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The Corporation of the Municipality of Clarington

By-law YYYY-NN

Being a By-law to establish a Municipal Accommodation Tax.

Whereas Subsection 400.1(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“Municipal Act”) as amended, authorizes a local municipality, by by-law, to impose a direct tax in respect of the purchase of transient accommodation in the municipality; and,

Whereas pursuant to section 400.1 of the Municipal Act and Ontario Regulation 435/17 (Transient Accommodation Tax) under the Municipal Act, the Council of the Corporation of the Municipality of Clarington (“Council”) wishes to establish a municipal accommodation tax to be levied on the purchase of transient accommodation within the Municipality of Clarington; and,

Whereas pursuant to subsection 400.1(3) of the Municipal Act, Council may establish and use such 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 has adopted the recommendations contained in Staff Report LLL-NNN-YY;

Now therefore the Council of the Corporation of the Municipality of Clarington enacts as follows:

1. Definitions

- 1.1. For the purposes of this By-law, unless stated otherwise or the context requires a different meaning:
 - a. **“Accommodation”** means Lodging, and the right to use Lodging, that is provided for consideration, whether or not the Lodging is actually used;
 - b. **“Books and Accounts”** includes books, accounts, bills, receipts, invoices, financial statements, and records in any format;

- c. **“By-law”** means this by-law and any amendments made thereto, including schedules;
- d. **“Council”** means the Council of the Municipality of Clarington;
- e. **“Director of Economic Development”** means the Municipality’s Director of Economic Development, or their designate.
- f. **“Eligible Tourism Entity”** has the meaning given to it in Ontario Regulation 435/17, as amended;
- g. **“Establishment”** means the physical location, a building or part of a building that provides Accommodation;
- h. **“Lodging”** includes:
 - i. the use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom, domicile, or other physical location; and,
 - ii. the use of one or more additional beds or cots in a bedroom or suite;
- i. **“Multiple Offence”** means an offence in respect to two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law;
- j. **“Municipal Accommodation Tax”** means the tax imposed under this By-law;
- k. **“Municipal Solicitor”** means the Deputy CAO, Legislative Services/Solicitor, or their designate;
- l. **“Municipality”** means the Corporation of the Municipality of Clarington, or its geographical area, as the context requires;
- m. **“Non- Serviced Roofed Accommodation”** means a roofed structure intended for temporary overnight stays that does not have both continuous electricity and potable running water. Non- Serviced Roofed Accommodations are not considered Accommodation under this By-law.

- n. **“Person”** includes an individual, a corporation, a partnership, a sole proprietorship, a trust, a joint venture, an association or any other organization or entity of any kind and their respective heirs, executors, administrators, successors, assigns or other legal representatives of a person to whom the context can apply according to law;
- o. **“Provider”** means a Person who sells, offers for sale, or otherwise provides Accommodation, and includes agents, hosts or any others who sell, offer for sale or otherwise provide Accommodation. Where a Provider cannot be easily determined, the owner of a property providing Accommodation is deemed to be the Provider;
- p. **“Purchase Price”** means the price for which Accommodation is purchased, including the price paid and other consideration accepted by the Provider in return for the Accommodation provided, including all fees and surcharges for additional occupants and beds, but does not include the harmonized sales tax imposed by the Government of Canada or by the Province of Ontario;
- q. **“Purchaser”** means a Person who purchases Accommodation;
- r. **“Treasurer”** means the Deputy CAO, Finance and Technology/Treasurer, or their designate.

2. Application

- 2.1. Subject to the exemptions set out in section 3 of this By-law, a Purchaser shall, at the time of purchasing Accommodation, pay the Municipal Accommodation Tax in the amount of five per cent (5%) of the Purchase Price of Accommodation provided for a period of twenty-nine (29) consecutive days or less in an Establishment where Accommodation is provided, including in the event of cancellation where the Purchase Price is payable. For greater certainty, the continuous period is not disrupted by the purchase of different rooms, suites, beds, or other Lodging in the same Establishment in the course of the continuous period.

3. Exemptions

- 3.1. The Municipal Accommodation Tax does not apply to Accommodation provided by:

- 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. 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 license issued under the *Private Hospitals Act*;
- e. every long-term care home as defined in subsection 2(1) of the *Fixing Long-Term Care Act, 2021* and every hospice;
- 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. a hotel or motel used by the Municipality, Regional Municipality of Durham or its service providers for shelter purposes;
- i. a treatment centre that receives private funding or provincial aid under the *Ministry of Community and Social Services Act*;
- j. a house of refuge or Lodging for the reformation of offenders;
- k. a charitable, non-profit philanthropic corporation organized as shelter for the relief of the poor or for emergency;
- l. a tent or trailer site supplied by a campground, tourist camp or trailer park, including any Non-Serviced Roofed Accommodation located within such facilities;

- m. Non-Serviced Roofed Accommodations, regardless of location.
- n. employers to their employees in premises operated by the employer;
- o. a hospitality room in an establishment that may or may not contain a bed and is used for displaying merchandise, holding meetings or entertaining; or,
- p. group bookings with contracts that are entered into prior to the date that this By-law takes effect.
- q. traditional Bed & Breakfast Establishments, subject to the eligibility criteria set out in Section 3.2.

3.2. To qualify as a Traditional Bed & Breakfast Exemption, the following shall apply:

- a. The Establishment complies with Zoning By-law 84-63 or 2005-109 ("Zoning By-laws), as amended or replaced from time to time, including any provisions related to the use of the property as a Bed & Breakfast as defined in the applicable Zoning By-law;
- b. The Establishment is operated within the operator's principal residence, and the operator (or designated staff) resides on the property during all guest stays;
- c. A breakfast is included as part of the accommodation experience, consisting of either a hot meal prepared and served by the operator, or perishable ingredients supplied for guests to prepare a hot breakfast themselves. Only breakfasts requiring cooking or refrigeration qualify for this exemption; pre-packaged or shelf-stable snacks do not. Health inspections are required only where mandated by the Durham Region Health Department.
- d. The Establishment provides guests with a method to book directly with the operator (including but not limited to telephone, email, or an operator-maintained website), demonstrating that it operates as a traditional small-business Bed & Breakfast rather than exclusively through online travel platforms;
- e. The Establishment maintains private liability insurance for the accommodation operation, obtained directly by the operator and not through a short-term rental platform or other third-party intermediary. Proof of insurance shall be provided to the Municipality upon request;

- f. The Establishment must be included in the Traditional Bed & Breakfast Registry maintained by the Director of Economic Development.
- 3.3. The Schedule shall be maintained by the Director of Economic Development and updated administratively as Establishments are verified, added, or removed based on compliance with subsection 3.2.
- 3.4. At the discretion of the Director of Economic Development, an Establishment may be added to the Traditional Bed & Breakfast Registry if the Establishment has demonstrated compliance with section 3.2.

4. Collection and Remittance

- 4.1. A Provider shall collect the Municipal Accommodation Tax from the Purchaser at the time the Accommodation is purchased.
- 4.2. A Provider shall identify the amount of the Municipal Accommodation Tax as a separate item on a bill, receipt, invoice or similar document issued by the Provider in respect of the Accommodation on which the tax is imposed and shall identify the item as "Municipal Accommodation Tax".
- 4.3. A Provider shall be responsible for the collection and remittance of HST directly to the Government of Canada and/or the Province of Ontario.
- 4.4. A Provider operating a hotel, motel, or other traditional accommodation shall, on or before the fifteenth (15th) day of the month, remit to the Municipality, or its tax collection agent, the amount of the Municipal Accommodation Tax collected for the previous month and shall submit monthly statements in a form required by the Municipality which details the number of Accommodations sold, the Purchase Price of each Accommodation, the amount of the Municipal Accommodation Tax collected and any other information as required by the Municipality for the purposes of administering and enforcing this By-law.
- 4.5. A Provider offering short-term accommodations through platforms such as Airbnb, Vrbo, or similar services shall remit the Municipal Accommodation Tax on a quarterly basis. Remittance shall be made to the Municipality, or its tax collection agent, on or before the fifteenth (15th) day of the month following the end of each calendar quarter. Specifically, remittances shall be due on April 15 for the first quarter (January 1 to March 31), July 15 for the second quarter (April

1 to June 30), October 15 for the third quarter (July 1 to September 30), and January 15 for the fourth quarter (October 1 to December 31). The Provider shall also submit a quarterly statement, in a form required by the Municipality, detailing the number of nights booked, the total amount charged to guests for the accommodations, the amount of Municipal Accommodation Tax collected, and any other information required by the Municipality for the purposes of administering and enforcing this By-law.

5. Delegation of Authority

- 5.1. The Treasurer is authorized to administer and enforce this By-law, including but not limited to approvals, appeals, enforcement, collection, and for instructing legal counsel to take such legal action as may be considered appropriate.
- 5.2. In administering this By-law, the Treasurer, or their designate, may issue interpretation bulletins and guidelines as deemed necessary or advisable from time to time.
- 5.3. The Director of Economic Development, or their designate, is delegated the authority to enter into agreements, including all necessary documents ancillary thereto, with an Eligible Tourism Entity(ies) that receives an amount of the Municipal Accommodation Tax, 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 in Clarington, and the agreements may provide for other matters, all in a form satisfactory to the Municipal Solicitor.

6. Tax Collection Agent

- 6.1. The tax collection agent for the Municipality under this By-law is the Person who is designated in an agreement with the Municipality to collect the Municipal Accommodation Tax as an agent for the Municipality.
- 6.2. The Director of Economic Development in consultation with the Treasurer, may designate additional tax collection agents for the Municipality and is delegated the authority to enter into agreements with such designated tax collection agents.

- 6.3. The tax collection agent(s) shall collect and administer the Municipal Accommodation Tax as an agent for the Municipality in accordance with this By-law and the agreement between the Municipality and that tax collection agent.

7. Interest and Fees

- 7.1. The Treasurer may impose a monthly interest charge of one and one-quarter per cent (1.25%) of the Municipal Accommodation Tax that remains outstanding, beginning on the day after the tax payment is due and on the sixteenth day of each month thereafter, until the Municipal Accommodation Tax, including all charges and interest owing, is paid in full.
- 7.2. If the amount of Municipal Accommodation Tax owed to the Municipality cannot be determined, the interest charge of 1.25% would be based on the full occupancy of the Establishment.
- 7.3. The Treasurer shall charge a fee for all payment remittances that are not honoured by the financial institution upon which it is drawn in an amount as set out in the Municipality's User Fee By-Law 2023-044, as amended.

8. Liens

- 8.1. All Municipal Accommodation Tax, interest, and penalties that are past due will be deemed to be in arrears and may be added to the tax roll for any real property in the Municipality of Clarington that is registered in the name of the Provider to be collected in the same manner as property taxes and will constitute a lien upon the lands, but such lien will not be a priority lien for the purposes of subsections 1(2.1), (2.2) and (3) of the Municipal Act and such lien will not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances.

9. Audit and Inspection

- 9.1. A Provider shall keep all Books and Accounts that are sufficient to furnish the Municipality, or its representative, with the necessary particulars of sales of Accommodations and the amount of the Municipal Accommodation Tax collected, payable and remitted, for no less than seven (7) years from the date of the sale of the Accommodation.

- 9.2. A Provider shall permit the Municipality, or its representative, at all reasonable times, entry into any premises where any business is carried on, where any property is kept, where anything is done in connection with any business, or where any Books and Accounts are or should be kept and shall permit the Municipality or its representative to audit and inspect all Books and Accounts of the Provider. A Provider shall produce copies of any Books and Accounts that may be required by the Municipality or its representative for the purposes of administering and enforcing this By-law.
- 9.3. A Provider shall:
- a. give the Municipality or its representative all reasonable assistance with the audit or inspection;
 - b. answer all questions relating to the audit or inspection either orally or, if the Municipality requires, in writing, on oath or by statutory declaration; and,
 - c. attend at the premises with the Municipality or its representative for the purposes of giving reasonable assistance and answering questions relating to the audit or inspection.
- 9.4. A Provider shall comply with a written demand from the Municipality or its representative for information or for the production on oath or otherwise of any Books and Accounts as the Municipality or its representative considers necessary to determine compliance with this By-law. A Provider in receipt of such a demand shall comply with the demand within the time specified in the demand.
- 9.5. No Person shall make, participate in, assent to or contribute to the making of false or deceptive statements or entries in a report, statement, form, Books and Accounts, or other document that is prepared, submitted or filed under or for the purposes of the By-law.
- 9.6. No Person shall destroy, alter, mutilate, hide or otherwise dispose of any Books or Accounts in order to evade payment or remittance of any amounts owing under this By-law.

10. Determination of Amount

- 10.1. The Treasurer may determine an amount of the Municipal Accommodation Tax that is required to be remitted, together with any interest imposed upon any Municipal Accommodation Tax that is outstanding, if a Provider who is

responsible for the payment or remittance of the Municipal Accommodation Tax fails to pay or remit as required by this By-law.

- 10.2. The Treasurer may assess or reassess for any Municipal Accommodation Tax that is payable by the Provider within three (3) years from the day the Municipal Accommodation Tax was remittable, except that where the Treasurer establishes that a Provider has made any negligent or wilful misrepresentation or has committed any fraud in supplying, or omitting to supply, any information under this By-law, then the Treasurer may assess or reassess, for any time that the Treasurer considers reasonable, the Municipal Accommodation Tax payable.
- 10.3. A Provider shall pay the amount of the Municipal Accommodation Tax and any interest set out in the notice of calculation made under this section 10 of this By-law within thirty (30) days from the date of mailing of the notice of calculation.
- 10.4. Liability to pay an amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
- 10.5. The Municipality 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.
- 10.6. 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.

11. Refunds

- 11.1. Where a Provider has paid or remitted an amount not payable under this By-law, the Municipality may, upon receipt of satisfactory evidence, determine that the amount was wrongly paid or remitted. If such a determination is made, the Municipality shall refund or credit all or part of the amount. However, no refund shall be issued unless an application for refund is submitted within 24 months of the payment date.
- 11.2. Where a Provider has applied for a refund in accordance with this By-law, and the claim is denied in whole or in part, the Municipality shall deliver to the

Provider a statement specifying the denied amount and the reasons for the denial.

12. Offences and Penalties

- 12.1. Every Person is guilty of an offence under this By-law who:
- a. makes, participates in, assents to or contributes to the making of false or deceptive statements in a report, statement, form or other document that is prepared, submitted or filed under or for the purposes of this By-law;
 - b. destroys, alters, mutilates, hides or otherwise disposes of any Books and Accounts in order to evade payment or remittance of any amounts owing under this By-law;
 - c. makes, participates in, assents to or contributes to the making of false or deceptive entries, including omitting to enter an entry, in any Books and Accounts;
 - d. hinders, obstructs or interferes with any audit or inspection conducted by the Municipality or its representative under this By-law;
 - e. willfully, in any manner, evades or attempts to evade:
 - I. paying the Municipal Accommodation Tax;
 - II. remitting the Municipal Accommodation Tax; or,
 - III. otherwise complying with this By-law; or,
 - f. conspires with any other Person to commit an offence described in subsections 12.1 (a) through (e) of this By-law.
- 12.2. Pursuant to the authority established in section 429(2) of the Municipal Act, 2001, S.O. 2001, c. 25, every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction pursuant to Part III of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended, shall be subject to the following penalties:
- a. upon a first conviction, a fine of not less than \$300.00 and not more than \$50,000.00 if the Provider is a Person other than a corporation, and not less than \$500.00 and not more than \$100,000.00 if the Provider is a corporation;

- b. upon a second or subsequent conviction for the same offence, a fine of not less than \$500.00 and not more than \$100,000.00;
- c. upon conviction for a continuing offence, a fine of not less than \$500.00 and not more than \$10,000.00 for each day or part of a day that the offence continues and the total of all of the daily fines for the offence is not limited to \$100,000.00; and,
- d. upon conviction for Multiple Offences, for each offence included in the Multiple Offence, a fine of not less than \$500.00 and not more than \$10,000.00 and the total of all fines for each included offence is not limited to \$100,000.00.

13. General

- 13.1. If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, illegal, unenforceable or of no force and effect, then it is the intention of Council that all remaining sections and portions of this By-law continue in force and effect to the fullest extent possible according to law.

14. Short Title

- 14.1. This By-law may be referred to as the “Municipal Accommodation Tax By-law”.

15. Effective Date

- 15.1. This By-law shall come into force and take effect on July 1, 2026.

Passed in Open Council this **XX** day of **MMMM, YYYY**.

Name, Mayor

Name, Municipal Clerk

By signing this by-law on **XXXX XX, YYYY**, Mayor ADRIAN FOSTER will not exercise the power to veto this by-law and this by-law is deemed passed as of this date.

DRAFT