

Background

At the February 6, 2018 Finance and Administration Committee, the General Manager of Corporate Services presented a report entitled "Transient Accommodation Tax". As a result staff were directed to:

1. Proceed with industry consultation and a review of best practices in other municipalities;
2. Direct 50% of the net MAT revenue towards the debt obligation required for the Event Centre;
3. Designate The City of Greater Sudbury Community Development Corporation (operating as the Greater Sudbury Development Corporation, or the GSDC) as the non-profit organization required to administer the remaining 50% net MAT revenue and that those funds be designated exclusively for tourism promotion and development; and
4. Report back with a detailed proposal for the structure and implementation of the program as well as providing Council the appropriate enacting by-laws.

This report serves to provide information regarding the items noted above.

Additional background

With the Province of Ontario's passage of Bill 127, the *Stronger Healthier Ontario Act*, municipalities are able to establish a by-law to collect an accommodation tax through accommodation providers within their jurisdictions. The implementation and administration of the accommodation tax is authorized under Section 400.1 of the Municipal Act and Ontario Regulation 435/17. Where a Municipal Accommodation Tax (MAT) by-law is in place the tax is mandatory and providers are obligated to collect the tax from purchasers of accommodation and remit the tax to the municipality. Municipalities are required to share the revenues with eligible not for profit tourism entities for the exclusive purpose of promoting tourism and product development within the municipality.

Progress since the February 6, 2018 Transient Accommodation Tax report

Staff from Economic Development, Legal and Finance have collaborated to move the implementation of the Municipal Accommodation Tax "MAT" forward.

1. Industry consultation and Best Practices

Industry Consultation

Public consultations have been held with accommodation providers ("providers"). City Tourism staff have met with management staff and owners of a number of providers to discuss the MAT and its implications. While individual business approaches vary according to the provider, common concerns regarding the MAT have emerged:

Collection of the MAT

The following are some key concerns regarding the providers' ability to collect the MAT:

- The MAT creates additional administrative requirements and may impact negatively on profit margins particularly as it is coming on at a time when providers are also forced to adjust for increased labour costs relating to Bill 148 (*Fair Workplaces, Better Jobs Act*).
- Greater Sudbury's competitive position may be negatively impacted if nearby municipalities choose not to implement the MAT.
- Many providers rely on corporate contracts for a significant share of their business, and it is relatively standard for a hotel or motel to hold long term agreements with set rates. The providers are obligated to honour these rates; therefore their ability to generate revenue from corporate contracts may be negatively impacted by the MAT.

Spending on tourism

Regulation 435/17 requires that once a municipality has a MAT by-law the municipality must provide 50% of the net MAT revenue collected to an Eligible Tourism Entity which must use the funds to promote tourism. At the February 6, 2018 Finance and Administration Committee, the City designated The City of Greater Sudbury Community Development Corporation (CGSCDC) as its Eligible Tourism Entity. Providers are concerned about:

- How the funds will be spent and their ability to offer input into the CGSCDC process to maximize the return for the tourism sector.
 - The City will include in the draft contribution agreement language that requires the CGSCDC to establish a Tourism Development Committee with membership from accommodation providers and community representation from the tourism sector.
 - The GSDC Board has initiated discussions with representatives of the city's accommodation sector to establish a partnered approach to decision-making on the investment of these funds.

- How there will be clear oversight and transparency in the management of the funds and ensuring there is comprehensive reporting on the investments and returns.
 - The City will include in the draft contribution agreement language that requires the CGSCDC to provide annual reporting to Council which would include a description of the promotion of tourism undertaken and the effectiveness of the undertaking on the benefit to the community and to the tourism and accommodation sectors.
- The risk that Council's commitment to the tourism industry over the long term may be reduced by reducing existing core funding for tourism in the City's operating budget and relying only on MAT funding to the Eligible Tourism Entity. This could result in a zero net gain to the City's tourism industry and defeat the intended objective of the provincial legislation is to grow a "stable, vibrant tourism environment" recognizing the industry as an important economic driver that creates jobs in the community.
 - Staff have not recommended the elimination of the City's existing core tourism funding with MAT revenue.

In conclusion, staff continue to connect with industry representatives to respond to questions regarding implementation and processes for reporting, and will draw on these enquiries to create effective Frequently Asked Questions (FAQs). FAQs will be developed to address issues which impact providers and guests. The draft FAQs are attached to this report. These FAQs will be posted on the City's website (www.greatersudbury.ca/mat/) and hard copies will be made available to the accommodation providers.

Best Practices

To date, staff have identified 11 Ontario municipalities that have either implemented or are in the process of developing MAT programs in their own jurisdictions. CGS staff have been in touch with colleagues in many of these communities in order to discuss the emerging best practices.

The following is a summary of some key points:

- Provision of additional exemptions,
- Ensure there is sufficient information for providers and the public on the MAT program,
- Allow sufficient time for proper implementation for both providers and the municipality, and
- Enter into an agreement with Airbnb to collect the MAT on behalf of their local providers.

Applications and Exemptions

It is proposed that the MAT will apply to accommodations which are provided for consideration where a bed is provided, whether or not there are additional amenities or services. Examples would include hotels, motels, motor hotels, lodges, resorts, bed and breakfast establishments, and all or part of a dwelling unit, such as occurs with Airbnb. The MAT will be applied to the fees and charges for the accommodation only. It is proposed that charges for ancillary services such as food, beverages, entertainment, internet usage, telephone usage and similar charges will not be subject to MAT provided these charges are separately itemized on the invoice.

It is proposed that the purchaser of accommodation be required to pay the MAT at the time of paying for the accommodation. To assist the purchaser in understanding the MAT, it is proposed to require the accommodation provider to set out on the invoice: the MAT rate, the amount of the MAT and identify that it is a Municipal Accommodation Tax.

Recognizing that some forms of accommodation are not intended to be subject to MAT, Section 400.2 of the Municipal Act sets out a number of mandatory exemptions.

A review of the By-laws passed by three municipalities which have passed MAT by-laws (Ottawa, Toronto, and Mississauga) indicated that the following additional exemptions from MAT were included. It is proposed to also include these exemptions in the City of Greater Sudbury by-law:

- 1) treatment centres that receive provincial funding under the *Ministry of Community and Social Services Act*;
- 2) lodging for the reformation of offenders;
- 3) City or its agents or charitable or non-profit corporations operating or providing shelter or emergency shelter for purposes such as the relief of the poor, for persons who are fleeing situations of physical, financial, emotional or psychological abuse or for other persons who are suffering from homelessness;
- 4) tent or trailer sites; and
- 5) premises operated by an employer and provided to their employees as lodging.

In addition, staff propose the following forms of accommodation be exempted from MAT in the proposed by-law:

- 1) homes for special care within the meaning of the *Homes for Special Care Act*, R.S.O 1990, c. H.12;
- 2) retirement home as defined in the *Retirement Home Act, 2010*, S.O. 2010, c. 11;
- 3) non-profit hospices; and
- 4) premises owned or operated by the City of Greater Sudbury.

Some visitors travelling to the City for medical treatments and hospital visits have requested exemptions for medical stays. Currently, no other municipality (Ottawa, Toronto, and Mississauga) has provided this exemption as it is considered to be

unmanageable to administer. There are other opportunities for relief to those travelling to Sudbury for these services such as providers offering compassionate room rates and the Ontario Ministry of Health's Northern Health Travel Grant which is available to eligible patients as well. Therefore the request for exemption has not been included in the by-law.

The City incorporated the best practices identified from the various municipalities in the creation of the relevant by-laws, FAQs, processes, reports and forms.

2. Net MAT revenue calculation and the City of Greater Sudbury' share

At the February 6, 2018 Finance and Administration Committee meeting, the following resolution was passed: "that 50% of the net revenue from the Hotel Tax be directed towards the debt obligation required for the Event Centre".

In accordance with Regulation 435/17 the City may deduct costs to administer and collect the MAT before distributing 50% of the revenue to the ETE. Based on discussions with other municipalities and review of best practices, administrative and collection costs would include staffing, development of forms, information technology, audit and legal costs. It is anticipated that additional staffing may be required for both the up-front development as well as the ongoing maintenance of the program.

Staff will prepare a Business Case to convert part-time staffing to full time status for the administration of the MAT program to be submitted as part of the 2019 Budget process.

The City will direct the City's portion of the MAT net revenue as calculated in accordance with the principles above, to the "Tax Rate Stabilization Reserve – Committed Reserve" to fund the Event Centre debt payments in accordance with approved Council budgets. Additional spending of these funds will require Council approval.

3. The City of Greater Sudbury Community Development Corporation (CGSCDC operating as the GSDC)

As previously noted, the City is required to share the net MAT collected with an Eligible Tourism Entity (ETE). At the February 6, 2018 Finance and Administration Committee, the City designated the CGSCDC as its ETE. The CGSCDC has undertaken the process to amend its objects to more clearly include tourism and the development of tourism products as part of its mandate, as required by the legislation.

As the ETE, the CGSCDC will be responsible for investing their share of the net MAT revenues into the City's tourism sector to fulfil the primary objective of bringing more visitors to the City each year, thereby increasing accommodation occupancy rates. To implement this, an agreement will be entered into with the CGSCDC in accordance with Regulation 435/17. The agreement will govern the terms on which the MAT funding

will be provided and set out financial accountability measures to ensure that amounts paid to the ETE are used for the exclusive purpose of promoting tourism.

To address the concern raised by the industry that their views might not be heard with respect to the use of the MAT funds, the proposed agreement will require the CGSCDC to establish a Tourism Development Subcommittee which includes representation from the tourism sector and accommodation providers, as well as CGSCDC board members. The Committee will solicit and relay input from the industry to assist the CGSCDC in developing a framework for an updated tourism strategy designed to drive tourism marketing, destination management and business development. This strategy will also serve as the basis for annual business planning; marketing plans and strategic communications and guide the expenditure of the funds generate by the MAT and paid to the CGSCDC.

As part of the financial responsibility measures, to ensure the CGSCDC uses the MAT funds only for the promotion of tourism activities and tourism products, the Agreement will also require:

- a budget be established annually to show intended expenditure on tourism marketing, destination management and business development;
- funds not be used to promote individual accommodation providers;
- preparation of audited financial statements which includes a schedule which accounts for funds and expenditures in accordance with the agreement;
- Council approval for Tangible Capital Assets that would be owned and/or operated by the City of Greater Sudbury and the creation of a reserve to set aside funding for such projects; and
- annual reporting to Council regarding the expenditure of the MAT funds and the impact on the tourism industry.

An initial three year term is proposed to allow for an evaluation of the program's success before the City agrees to renew or extend the term. The City will be entitled to terminate the agreement for non-compliance.

This report requests the delegation of authority to the Executive Director Finance, Assets and Fleet to negotiate and enter into a contribution agreement with the CGSCDC to act as the ETE in accordance with the regulation. The contribution agreement will detail the financial accountability measures required to be sustained by the CGSCDC.

Advances

Section 5.(5) of Ontario Regulation 435/17 requires the municipality to pay the ETE within 60 days after the December 31st, fiscal year end. While staff is proposing an implementation date of September 1, 2018, it is proposed that the ETE's share of the net

revenues for the first, part fiscal year, will not be transferred to the ETE until February 28, 2019, to allow sufficient time for the amendment of the Letters Patent for the CGSCDC, the agreement to be finalized and signed, the Tourism Development Subcommittee to be formed and have time to present its recommendations to the Board of the CGSCDC, the initial strategies to be developed and the initial budget prepared.

Starting in 2019, it is proposed to advance the ETE's share of the MAT collected in quarterly installments, meeting the end of February deadline referenced above.

This report requests that Council approve an update to the Reserve and Reserve Fund by-law to create a new Obligatory Reserve Fund titled "Municipal Accommodation Tax - CGSCDC". The CGSCDC's portion of the net MAT revenue will be transferred to this Reserve Fund until as the requirements noted above have been fulfilled.

4. Structure, implementation and by-law

Structure

Finance – Accounting will be responsible to collect and administer the MAT revenue and distribution to the CGSCDC. In addition Finance – Accounting will ensure compliance with the MAT by-law and other City related by-laws and policies, such as the Accounts Receivable and Collection Policy and Procedures which provides mechanisms to collect funds owing to the City.

Collection

Accommodation providers will be required to:

- Complete an Establishment Information Sheet annually,
- Submit MAT Remittance Reports monthly, and
- Submit payment to the City for the MAT collected monthly.

The first Remittance Reports will be due October 31st, 2018 and payment must be received by November 15th, 2018.

Due to the time frame for implementation the monthly reporting will begin as a paper-based/email submission. The City will explore options to develop an online platform for submitting the remittance reports and payments.

Qualified providers may apply for a Quarterly Reporting and Remittance Program to reduce their administrative burden.

Once the MAT by-law is passed, payment of the Municipal Accommodation Tax by purchasers of accommodation is mandatory and the accommodation providers are obligated to remit the MAT to the City.

While a high level of compliance is anticipated (based on the experiences of other municipalities that have implemented MAT), it is proposed to provide in the By-law that

the City may calculate and assess MAT not submitted based on the Remittance Report, and if the Provider does not submit a Remittance Report, based on an estimate of full occupancy. A process will be included for re-assessment and adjustment of records once the necessary information is filed by the accommodation provider. The City will also have the right to audit providers to ensure accuracy of Remittance Reports. Mechanisms will also be included to refund any amounts which may have been overpaid.

In the event that arrears occur due to accommodation providers failing to collect or remit, Provincial legislation authorizes a number of collection and enforcement methods. The City will utilize the following methods of collection where arrears occur:

- collection agencies;
- transfer to property tax; and
- litigation.

Incomplete or late remittances/reporting will be subject to 1.25% interest in accordance with the Miscellaneous User Fee By-law.

Contraventions under the by-law will also be subject to prosecution or fines under the Provincial Offences Act.

Collection by Airbnb

The MAT will also apply to accommodations provided through Airbnb. Staff are pursuing an agreement with the Canadian office of Airbnb to collect the MAT at the platform level (i.e. at the point of booking online with the consumer). Representatives of Airbnb's Canadian operations have confirmed their willingness to collect the MAT on behalf of their Greater Sudbury providers at the point of booking.

An agreement with Airbnb would overcome the difficulty associated with the City currently identifying these providers. The Bylaw Department has committed to a formal review of the Business License Bylaw in order to support a regulatory environment that is business friendly and supports the health and well being of residents. To address a two-tier regulatory model of Licensing and Registration that may not be effective, Staff will further analyze best practices of Municipal comparators in order to bring forward recommendations that support consumer protection and the safety and quality of life for residents.

In addition to other areas of the Business Licensing Bylaw, this initiative will involve the review of service based businesses such as Hotels, Motels and Bed & Breakfasts and whether the current requirement of Business Registration for this group accomplishes the overarching intent of any Municipal Business Licensing regime. Further, Staff will consider advancements in technology with new and changing industries such as Airbnb, and explore ways to enable them while also recommending that there are adequate regulations in place to preserve the health and safety of communities.

This report requests the delegation of authority to the Executive Director Finance, Assets and Fleet to negotiate and enter into a collection agreement with Airbnb to collect the Municipal Accommodation Tax from its members and remit to the City of Greater Sudbury on their behalf.

Implementation

In the February 6, 2018 Transient Accommodation Tax report to the Finance and Administration Committee, the proposed effective date for the MAT was July 1, 2018. Based on consultation with the accommodation industry and municipalities, staff determined that the implementation be deferred to September 1, 2018 for the following reasons:

- Accommodation provider systems and processes: providers need sufficient time to update their software systems to capture and report the MAT in their systems and properly administer the program from a collection perspective. Not having these systems in place before the MAT is implemented may result in misreporting and would require additional provider and staff time to reconcile the MAT revenue that should have been collected and remitted thereby increasing frustration and non-compliance issues.
- Complexity of the by-law: based on a review of other municipalities and considerations, more time is required to ensure that the by-law is properly drafted in a clear and concise manner.
- Resourcing: As the implementation of the MAT was a Business Case for the 2018 Budget it was not included in staff work plans for 2018 (developed prior to passage of the Budget), therefore there is a lack of resources to dedicate to the project. Staff have been working diligently amid competing priorities to get the by-laws and processes in place in an effective and detailed manner to ensure success of the launch.
- Processes and systems: The City will need to create policies, processes and forms to process the Remittance Reports, payments and develop a compliance audit program. The City must also be prepared with answers to questions for providers and purchasers alike. The City will start with a manual process and will explore options for reporting and processing payments electronically.

Three municipalities (Mississauga, Ottawa and Toronto) had existing destination marketing programs (DMP) in place prior to implementing MAT thereby permitting a short implementation period (three to four months). With an existing DMP the municipality, the associated tourism organization and accommodation providers had established systems that required minor adjustments for the Municipal Accommodation Tax. Since Greater Sudbury did not have a DMP in existence prior to the MAT legislation,

additional time and effort is required by all parties to establish these relationships and processes.

With the passage of the by-law authorizing the MAT, Finance staff will communicate with providers the collection, reporting and payment requirements. Additionally the City will provide MAT information for the purchasers of accommodation.

A series of Frequently Asked Questions (FAQs) will be posted on the City's website (www.greatersudbury.ca/mat/) for accommodation providers and purchasers alike.

This report requests City Council direct staff to present the necessary by-law to implement the Municipal Accommodation Tax on the principles described in this report; delegating the authority to the Treasurer to administer the by-law and develop the processes and documents necessary to implement the Bylaw; and coming into effect on September 1st, 2018.

Next steps

Staff will communicate with the accommodation providers regarding the administrative details of the MAT program and there will be a communication strategy directed to the public in regards to the benefits of the program. The communication strategy will coincide with the launch of the MAT.

Resources cited

February 6, 2018 – Finance and Administration Committee – Transient Accommodation Tax report

<http://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&agenda=report&itemid=5&id=1269>

Bill 127 – Stronger, Healthier Ontario Act (Budget Measures), 2017

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4778&isCurrent=false&ParlSessionID=412&detailPage=bills_detail_the_bill

Municipal Act, 2001

<https://www.ontario.ca/laws/statute/01m25>

Ontario Regulation 435/17 – Transient Accommodation Tax

<https://www.ontario.ca/laws/regulation/170435?search=litigation+guardian>