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| TITLE: BY-LAW NO. 6909 - A BY-LAW TO LEVY A TAX ON SHORT TERM ACCOMMODATION | | Page 1 of 3 |
| PRESENTER: Grant McMillan | AGENDA NO: | |
| DEPARTMENT: Treasury | DATE: August 6, 2008 | |
| CLEARANCES: Nil | ATTACHMENTS: 1. By-law # 6909 (# pages = 5) (with proposed amendments) | |
| APPROVALS: | | |
|  _____ | <u>Aug 6, 2008</u> Date |  _____ |
| Department Head | | City Manager |
| | | <u>12/08/08</u> Date |

SUMMARY OF HISTORY/DISCUSSION:

As a result of a May 5th, 2008 motion of City Council, an accommodation tax by-law was drafted which received first reading on June 3rd, 2008. On June 24th, 2008, City Council sat to hear delegations with respect to this by-law. Subsequent to this meeting, Administration invited all accommodation industry members to attend a further consultation meeting with Administration on July 31st, 2008 to examine the possibility of finding some middle ground on this issue since the delegations from the industry were clear in their opposition to the by-law at the June 24th meeting.

With respect to the July 31st meeting, the eight industry members that attended were still opposed to the tax. In an attempt to find some middle ground particularly around the use of the funds and who managed or controlled their use, Administration suggested that one half of the funds could be provided to Brandon First to promote more overnight stays in Brandon utilizing an agreement specifying how the funds could be used prior to transfer of the funds while the other approximately \$150,000 would be retained in a City Reserve fund to be used for City Council initiatives. Even this alternative did not receive a favourable response. The reasons for this were not all industry members were members of Brandon First, control of the money should, in the industry's opinion, be totally with them, City Council could use the funds for matters that would not benefit the accommodation industry and that Brandon First would not likely have the capacity to accomplish much given they were just now getting their feet under themselves.

The following represents some of the concerns expressed at the July 31st meeting.

1. There were concerns about the continuation of the participation of accommodation industry members in Brandon First should an accommodation tax be imposed.
2. Not all accommodation industry members are members of Brandon First nor should they be compelled to be to have a say in the distribution of accommodation tax monies.
3. Not all accommodation industry members are members of the Westman Accommodations Group and therefore they would not be the correct group to manage the funds.
4. There were concerns about Brandon First's transformation that would be required should these additional responsibilities become part of their mandate.
5. There were concerns about the use of the funds and whether the City would ultimately simply absorb the funds into general revenues.
6. The definition of what the money can be used for needs to be changed to ensure any funding is used to encourage more overnight stays in Brandon. Not all events generate more overnight stays since the draw area may be small geographically. The existing definition of how the money can be used is not specific to more overnight stays in Brandon.

7. There are lots of economic dark clouds on the horizon for the industry like the higher gas prices and the softening of the economy in general. The tax would be an additional disincentive to come to Brandon and stay.
8. If the tax is to proceed, the recommendations of the Westman Accommodation Group need to be implemented.

During the lead up to and at the June 24th City Council meeting, industry members were encouraged to make suggestions that would improve the Accommodation Tax By-law. Virtually all submissions from the industry were opposed to the tax but some offered suggestions should City Council see fit to proceed with the tax. The following are those suggestions and the proposed recommendation as to their disposition.

1. The definition of how the funds are used needs to be modified to ensure all tax funds will generate additional overnight stays in Brandon. An amendment has been prepared if City Council wishes to narrow the use of these funds to solely events that encourage more overnight stays.
2. All the funds should be managed by a group at least 50% of which are accommodation industry members. No amendment is suggested in this area. A proposal which would have seen approximately 50% of the funds managed externally was proposed on July 31st but got a less than positive response. Not all industry members are members of Brandon First and there were concerns about Brandon First's ability to undertake the additional responsibilities. All industry members are not members of Westman Accommodations Group so they were also not suggested as the group to manage any tax monies. The total transfer of control of the funds to any group should not be done without a strong agreement in place to ensure Council's wishes are fulfilled.
3. The by-law should be reviewed to ensure it is effecting the required changes. An amendment mandating a City Council review by December 1, 2010 has been prepared even though City Council can review any by-law at any time.
4. Administration and enforcement costs should not exceed 10% of the revenue generated. An amendment to this effect has been prepared to ensure these costs are limited to the suggested percentage.
5. It was suggested the \$30 per night exemption be removed since the facilities that charge these amounts perform the same function regardless of price. It is believed that there are very few facilities if any that charge these low rates and they likely don't really compete for the same type of customer. Additionally, the amount of revenue generated from facilities such as this would be very small and not likely cover the administrative and enforcement costs associated with them. It is recommended that the exemption for low cost accommodation remain.
6. It was suggested that only rooms that were actually used be subject to the tax. Some companies guarantee rooms to ensure their staff has a place to stay should they need it but sometimes do not actually occupy the room. While this exemption is possible, it is not recommended since it would be difficult to monitor and enforce.
7. It was suggested that some of the "free" items included in the room rate such as a continental breakfast be valued and then not be subject to the accommodation tax. Once again, this would be very difficult to value and would likely lead to value a lot of extras and then arguing they should not be subject to the tax. No amendment is recommended on this item.
8. It was suggested by a Bed and Breakfast operator that an exemption should be made for small operations like the Provincial Government has done for their Retail Sales Tax when a B and B has three or less rooms for rent. An amendment has been prepared to effect this change if City Council desires. While it does create an unlevel playing field to some extent, the amount of revenue generated from these establishments would be minimal compared to the administration and enforcement costs.
9. It was suggested the accommodation industry should be compensated for the additional administration costs they will incur. While this is certainly possible, it is not recommended since the amount of extra administration on their part is expected to be minimal. It is Administration's desire to make the reporting as simple as possible by requiring reporting of only monthly gross revenues less any exempt accommodation.

10. It was suggested the penalty section should be modified to delete any reference to a jail sentence. An amendment is recommended to do just that given a jail sentence would only likely be imposed in the most flagrant situations. The remaining monetary provisions would be adequate.
11. A suggestion was made to make the effective date something other than New Years Day due to all the other things that day brings. An amendment to make the tax effective January 5th, 2009 has been prepared.

It was also noted that a wording error was contained in the by-law when given first reading. In Paragraph 7.1, the word “incentives” was used where the word “initiatives” should have been used to be consistent with the third paragraph of the preamble. The amendment proposed for this paragraph will correct this oversight.

RECOMMENDATION:

That By-law No. 6909, to impose a tax on accommodation of short duration, be amended by adding the following to Subsection 3.3:

“(i) accommodation provided in establishments in which fewer than four bedrooms are available for rent.”

That the by-law be further amended by deleting in Subsection 7.1 the word: “incentives” and substituting therefor, the word: “initiatives”.

That the by-law be further amended by adding in Subsection 7.2, after the word: “funds”, the words: “will be used to fund new initiatives and events that generate more overnight stays in Brandon and”.

That the by-law be further amended by adding in Subsection 7.3, after the word: “by-law”, the words: “which shall be limited to 10% of the gross revenue generated by this tax”.

That the by-law be further amended by deleting in Subsection 12.1(b)(i), the words: “or to imprisonment for a term not exceeding six (6) months, or both fine and imprisonment.”.

That the by-law be further amended by deleting in Subsection 13.1, the date: “January 1” and substituting therefor, the date: January 5”.

That the by-law be further amended by re-numbering Section 13 as Section 14 and by adding the following as Section 13:

“13. **BY-LAW REVIEW**

- 13.1 The City’s Administration shall conduct a review of this by-law inclusive of industry member input and present its findings to City Council prior to December 1, 2010.”.

That the by-law, as amended, be read a second time;

That the by-law be read a third and final time.

BY-LAW NO. 6909

BEING A BY-LAW OF THE CITY OF BRANDON to impose a tax on accommodation of short duration in order to support new events or initiatives in the areas of economic development, culture and recreation to be known as the "Accommodation Tax By-law."

WHEREAS *The Municipal Revenue (Grants and Taxation) Act*, R.S.M. 1987 c. T5 provides that the council of a municipality may pass by-laws imposing such forms of taxes as it deems advisable within the municipality including, without restricting the generality of the foregoing, taxes on persons who purchase hotel and motel accommodation;

AND WHEREAS a tax on accommodations of short duration within the City of Brandon is intended to generate revenue to promote and support new initiatives or events in the areas of economic development, culture and recreation but not to be used for capital or operating subsidies;

NOW THEREFORE the Council of The City of Brandon, in open session, duly assembled, enacts as follows:

1. SHORT TITLE

This by-law may be referred to as the Accommodation Tax By-law.

2. DEFINITIONS

- (a) "ACCOMMODATION" means lodging, and the right to use lodging, that is provided for consideration, whether or not the lodging is actually used.
- (b) "ACCOMMODATION TAX" means the tax imposed by Section 3 of this by-law.
- (c) "ALL-INCLUSIVE VACATION PACKAGE" means a vacation arrangement that, for a single price, includes at least one nights lodging in Brandon, round-trip transportation to or from Brandon and at least one other location, meals, drinks and entertainment.
- (d) "AUDIT AND FINANCE COMMITTEE" means a committee appointed by City Council in accordance with the provisions of Organizational By-law No. 6650 whose responsibilities include the hearing and making decisions on appeals heard pursuant to the provisions of this by-law.
- (e) "ESTABLISHMENT" means a business that provides accommodation at a particular location.
- (f) "LODGING" includes:
 - (i) the use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom;
 - (ii) the use of one or more additional beds or cots in a bedroom or suite; and
 - (iii) food, drink, entertainment, use of equipment or facilities, and other amenities and benefits where these are included in the purchase price without additional charge to the purchaser.
- (g) "OPERATOR" means a person who sells, offers for sale, or otherwise provides accommodation.
- (h) "PURCHASE PRICE" means the price for which accommodation is purchased, including the price paid in money, the value of goods provided or services rendered or other consideration accepted by the operator in return for the accommodation provided, but does not include the goods and services tax imposed by the Government of Canada nor the retail sales tax imposed by the Province of Manitoba.
- (i) "PURCHASER" means a person who purchases accommodation.
- (j) "TAX COLLECTOR" means the Director of Finance of the City of Brandon and any employee of the City appointed by the Director to administer or enforce all or part of this by-law.
- (k) "TIME SHARE AGREEMENT" means lodging that is purchased pursuant to a written agreement, typically known as a time share agreement, that
 - (i) has a term of two or more consecutive years;
 - (ii) fixes the location and time of occupancy;
 - (iii) fixes the total price and the terms and conditions for the payment of the total price for the accommodation; and
 - (iv) provides for a cumulative number of nights of occupancy over the course of the agreement that is no more than thirty (30) nights.

3. APPLICATION OF TAX

- 3.1 Subject to this section, a purchaser must, at the time of purchasing accommodation, pay an accommodation tax in the amount of 2% of the purchase price of accommodation provided for a continuous period of 30 nights or less whether provided in a hotel, motel, inn, housekeeping unit, lodging house, boarding house, rooming house, bed and breakfast establishment, resort, hostel, dormitory or any place in which accommodation is provided.
- 3.2 For greater certainty, the continuous period referred to in subsection 3.1 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.
- 3.3 The accommodation tax imposed by subsection 3.1 does not apply to:
- (a) accommodation where the purchase price is \$30.00 or less per night or \$210.00 or less per week;
 - (b) accommodation provided to patients or residents in a hospital, a sanatorium, a facility designated by regulations under *The Mental Health Act*, a personal care home licensed under *The Health Services Insurance Act*, or a residential care facility licensed under *The Social Services Administration Act*;
 - (c) accommodation provided to a student by an educational institution while the student is registered at and attending the institution;
 - (d) accommodation supplied by employers to their employees in premises operated by or on behalf of the employer;
 - (e) a time-share agreement;
 - (f) tent or trailer sites supplied by a campground, tourist camp or trailer park;
 - (g) a hospitality room in an establishment that
 - (i) does not contain a bed;
 - (ii) is not a suite that contains a bed; and
 - (iii) is used for displaying merchandise, holding meetings, or entertaining;
 - (h) elements of an all-inclusive vacation package that
 - (i) do not take place in, or on the grounds of, the establishment providing the accommodation; and
 - (ii) can be reasonably distinguished from the elements of the all-inclusive vacation package that are related to the accommodation.
- (i) accommodation provided in establishments in which fewer than four (4) bedrooms are available for rent.

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- 3.4 Where subsection 3.3(h) (all-inclusive vacation package) applies, the tax imposed by subsection 3.1 is imposed on that portion of the total purchase price of the all-inclusive vacation package that is reasonably attributable to the elements that are related to the accommodation.

4. TAX COLLECTED BY OPERATOR

- 4.1 An operator must, as an agent for the tax collector, collect the accommodation tax from the purchaser at the time the accommodation is purchased.
- 4.2 The amount of the accommodation tax must be shown as a separate item or charge on a bill, receipt, invoice or similar document issued by the operator in respect of accommodation on which the tax is imposed.

5. TAX REMITTED AND STATEMENT SUBMITTED BY OPERATOR MONTHLY

- 5.1 An operator must remit to the tax collector at the end of every month for each establishment the operator operates:
- (a) the amount of the accommodation tax that was collected by the operator during that month;
 - (b) the amount of the accommodation tax that should have been collected by the operator during that month; and
 - (c) the amount that was collected in error by the operator during that month and that has not been refunded to the purchaser.

- 5.2 An operator must, on a form provided by the tax collector, submit to the tax collector at the end of every month, a monthly statement for each establishment the operator operates, which statement must contain information reasonably required by the tax collector to administer or enforce this by-law including:
 - (a) the total revenue earned by the establishment from the sale of accommodations during the month;
 - (b) the amount of revenue earned from the sale of accommodations during the month that is not subject to the tax;
 - (c) the amount of revenue earned from the sale of accommodations during the month that is subject to the accommodation tax;
 - (d) the total accommodation tax collected; and
 - (e) the total accommodation tax remitted.
- 5.3 Unless otherwise permitted by the tax collector, the obligation to provide a monthly statement applies even when no taxes have been collected.
- 5.4 The obligation under subsection 5.1 to remit taxes and the obligation in subsection 5.2 to submit a monthly statement must be met no later than the 20th day of the month following the month in which the taxes were payable and for which the monthly statement is applicable.

6. REFUNDS

- 6.1 The tax collector shall refund to an operator all or a portion of an amount that was collected as if it were the accommodation tax if, within one year of the collection and remittance of the amount, the operator provides proof that:
 - (a) the amount was collected notwithstanding that it was not payable as an accommodation tax;
 - (b) the amount was remitted to the tax collector; and
 - (c) the amount has been refunded by the operator to the purchaser.
- 6.2 In complying with subsection 6.1, the tax collector may deduct the amount of the refund payable to the operator from the amount of the tax that the operator is required to remit under this by-law.
- 6.3 The tax collector shall refund to a purchaser all or a portion of an amount that was paid as if it were the accommodation tax if the purchaser applies for the refund within one year of the payment of the tax and provides evidence that:
 - (a) the amount was paid notwithstanding that it was not payable; and
 - (b) the operator has refused to refund the amount to the purchaser;

as long as the amount was remitted by the operator to the tax collector and has not been refunded to the operator by the tax collector.

7. USE OF ACCOMMODATION TAX FUNDS

- 7.1 In any given year, the net proceeds from this tax shall be deposited to the Accommodation Tax Reserve Fund and shall only be used to fund new ~~incentives, initiatives~~ or events which promote and support enhanced economic development, culture and recreation.
- 7.2 To add further clarity, these funds will be used to fund new initiatives and events that generate more overnight stays in Brandon and will not be used to provide capital or operating subsidies to existing programs or facilities.
- 7.3 The net proceeds from the Accommodation Tax shall be defined as the gross revenue received from said tax less any refunds and costs of administering and enforcing this by-law which will be limited to 10% of the gross revenue generated by this tax.

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8. INSPECTION, AUDIT AND COLLECTION

- 8.1 The tax collector or his designate may for the purpose of enforcing this by-law, enter any establishment to:
- (a) collect the tax imposed by this by-law, if necessary;
 - (b) audit the books, records and accounts of the operator for the purpose of ascertaining the amount of tax to be collected and remitted;
 - (c) place in the lobby or other part of the establishment such notices regarding the tax as the tax collector may consider necessary;
 - (d) require the operator to produce for inspection any book, contract, agreement, letter, paper or document relating to the establishment, the accommodation provided, or any other matter relating to this by-law; and
 - (e) make and remove any copies of any documents or records required in the administration of this by-law.

9. APPEALS

- 9.1 Any appeal of a decision made by the tax collector will be made to the Audit and Finance Committee who will conduct a hearing on the appealed matter within sixty (60) days of receipt of the written appeal.
- 9.2 Written notification of their desire to appeal shall be directed to the Secretary of the Audit and Finance Committee outlining the reasons for appeal.
- 9.3 The Secretary of the Audit and Finance Committee shall cause not less than five (5) days notice of the hearing to be served, by certified mail or registered mail, on the appellant at the address provided by the appellant at the time of registering the appeal.
- 9.4 On the day and time set out in the appeal hearing notice, the Audit and Finance Committee shall receive representation from both Administration and the appellant and/or his agent. The hearing may be adjourned from time to time and may be resumed at such time and place as the Committee may decide.
- 9.5 Upon hearing an appeal, the Audit and Finance Committee may rescind the decision of the tax collector, confirm the decision of the tax collector, or make such other order as the circumstances of each case it deems just.
- 9.6 The Secretary shall communicate, in writing, the Committee's order to both the appellant and the tax collector as soon as is practical following the rendering of the Committee's decision.
- 9.7 The order or decision of the Audit and Finance Committee is final and for further clarity, said order of decision is not appealable to City Council.

10. ADDRESS FOR SERVICE

- 10.1 Where an address for service under this by-law is required, one of the following shall be used:
- (a) if the person to be served is an operator, the street address of the establishment of which he or she is the operator;
 - (b) if the person to be served is not an operator, the address provided by that person in communication with the tax collector.

11. INTEREST PENALTIES

- 11.1 A penalty equivalent to the product of 5.0%, and the amount of the unremitted taxes shall be applied to taxes imposed by Section 3 that are required to be remitted by subsection 5.1 but have not been remitted by the date specified in subsection 5.4.
- 11.2 Additional penalties will be imposed at a rate of 1.25% per month on the 1st day of each succeeding month.

12. **OTHER PENALTIES**

12.1 Every person who fails to comply with the provisions of this by-law is guilty of an offence and, in addition to being liable for payment of the penalty imposed by Section 10, is liable on summary conviction,

(a) for failing to collect or remit the tax, to a fine that is not less than double the amount of the tax that should have been collected and remitted to the City of Brandon;

(b) for failing to comply with other provisions of this by-law,

(i) if an individual, to a fine not exceeding one thousand dollars (\$1,000.00), ~~or to imprisonment for a term not exceeding six (6) months, or to both fine and imprisonments;~~

(ii) if a corporation, to a fine not exceeding five thousand dollars (\$5,000.00).

13. **BY-LAW REVIEW**

13.1 The City's Administration shall conduct a review of this by-law inclusive of industry member input and present its findings to City Council prior to December 1, 2010.

14. **COMING INTO FORCE**

14.1 This by-law shall come into force and take effect on ~~January 1~~ January 5, 2009.

DONE AND PASSED by the Council of The City of Brandon in a meeting duly assembled this day of A.D. 2008.

MAYOR

CITY CLERK

Read a first time this 3rd day of June A.D. 2008
Read a second time this day of A.D. 2008
Read a third time this day of A.D. 2008

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