

Town of Niagara-on-the-Lake

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Report: CS-22-019
Committee Date: 2022-06-20
Report To: Council
Due in Council: 2022-06-20
Subject: Municipal Accommodation Tax

RECOMMENDATION

It is respectfully recommended that:

- 1.1. Council approve the attached by-law (**Appendix I**) for the implementation of a Municipal Accommodation Tax (MAT), commencing July 1, 2022;
- 1.2. Council receive the attached feedback and suggestions from the Governance Advisory Group (**Appendix II**);
- 1.3. Council approve Tourism NOTL, as a subsidiary of the NOTL Chamber of Commerce, as the local Destination Marketing Organization (DMO);
- 1.4. Council approve that MAT revenues be split on a 50/50 basis, net of administration costs, with the local DMO;
- 1.5. Council approve the creation of a new MAT Governance Advisory Committee (comprising Council Member(s), Staff, Residents, DMO representative(s), and Operator(s) to develop approval criteria for and make recommendations about MAT-funded capital projects on an ongoing basis; and
- 1.6. Council approve hiring a contract Staff member in 2023 (to be funded from the MAT reserve) to implement and manage the MAT program and that the results of the position and time requirements be assessed and reported back to Council.

EXECUTIVE SUMMARY

In August of 2021, Council passed a motion to implement a MAT within the 2022 budget for tourism projects. This was to target accommodations with 5 or more rooms, starting with a tax rate of 2% on room accommodation rates and scaling up to 3% and 4% over a three-year period. Council direction was provided to place any revenues generated into a special reserve for tourism promotion, Town capital infrastructure and tourism initiatives. Council further directed that Staff form a MAT Governance Advisory Group for consultation on the proposed MAT design and governance processes.

Staff met with the Government Advisory Group, composed of various industry stakeholders, to discuss a draft By-law and overall principles. Staff considered these principles while formulating the final draft By-law (**Appendix I**).

The Governance Advisory Group also made recommendations regarding the content of the By-law to meet operational objectives. These recommendations were also considered while formulating the final draft By-law, but some were not possible due to Council's previous direction.

These recommendations are discussed further in Section 5 of the Report.

Should Council approve the attached By-law, the program will come into effect on July 1, 2022.

Revenues generated from the program are proposed to be split on a 50/50 basis with the Destination Marketing Organization (the Chamber of Commerce). Staff are also recommending the creation of a new MAT Governance Advisory Committee to further develop criteria around how the Town uses its portion of MAT revenues and make recommendations regarding MAT-funded capital projects on an ongoing basis.

3. PURPOSE

The purpose of this Report is to provide the framework for how the Municipal Accommodation Tax (MAT) will operate and provide feedback from stakeholders who participated in a Municipal Accommodation Tax Governance Advisory Group.

4. BACKGROUND

In August of 2021, Council passed a motion to implement a MAT within the 2022 budget. An excerpt of the motion was as follows:

"...Therefore, be it resolved that Council support the introduction of MAT within the 2022 budget for accommodations with 5 or more rooms, with a scaled-up version of 2%, 3%, and 4% over 3 years, and that any funds generated be put in a reserve to support tourism infrastructure,

And that Audit & Finance Committee formulate recommendations for tourism-based capital projects for Council consideration in the 2022 Budget year,

And that the introduction of MAT be included in the scope of the Tourism Strategy,

And further that the cost of the administration of the program be funded from Municipal Accommodation Tax."

During a special Council meeting held on January 31, 2022, Council approved the following motion:

"...Therefore, the Audit and Finance Committee recommends that Council direct staff to implement the MAT as approved by Council, that they establish the appropriate reserve accounts and consult with the accommodation providers over the next several months, that the 2022 Museum request of \$100,000 be funded from the MAT reserves and that the implementation date be set as July 1, 2022."

Staff has drafted a MAT By-law (**Appendix I**) based on these requirements.

During the Special Council meeting held on January 31, 2022, Council also approved a motion

"to include the creation of a Governance Advisory Group, of up to nine (9) tourism stakeholders, selected by Staff, to assist Staff in the design and governance processes for the MAT program to be implemented by July 1, 2022, and that this initiative not delay the implementation of this program."

Staff met with the Governance Advisory Group on May 8 and June 14, 2022, to discuss a draft MAT By-law (**Appendix I**) and implementation and governance items surrounding the MAT program.

The Governance Advisory Group summarized the following principles for the MAT program that they recommend the Town adhere to moving forward:

- Maintains competitive advantage
- Maintains flexibility
- Promotes transparency
- Is Community-driven
- Promotes inclusivity
- Provides operational and administrative efficiency and effectiveness
- Aligns with the Town's tourism strategy and objective of sustainable tourism growth
- Achieves the intent of the legislation (*O. Reg. 435/17*)

Furthermore, the Governance Advisory Group suggested the following:

- Criteria should be established to determine the type of projects MAT revenues can be spent on.
- MAT revenues should be used to further tourism initiatives, assisting in the sustainable growth of the industry, as the legislation intends.
- MAT revenues should not be used to replace existing items already budgeted for in the Town's operating budget.

5. DISCUSSION / ANALYSIS

Staff has developed a draft MAT By-law in compliance with *Ontario Regulation 435/17 Transient Accommodation Tax* and Council's direction, including but not limited to the following elements:

- Applicable to accommodations with five or more rooms
- An escalating tax rate of 2%,3%, and 4% over three years
- Funds generated from the program will be placed into a special reserve

If approved by Council, the MAT By-law will take effect July 1, 2022.

5.1 Governance Advisory Group Recommendations:

Staff and the Governance Advisory Group were tasked with designing the governance and processes related to the Town's MAT program. The group met to establish the principles and framework for the program as well as discuss the logistics of implementing MAT from the operators perspective. The first meeting consisted of the members meeting for a collaborative workshop to review the Town's draft MAT By-law, identify principles for decision-making, and make recommendations concerning the framework of the program. The second meeting confirmed the main principles and recommendations made by the group as well as the proposed steps moving forward.

Staff and the Governance Advisory Group agreed on most items in the draft MAT By-law in the categories of Definitions, Exemptions, Tax Collection and Remittance, Delegation of Authority, Interest Penalties, Liens and Other Penalties. They also agreed on a quarterly remittance period and default based on the full occupancy.

There was significant discussion regarding Application, and Audit and Inspections. In particular, the group raised concerns about preferring a flat rate over a percentage-based remittance and using a third-party for auditing records.

A summary of the group's recommendations and suggestions is attached as **Appendix II**.

The key recommendations of the group are as follows:

1. The MAT should be applied at the time of settlement and after services have been rendered.
2. A flat rate per room/night should be used to simplify the administration, collection, remittance, and auditing processes of the program.
3. If a flat rate is not used, a third-party should be used when auditing records of an Operator to prevent potential liabilities or the Town from inadvertently sharing confidential information and industry data.
4. Corporate bookings should be exempt from the MAT to promote maintaining competitiveness in the market space.
5. Consideration should be given to extending the implementation date of the MAT, due to changes required in accounting and POS systems and further development of any required processes to support the MAT program.
6. The anniversary date of the MAT increases is recommended to align with a calendar year.

These recommendations are discussed in additional detail below, including whether the changes were implemented in the By-law. A complete list of requested changes and discussions can be found in **Appendix II**.

5.1.1 Timing of collection

The Governance Advisory Group believed that clarification was required as to the timing of when MAT was to be collected. The draft MAT By-law included language to collect this at the time of purchase/booking. The group recommended this be changed to reflect when services have been rendered and at the time of settlement. While many visitors may pre-book and prepay for accommodations, visitors may extend or modify their stay. Staff agree with this change and have reflected it in the draft by-law.

5.1.2 Flat rate per room/night

Staff has not considered this approach in the preparation of the attached By-law (**Appendix I**), as Council has provided direction to implement a percentage rate.

The Governance Advisory Group saw a flat rate as simplifying the overall process of calculating, collecting, remitting and auditing for the following reasons:

- Some Operators only have a single rate for their operation, inclusive of other amenities such as meals. As the MAT is only intended to be charged on the room rate and not other amenities, Operators would be required to separate charges on the bill and/or amend their rate structure, including modifications to their accounting or booking systems. Due to this approach, some raised that there may be an opportunity to "game the system" whereby low rates are set for the room accommodation vs. the cost of other amenities, leading to a lower MAT collection. A flat rate was seen as less complex, with the only calculation being a flat rate per room per night. This led to a secondary discussion of tiered flat rates for different types of accommodations. Staff has not addressed this particular item in the by-law, and left the onus on the Operators to address their rate structure or receipting practices. MAT can be worked into the room cost along

with a note on the receipt or invoice indicating the MAT percentage and dollar amount.

- Many Operators were apprehensive about sharing accounting records with the Town. A flat rate alleviates this concern from an auditing perspective as then only the number of bookings and nights need to be verified outside of providing room rental revenue.

5.1.3 Using a third party to audit if a flat rate was not approved

Operators expressed a strong apprehension about sharing accounting records directly with the Town. Concerns around confidentiality and potential liability for the Town were raised. The use of a third-party firm was recommended to provide assurances on their behalf that collections and remittances were done in compliance with the Town's by-law. Suggestions ranged from a hotel or STR/Bed & Breakfast association to an audit firm.

At this time, Staff has not made adjustments to the draft by-law as certain assurances need to be in place for records to be verifiable and accurate from the Town's perspective. As surrounding municipalities are implementing MAT programs of their own, there exists the opportunity to enter into a shared services agreement for auditing Operators with a licensed accounting firm. The cost could be borne as an administrative cost of the MAT program. The cost would lower revenue sharing amounts with the Destination Marketing Organization (DMO) but should satisfy concerns raised by Operators and simplify the auditing process from a Staff perspective while also providing some level of guarantee that the program is functioning for all participating stakeholders.

5.1.4 Exemption of corporate bookings

The Governance Advisory Group raised the possibility of corporate bookings (conferences, training, business retreats or other stays classified as business stays) being exempt from the MAT. This market space is seen as highly competitive, with the introduction of a new tax reducing the overall competitiveness of accommodations located in Niagara-on-the-Lake. Customers may consider Niagara Falls or St. Catharines for their corporate needs if local accommodation rates have been pushed higher due to the MAT.

At this time, Staff has not addressed this concern. It should be noted that the City of St. Catharines recently approved a 4% MAT in early June of 2022. Niagara Falls has implemented a flat rate MAT of \$2 per room per night. In reviewing Niagara Falls By-law, Staff did not identify an exemption for Corporate Bookings. This has been verbally confirmed with Niagara Falls Staff, and the only exemption which may apply is when rooms are fully comped (provided for free) by an accommodation provider.

5.1.5 Extension of the implementation date

The Governance Advisory Group expressed concern about the quick turnaround in implementation requirements. The group indicated that accounting, point of sale, or booking systems would require modifications before applying a MAT. As some systems are larger or more complex, testing these changes before rolling out the changes was requested for consideration.

Council has previously provided direction on the implementation date, so Staff has maintained an effective date of July 1, 2022. However, Staff has addressed this concern in the draft by-law by adding language to temporarily waive the penalty for up to 90 days on installments (for a period of one year).

5.1.6 Anniversary date of the MAT increase

The advisory group expressed a desire for the annual escalation of the MAT to align with the

calendar year to simplify bookings. Staff has accommodated this request under Section 3 of the by-law, aligning the first escalation of 3% to January 1, 2024, and the last escalation rate of 4% to January 1, 2025.

5.1.7 Other adjustments or clarifications:

- Adjusted the definition of Purchase Price to clarify the timing of the application of MAT from booking to upon settlement and after services have been rendered.
- "Vacation Rental" was added to the list of accommodation types to be charged under Section 2 of the by-law.
- Exempted bookings and contracts that have been made before July 1, 2022, but occurring after July 1, 2022, in order to smooth the transition and implementation of the MAT program.
- Waived the interest and penalties for up to 90 days in the first year of implementation.
- Clarified the language around which records would be requested in the course of an audit.

Further discussion and all revisions can be found in **Appendix II**.

5.2 Destination Marketing Organization:

A "destination marketing program" means a program under which one or more providers of transient accommodation in a municipality agree to pay a portion of their revenue to a non-profit entity (for which the providers of transient accommodation may or may not charge fees to purchasers of transient accommodation to recover that revenue) to be used by an eligible tourism entity in promoting tourism.

O. Reg. 435/17 requires 50% of the Municipal Accommodation Tax revenue to be paid to one or more "eligible tourism entities" (MAT Funds). An "eligible tourism entity" is a non-profit entity whose mandate includes the promotion of tourism in Ontario or in a municipality.

Under the legislation, the Town is required to designate a destination marketing organization (DMO) to share program revenues for the purposes of tourism promotion. The minimum amount that is to go to the DMO is 50%. Staff is seeking that Council approve that MAT revenues be split on a 50/50 basis, net of administration costs, with the local DMO.

The municipality must also enter into an agreement with the eligible tourism entity (e.g. Niagara-on-the-Lake Chamber of Commerce) that receives a portion of the Municipal Accommodation Tax. This agreement must include reasonable financial accountability measures to ensure amounts paid to the entity are used for the exclusive purpose of promoting tourism and may provide for other matters.

The NOTL Chamber of Commerce (the "Chamber") has been a driving force for Tourism in Niagara-in-the-Lake for many years. The Town has a long-standing relationship with the Chamber. In 2013, By-law 4663-13 was approved. The by-law states, "As the Destination Marketing Organization for Niagara on the Lake, the Chamber shall provide a range of visitor services, tourism marketing and promotional services which continue to enhance Niagara-on-the-Lake's stature as a premier visitor destination." Much has changed since 2013, and since then, the Chamber has created Tourism Niagara-on-the-Lake, a subsidiary of the Chamber. Tourism NOTL is committed to the development, encouragement, promotion and enhancement of a positive and diverse economic environment consistent with the special cultural, historical, agricultural, ecological and community qualities of Niagara-on -the-Lake and its environs. Given this, Staff believes that this arrangement should be reaffirmed under a new Agreement.

It is proposed that the Town reaffirm the Niagara-on-the-Lake Chamber of Commerce as the eligible tourism entity for the purposes of the MAT. Section 8 of the draft MAT By-law provides additional detail regarding the authority and steps to enter into the associated agreements.

5.3 MAT Governance Advisory Committee

The Governance Advisory Group was established as a short-term working group to assist Staff in designing the MAT program framework and draft By-law. Their work has concluded with the recommendations in this Report, and Staff is grateful for their valuable input.

However, to further develop the program and provide ongoing oversight with a broader stakeholder group, Staff recommends creating a MAT Governance Advisory Committee. This group would be composed of Council Member(s), Staff, Residents, DMO representative(s), and Operator(s). Their objective would be to develop approval criteria for and make recommendations about MAT-funded capital projects on an ongoing basis.

If approved, Staff will return to Council with additional detail and a Terms of Reference for Council's consideration.

6. STRATEGIC PLAN

Pillar(s)

1. Protect Distinctive Community Assets

Objective(s)

1.2 Close the gap on capital investments

Tactic(s)

2.3 a) Determine priorities relating to economic development, environmental stewardship, and tourism

7. OPTIONS

Option 1: Council approve the attached by-law with an implementation date for MAT as of July 1, 2022 (*As recommended*).

Option 2: Council not approve the attached by-law and request Staff to make amendments to the proposed MAT program

8. FINANCIAL IMPLICATIONS

Staff have previously estimated MAT revenues for seven (7) months to be approximately \$309,000. This is expected to be slightly lower due to a later start date and modifications to the MAT By-law to smooth the implementation.

Changes applied to the draft by-law will impact the total overall revenue collected or administrative costs of the program:

- **Exemption of bookings and contracts as of July 1, 2022:** To smooth implementation of the MAT program for operators, Staff have included in the draft by-law that bookings occurring after July 1, 2022, but made before July 1, 2022, would be exempt from the MAT. It's been shared that roughly 80%-90% of bookings for the year for Short Term Rentals are complete by this

time. There are 14 STR establishments with 5 or more rooms, suggesting that only 2% of 10%-20% of the Short Term Rental revenues would be captured as opposed to previous projections using a portion of 50% based on occupancy rates. Data for existing bookings with hotels are currently unknown. Based on previous projections with STRs, this may be a reduction of up to \$12,000 in overall MAT revenues.

- **Staff Member costs:** A contract Staff member to manage the MAT program in 2023 will cost approximately \$70,000. Staff would aim to hire this position to align with the 2023 budget year to further develop MAT processes and manage the MAT program.
- **Use of a third-party auditor (as a potential future option):** At this time, Staff would estimate \$30,000-\$50,000 for an external auditor to perform limited desk audits of several operators. At this time, audit parameters and guidelines have not been established; therefore, the cost may be much higher depending on the level of audit requirements. Staff will also be dealing with limited data for several collection periods before being able to properly assess the data being collected and establishing baseline data for identifying audit candidates. As more municipalities in the Region implement a MAT program, an opportunity exists to enter into a shared services agreement for the services of an external auditor. This will be reviewed in the future.

9. ENVIRONMENTAL IMPACT

N/A – There are no environmental impacts to this Report.

10. COMMUNICATIONS

The MAT program will require that an extensive communication plan be developed and executed. Accommodation Operators will need to be contacted and made aware of the requirements of the program and quarterly filing requirements.

Staff will develop a new section of the Town's website dedicated to the MAT program. Materials will include a comprehensive general frequently asked questions (FAQ) document, instructions and standardized forms for remitting the MAT to Town, and other resources for Operators and Visitors. A new section will be developed on the Town's website with resources and materials for accommodation operators and visitors to the Town.

11. CONCLUSION

Should the attached MAT By-law be approved, the Municipal Accommodation will take effect July 1, 2022, for accommodations with 5 or more rooms with the objective of funding future tourism initiatives.

12. PREVIOUS REPORTS

- N/A

13. APPENDICES

- **Appendix I** – Draft MAT By-Law
- **Appendix II** – Meeting Minutes and Summary from Governance Advisory Group

Prepared & Recommended by:

A handwritten signature in blue ink, appearing to read 'Freeborn'.

**Kyle Freeborn, CPA, CMA
Director of Corporate Services/Treasurer**

Submitted by:

A handwritten signature in black ink, appearing to read 'M. Cluckie'.

**Marnie Cluckie, MS.LOD, B.ARCH, B.ES
Chief Administrative Officer**