning By-law 97-123, as amended.

Tax Collected by Provider

- 6. A Provider must provide to a Purchaser a written receipt or invoice on which the Provider specifies the amount of the Municipal Accommodation Tax as a separate item and identifies the amount as "Municipal Accommodation Tax".
- 7. A Provider must collect the Municipal Accommodation Tax from the Purchaser at the time of purchase of Transient Accommodation.
- 8. A Provider holds in trust for the City the Municipal Accommodation Tax collected by the Provider.
- 9. A Provider must forthwith provide to the City all information that the City's Treasurer may from time to time request in relation to the administration or enforcement of this By-law.

10. A Provider must, by the fifteenth (15th) day following the end of each calendar month, remit to the Tax Collection Agent all Municipal Accommodation Tax collected by the Provider as at the end of the said calendar month. Each such remittance must be made in the manner prescribed by the Tax Collection Agent and, without limiting section 9, must be accompanied by a statement in a form prescribed by the Tax Collection Agent that includes the following information
- a) Total number of nights for which each unit of Transient Accommodation was provided;
 - b) Total Municipal Accommodation Tax collected;
 - c) Total Municipal Accommodation Tax collected for each unit of Transient Accommodation;
 - d) For each unit of Transient Accommodation, particulars of each exemption from the payment of Municipal Accommodation Tax including the paragraph(s) under section 5 and the proof upon which the Provider relied in applying the exemption.

Refunds

11. Where, within twenty-four (24) hours of paying an amount on account of Municipal Accommodation Tax, a Purchaser submits to the Tax Collection Agent or to the City's Treasurer a written complaint that the amount or part was not payable pursuant to this By-law ("Disputed MAT"), the City's Treasurer or the Tax Collection Agent may make a determination as to whether the Disputed MAT was correctly or wrongly paid. If the determination is that the Disputed MAT was wrongly paid, the City's Treasurer or the Tax Collection Agent may direct the Provider to refund or credit to the Purchaser an amount equal to the Disputed MAT. The Provider must forthwith comply with the direction.
12. Where, within twenty-four (24) hours of a remittance of Municipal Accommodation Tax pursuant to section 10, a Provider submits to the Tax Collection Agent or to the City's Treasurer a written complaint that the amount or part of the remittance was in error ("Disputed Remittance"), the City's Treasurer or the Tax Collection Agent may make a determination as to whether the Disputed Remittance was or was not made in error. If the determination is that the Disputed Remittance was made in error, the City's Treasurer or the Tax Collection Agent may cause to be refunded or credited to the Provider an amount equal to the Disputed Remittance.
13. The determinations and, as applicable, direction of the Treasurer or the Tax Collection Agent pursuant to sections 11 and 12 are final and not subject to review including review by any Court.

Tax Collection Agent

14. The Tax Collection Agent is the Ontario Restaurant Hotel & Motel Association.
15. The City's Chief Administrative Officer, in consultation with the City Solicitor, may designate additional tax collection agents for the City and enter into agreements

with Tax Collection Agents in forms acceptable to the City's Treasurer and the City Solicitor.

16. The Tax Collection Agent will collect and administer the Municipal Accommodation Tax as an agent for the City in accordance with the agreement between the City and the Tax Collection Agent and this By-law.

Interest, Fees and Liens

17. Penalties and interest at a monthly rate of interest applicable to overdue property taxes apply to any outstanding Municipal Accommodation Tax and are payable monthly by the Providers of Transient Accommodation on the amount of any Municipal Accommodation Tax payable or remittable from the business day following the date on which the Municipal Accommodation Tax was payable or its remittance was due up to and including the date on which such Municipal Accommodation Tax is paid or remitted in full.
18. All Municipal Accommodation Tax penalties and interest that are past due may be deemed by the City Treasurer to be in arrears, and may, at the Treasurer's discretion, be transferred to the City's tax collector's roll for any real property in the City to be collected in the same manner as municipal property taxes and constitutes a lien upon the said real property.

Audit and Inspections

19. Every Provider must keep, for a period of no less than three (3) years, books of account, records, and documents sufficient to furnish the City or its Tax Collection Agent with the information set out in sections 9 and 10.
20. The City's Treasurer or the Tax Collection Agent may inspect and audit all books, documents, transactions, and accounts of Providers and require Providers to produce copies of any document or records required for the purpose of administering and enforcing this By-law.
21. Every Provider must furnish upon the demand of the City Treasurer or the Tax Collection Agent for inspection, copies of any books, documents, transactions, accounts or records required for the purposes of the administration and enforcement of this By-law.

Offences and Penalties

22. Every person who contravenes any provision of this By-law is guilty of an offence.
23. Every director or officer of a corporation who knowingly concurs in the contravention by the corporation of any provision of this By-law is guilty of an offence.
24. Every person convicted of an offence under this By-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 for each day on which offence occurs or continues.

Effective Date

25. This By-law comes into force and effect on October 1, 2019.

By-law read a first, second and third time this 24th day of June, 2019.

(Sgd.) Diane Therrien, Mayor

(Sgd.) John Kennedy, City Clerk