



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**New Taxation Measures - Report on Design Features and
Implementation Authorities**

Date:	October 26, 2007
To:	Executive Committee
From:	City Manager Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2007\Internal Services\Cf\ec07047Cf – et (AFS #6185)

SUMMARY

This report is submitted in accordance with the decisions of Council from its meeting of October 22 and 23, 2007 in regard to EX10.1 (including a report, dated June 11, 2007 entitled “New Taxation Measures – *City of Toronto Act, 2006*” and a supplemental report, dated July 12, 2007 entitled “New Taxation Measures Supplemental Report – *City of Toronto Act, 2006*”).

The purpose of this report is to seek all necessary authorities to implement a municipal land transfer tax (MLTT) early in 2008 and a personal vehicle tax (PVT) as early as possible, including authority to enter into a municipal land transfer tax administration and collection agreement with Teranet, and to recommend tax design features for the proposed MLTT.

The name ‘vehicle ownership tax’ used in the July 12, 2007 report has been changed to the name ‘personal vehicle tax (PVT)’ in this report, to reflect more accurately the process of issuance/ validation of permit for utilization of a vehicle on the road.

RECOMMENDATIONS

The City Manager and the Deputy City Manager and Chief Financial Officer recommend that:

1. Council adopt the administrative design features for the MLTT mirroring the existing provincial land transfer tax (including all provincial rebates and exemptions), as set out in Appendix A of this report, with the following key distinctive features unique to the MLTT:
 - i. The MLTT will have rates and rate thresholds unique to the MLTT, as adopted by Council at its meeting of October 22 and 23, 2007;
 - ii. The MLTT includes exemptions for the Crown, Crown agents and various other public bodies as required by the *City of Toronto Act, 2006* (COTA) which differ from the Crown exemptions from the provincial land transfer tax;
 - iii. The MLTT will include various rebates and exemptions adopted by Council at its meeting of October 22 and 23, 2007 and set out in Appendix A which are unique to the MLTT;
 - iv. As an interim measure, until an appropriate amendment to COTA is made, the City's appeal and dispute resolution mechanism under the MLTT by-law will operate through the Government Management Committee to Council;
 - v. The MLTT will attract interest rates and penalties which may differ from those imposed on the provincial land transfer tax, as set out in Appendix A; and
 - vi. The City may use collection and enforcement mechanisms in the collection of the MLTT that may differ from the *Land Transfer Tax Act* as set out in Appendix A;
2. Council authorize and direct appropriate City officials to enter into any necessary agreements with Teranet Inc. and the Province, pursuant to which Teranet would be named the City's exclusive authorized MLTT collection agent for all electronically registered transactions, develop systems to apply appropriate MLTT exemptions and rebates for the City, and temporarily assist with manual MLTT rebates administration until such time as they can be handled electronically through the Teraview system, all in accordance with the terms and conditions set out in Confidential Attachment 1 and in a form acceptable to the City Solicitor; and the Province would share information relevant to the MLTT and/or to collect the MLTT on behalf of the City in respect of land transfer transactions which are handled outside the Teranet system;
3. Council request the Province to make regulations under the *City of Toronto Act, 2006* allowing the City to add any outstanding MLTT pertaining to a property to the property tax roll for that property and collect it in the same manner as property taxes;
4. Council request the Province to amend the *City of Toronto Act, 2006* to allow the City:
 - (a) priority lien status on uncollected MLTT; and

- (b) to incorporate the current *Land Transfer Tax Act* appeal right to the Superior Court of Justice;
5. Council request the Province to make any necessary legislative or regulatory amendments to allow the Minister to refuse the issuance and validation of personal vehicle permits unless the City's PVT is paid in full;
 6. The Deputy City Manager and Chief Financial Officer report back to Council in early 2008 on the progress of discussions with the Province on an agreement to collect and administer the PVT;
 7. The Deputy City Manager & Chief Financial Officer be granted authority to recruit and hire the necessary staff required for the implementation and on-going administration of the MLTT;
 8. Council request the Federal Government to amend any federal regulations necessary to extend the GST exemption, which is currently in place for the provincial land transfer tax and land transfer taxes imposed by municipalities outside of Ontario, to the MLTT and PVT;
 9. The Deputy City Manager & Chief Financial Officer report directly to Council on outstanding items contained in this report; and
 10. The City Solicitor be authorized to introduce the necessary bills to give effect to the MLTT and the appropriate officials be authorized and directed to take necessary actions to give effect thereto.

Implementation Points

The *City of Toronto Act, 2006* (COTA) requires that a tax by-law be adopted for any tax under the COTA's taxation provisions that shall include a description of the subject of the tax, the applicable rates, and the manner of collection of the tax, including the identification of the agent responsible for collection.

The by-law may include such provisions as exemptions, rebates, penalties, interest on overdue amounts, audit and inspection powers, and enforcement measures, including fines, garnishment, seizure and sale of property, dispute resolution mechanisms, and the creation and registration of liens.

COTA also sets out entities that are exempt from any new taxes adopted by the City, including the Province, Crown agents, Crown corporations, school boards, post-secondary institutions, hospitals, long term care homes and any other person that the Province prescribes by regulation.

Both MLTT and PVT will require collection and/or administrative service agreements with appropriate entities on an ongoing basis.

This report recommends that the City execute an agreement to collect and administer the MLTT in respect of all electronic registrations on the City's behalf with Teranet, a public company that owns and operates the software to administer the land titles registry taxing and reporting systems under exclusive long term contract with the Government of Ontario. In addition, staff will develop arrangements with the Province to share data and otherwise assist in the collection and administration of MLTT for the nominal volumes of taxable land transfer not processed through Teranet.

Similar agreements may also be required with the Province or its agents for the collection and administration of a PVT. This report recommends that the Deputy City Manager and Chief Financial Officer report back on the collection and administration of the PVT early in 2008.

Financial Impact

The administrative programs required for MLTT rebate processing, compliance audits, enforcement, dispute resolution mechanisms and customer service would cost the City an estimated \$1.7 million per year, and \$2.5 million in 2008 until certain rebate functions are automated. Details of these costs will be included in the 2008 operating budget. The immediate portion of these costs in the 2007 fiscal year is expected to be nominal and any impacts will be reported through the normal variance process.

Allowances for annual administration costs are included in the gross proceeds estimates below, which also summarize the financial impacts of the decisions made by Council at its October 22, & 23, 2007 meeting as follows:

Tax	Description	Estimated Revenues (2008)	Estimated Revenues (fully phased-in)
Municipal Land Transfer Tax	Gross proceeds net of admin fees & costs	\$290.0	\$300.0
	Less: Grandfathering – Residential	<\$40.0>	<\$0>
	- Non-residential	<\$35.0>	<\$0>
	: Extended 1 st Time Home Buyers Rebate	<\$40.0>	<\$40.0>
	: Extend 1% rate to \$400K	<\$17.0>	<\$17.0>
	: Reduce \$40M+ rate to 1%	<\$ 3.0>	<\$ 3.0>
	Net Revenues	\$155.0	\$240.0
Personal Vehicle Tax	Estimated Net Revenues (net of administration costs)	\$20.0	\$55.0
	Total New Revenues	\$175.0	\$295.0

The figures above are based on the Council's decision to implement the MLTT effective February 1, 2008, and the staff estimate for a feasible implementation date for the PVT.

The fully phased in figures relate to the 2008 revenues on a fully annualized basis, after the impact of grandfathered transactions has run its course, which is expected to occur over about a year for commercial transfers and up to three years for residential (specifically new condominium purchases) transfers. The impact of potential changes in market volumes and prices over this period are not taken into account.

Estimates of the revenue impact are shown for the incremental impact of Council's various decisions. For example, the Extended First Time Home Buyer's Rebate is the estimated cost of extending the program to purchases of existing homes (from just newly constructed) and raising the potential amount to \$3,725 from \$2,000 under the Provincial program. The cost of the rebate under the Provincial program is already incorporated in the gross proceeds figure. Rebates and or exemptions with nominal impact (such as the minimum consideration exemption) are not included in the chart.

DECISION HISTORY

City Council, at its meeting of October 22 and 23, 2007 with respect to EX10.1, considered submissions including a report dated June 11, 2007, entitled "New Taxation Measures - *City of Toronto Act, 2006*", and a supplemental report, dated July 12, 2007 entitled "New Taxation Measures Supplemental report – *City of Toronto Act, 2006*", and adopted the recommendation to implement a municipal land transfer tax effective February 1, 2008, with amendments to the program recommended to Council in July.

COMMENTS

The purpose of this report is to seek all necessary authorities to implement a MLTT effective February 1, 2008, including authority to execute a municipal land transfer tax administration agreement with Teranet.

1. Municipal Land Transfer Tax

A. MLTT Design Characteristics

At its meeting of October 22 and 23, 2007 Council approved the implementation of a land transfer tax based on the current tax imposed by the Province under the *Land Transfer Tax Act* (the "LTTA").

The LTTA and its accompanying regulations establish the Provincial land transfer tax regime. It is recommended that the City incorporate by reference all relevant provisions of the LTTA into the MLTT by-law, including all rebates and exemption provisions of the LTTA and all exemptions and rebates to the provincial tax authorized through other legislation, and future amendments to the LTTA. This ensures that all changes to the provincial land tax regime will be automatically mirrored by the City's MLTT regime, with the exception of the design features unique to the MLTT as follows:

(1) Rates and Rate Thresholds

The rate and rate thresholds established by Council differ from those currently imposed under the LTTA. It is recommended that under the by-law, Council continue to set the rate regime independently of any changes to tax rates made by the Province. In the event that the Province materially revises its rate regime, the City's Deputy City Manager and CFO would report to Council on the implications for the City tax and any recommended changes to the rate regime set out in the City by-law.

(2) Statutory Exemptions

The LTTA specifies that the Crown and its agencies as defined in the *Crown Agency Act* are exempt from the tax. The COTA provides a broader group of required exemptions for all new City taxes. Section 268 requires exemptions for the Crown; every agency of the Crown and every authority, board, commission, corporation, office or organization of the Crown; every board defined under the *Education Act*; every university and college in Ontario; hospitals; every long-term care home and such other persons and entities as may be prescribed.

The impact of statutory exemptions on estimated gross revenues was incorporated in the estimates considered in the June 11, 2007 staff report to the Executive Committee. Such impacts are not expected to be significant in any given year.

If there are changes to the COTA that affect the City's by-law, such as a prescribed change to the mandatory exemptions list, the City by-law would incorporate all such changes, and staff would undertake the necessary changes to the tax collection mechanisms and report to Council on the implications.

(3) MLTT-specific Rebates and Exemptions

Council approved the following provisions:

- (a) Grandfathering - MLTT rebate for all real property buyers who entered into an Agreement of Purchase and Sale for the property on or before December 31, 2007;
- (b) Expanded First Time Homebuyers - MLTT rebate up to \$3,725 for all first-time buyers of new and resale homes (i.e. a 100% rebate on homes valued up to \$400,000), similar to the current provincial rebate, except that the maximum rebate is larger than the \$2,000 limit to the Provincial rebate, and the rebate will apply to both newly constructed and existing homes;
- (c) City Exemptions - Exemption from MLTT for City divisions, local boards as defined in the *City of Toronto Act, 2006*, Toronto Community Housing Corporation (TCHC) and Toronto Economic Development Corporation (TEDCO);
- (d) Minimum Tax - Exemption from MLTT on property transfer transactions where the gross tax assessed (before applicable rebates) would result in revenue of less than \$2.00 after transaction fees paid by the City.

(4) Other administrative features

Various other differences will exist between the Provincial LTTA and the City's MLTTA by-law.

The COTA currently does not permit the City to rely on the LTTA process in respect of the MLTT for appeals by taxpayers to the Superior Court of Justice. To the extent that the rebates and exemptions under the City tax differ from the LTTA, there will always be the potential for appeals relating directly to the application of those design features by the City. Accordingly, it is recommended that the Government Management Committee serve as the City's appeal and dispute resolution body for the MLTT by hearing appeals and making recommendations to Council. The Government Management Committee already serves a similar appeal function in respect of property tax appeals

The LTTA does not require the payment of the tax in order to register transfer of title in a property. However, the penalties imposed by Teranet and the banks for insufficient funds upon transfer, and the enforcement capacity of the Province, result in prompt payment being the norm. The City has authority under the COTA to establish its own set of penalties and enforcement mechanisms for collection of unpaid taxes. It is appropriate therefore that the City establish collection and enforcement processes, including interest charges on overdue amounts that fit with its existing procedures, as recommended in this report and set out in Appendix A, but which mirrors the LTTA as closely as possible.

B. Collection of MLTT by Teranet

Section 271 of COTA provides that the City may enter into agreements with another person or entity, including the Crown, providing for the collection of taxes imposed under section 267 of COTA and the administration and enforcement of the by-law imposing the taxes and the agreement may authorize the person or entity to collect taxes and administer and enforce the by-law on the City's behalf. Teranet is currently collecting the Provincial land transfer tax on behalf of the Province and is in an ideal position to assist the City with the collection of a MLTT.

Accordingly, the City and Teranet undertook preliminary discussions in regard to the potential launch of the collection of the MLTT by Teranet subject to Council approval of the tax. Teranet commenced preparations for developing the capability to collect the MLTT through Teranet's proprietary Teraview software so that the work could be completed in accordance with the City's interest in collecting the tax as early as possible in 2008.

The following process for Teranet collection and remittance of the MLTT is recommended:

- i. all electronic MLTT payments will be collected by Teranet;
- ii. per the Confidential Attachment to this report, the City would pay a fee to Teranet that would be deducted from MLTT revenues and the net amount remitted to the City each day;
- iii. Teranet will modify its system so that any rebates or exemptions specific to the City by-law may be netted off the assessed tax at the time the MLTT is paid. In the interim, Teranet will assist in the manual processing of rebate applications on a fee for service basis. All applications that are determined to be eligible for a rebate will be forwarded to the City for processing of the refund cheque.
- iv. in the case of non-payment of MLTT due to insufficient funds in the purchaser's or the purchaser's lawyer's trust account, Teranet would undertake its standard procedures to obtain payment, but if unsuccessful would refer the account to the City for collection.

The recommended terms of the agreement that would be executed with Teranet are identified in the Confidential Attachment and would remain confidential until final agreement has been reached. These terms are still under discussion with Teranet as they relate to the recent decisions of Council on October 22 and 23, 2007. Any amendments will be reported directly to Council for approval.

C. Administration of Rebates and Exemptions

With the exception of the minimum net tax exemption, any rebates or exemptions approved by Council that differ from those under the current LTTA are not currently available on the Teranet system, and will require manual processing until such time as related system upgrades can be implemented that would permit the related amount to be offset against the MLTT payable to the City at the time of registration, subject to eligibility. Teranet indicates that such changes could be implemented in the spring of 2008. In the interim, Teranet would facilitate the rebate process by developing (in a form acceptable to the Deputy City Manager and Chief Financial Officer) and making available the rebate application form. Teranet will receive/accept rebate application forms and appropriate supporting documentation from the applicant and/or agent, determine eligibility for and calculate the rebate amount. Based on the information and approvals provided by Teranet, the City's Revenue Services Division will issue rebate refund cheques to the applicant. However, if property taxes are outstanding on the property purchased, the rebate will be applied against the outstanding amount.

(1) Grandfathering Rebate

Council approved a full rebate of applicable municipal land transfer tax where the purchase and sale agreement was executed on or prior to December 31, 2007. It is

expected that this rebate will apply predominately to condominium purchase agreements entered into over the past two to three years which have yet to close, and single family residences for which purchase and sale agreements are executed in the last few months of 2007, and which typically close two to three months after the date of the purchase agreement. Staff estimate that qualifying residential transfers would reduce typical annual MLTT revenues by \$40 million in 2008, based on the February 1, 2008 implementation date. Once the backlog of previously executed agreements of purchase and sale result in title transfers (expected to occur over approximately three years), no further grandfathering rebates would occur and the net proceeds to the City would rise.

Similarly, transfers of commercial property may take many months to close after a purchase agreement is executed. Although the volumes of these transactions are much lower, staff estimate that 2008 revenues would be approximately \$35 million lower than normal due to the number of 2008 land transfers that will be related to commercial property purchase agreements executed before the end of 2007.

As previously discussed, until such time as Teranet can administer this exemption on its Teraview system, the City, with Teranet's assistance, will issue rebates of the MLTT for all transactions meeting the eligibility criteria. Teranet will administer the rebate program by accepting applications and all relevant documentation, while the City itself will issue the rebates upon Teranet's advice. Once the exemption is reflected in Teraview, the transaction will be exempt from MLTT at the time of electronic registration, subject to post audit by the City.

In any case, staff will establish a process for reviewing high value rebate applications to ensure that funds are released in a timely manner and to ensure that ineligible claims are not processed.

(2) First-time Home Buyer Rebate

The Provincial LTTA includes a rebate for first time home buyers of newly constructed homes. The Province of Ontario is contemplating an extension of the rebate to first-time home buyers of existing homes, as indicated in the Liberal Party's pre-election platform.

Council adopted the extension of the rebate to all first time home buyers effective February 1, 2008. The rebate is up to a maximum amount of \$3,725.00, (the MLTT applicable on a home valued at \$400,000), compared to the current Provincial rebate of \$2,000, which is the Provincial tax applicable on a home valued at \$227,500.

As previously discussed, until such time as Teranet can administer this exemption on its Teraview system, the City, with Teranet's assistance, will issue rebates of the MLTT for all transactions meeting the eligibility criteria. Once the exemption is reflected in Teraview, the transaction can be made exempt from MLTT at the time of electronic registration, subject to post audit by the City.

Establishment of whether a purchaser is a first time real property buyer anywhere in the world can be challenging. The Province currently relies on an affidavit. The City would

similarly rely on an affidavit, and will require audit or inspection of appropriate documents to satisfy its own standards. Additionally, procedures will be established to check land registry records for evidence of previous home ownership in Ontario, and elsewhere if and when systems are available and agreements can be put in place. City counter operations would accept rebate applications for processing and issue a rebate cheque on approval.

(3) City, and City Local Boards' Exemption:

Council approved an exemption for land purchases by the City and its local Boards as defined under the COTA and for the City's not-for-profit corporations TEDCO and TCHC. Purchases by these entities would not be expected to substantially affect revenue projections, and in any case applying the tax would not result in any net benefit for the City, and would increase transaction costs. The rebate will be administered through a manual process (i.e. tax applied and reimbursed) until the Teranet system can be adjusted to accommodate an identifier for eligible transactions.

(4) Statutory exemptions

Until this exemption can be reflected in the tax calculation on the Teranet system, the City will advise the related institutions of their exemption from MLTT, and recommend that they arrange to prepay their applicable land transfer tax at the Ministry of Revenue offices so as to avoid the automatic assessment of the tax under the Teranet collection system. In the event that such a transfer is processed through the Teranet system in early 2008 before the necessary system adjustments can be made, the City would refund the charges.

(5) Minimum Consideration Exemption

As approved by Council, any real property transfer resulting in net tax revenue to the City of less than \$2.00 after Teranet's fee will be exempt (eliminating the fee and the revenue). This exemption will be implemented by Teranet on February 1, 2008, and will mean that any transfers of property valued below a nominal threshold will be exempt.

D. Taxes Not Collected under Agreement with Teranet

Not all MLTT transactions are accessible through the computer-supported Teranet system. Real property purchasers or their agents may go to the provincial Land Registry Office (LRO) or the Ministry of Revenue (MOR) office in Oshawa to make over-the-counter payments of LTT. It is estimated that these transactions represent less than 1% of all transactions. In these cases, land transfer taxes are not collected by Teranet. Instead, the City intends to reach an agreement with the Province to obtain all necessary information for the City to track the MLTT payable on these transactions and possibly arrange for collection of the MLTT at both offices by the Province on non-electronically registered transactions. Should any unusual circumstances or costs arise from these arrangements the Deputy City Manager and Chief Financial Officer would report then to Committee.

In the interim and in the absence of an agreement with the Province to collect the MLTT on the City's behalf, the City will require payment of the MLTT as it relates to any conveyances registered over-the-counter at the Provincial LRO and MOR office in Oshawa to be made either at Toronto City Hall or the North York Civic Centre. In the event that MLTT payment is not received, the City will issue an assessment of tax owing and/or demand notice, and pursue collection on any unpaid amounts.

The City can identify and pursue payment of unpaid amounts relating to transactions occurring through the LRO through data provided in a weekly report from Teranet. Transactions occurring through the MOR offices in Oshawa can only be taxed if and when appropriate data sharing arrangements are put in place.

E. Penalties, Interest, Audit/Inspection, Dispute Resolution and Other Enforcement Measures

Non Payment

Sub-section 267(4) of the COTA makes provision for a City by-law to incorporate various enforcement measures such as penalties for failing to comply with the by-law, interest on outstanding taxes and penalties, assessment of outstanding tax/penalties/interest, audit and inspection powers, establishment and use of dispute resolution mechanisms and establishment and use of any other enforcement measures as City Council considers appropriate (e.g. garnishment, seizure and sale of property, creation and registration of liens).

(1) Collections

Non-payment of MLTT by a real property purchaser does not constitute sufficient reason to disallow land transfer registration (the same is true of the provincial land transfer tax). The City has to use other enforcement measure (e.g. penalties, interest charges and/or liens) to collect any outstanding payment.

As noted above, the City expects that Teranet will forward unpaid accounts to the City for further collection. In addition, where land transfers are processed at provincial counters, the City will require that the purchaser/agent make payment at City Hall or the North York Civic Centre Office in person. The following collection action will be initiated on any unpaid MLTT:

- Upon learning of the failure to pay, Revenue Services staff will issue an assessment of tax payable requiring immediate payment. Interest and penalty charges at a rate of 15% per annum commencing the day after registration will apply until full payment is received, i.e. the same rate as is applied against outstanding property taxes;
- The purchaser will be provided 30 days to make payment;

- If payment is not received, Revenue Services staff will work with the City Solicitor's office to determine the appropriate collection mechanisms to collect the outstanding taxes; and
- Collection mechanisms may include the issuance of the outstanding receivable to a bailiff and/or a collection agency, garnishment, seizure of assets and/ or property, commencing court action to collect, registration of liens and taking of security.

(2) Use of Property Tax Bill and Priority Liens

The new MLTT is intended to generate new revenues and reduce dependence on property taxes. The City would rely on these new revenues as it would property tax revenue. In order to have an effective enforcement tool, the City requires the ability to add MLTT arrears to the property tax bill, collect them in the same manner as property taxes, and have a lien with priority over all other liens, other than those of the Crown in the same way it does for unpaid property taxes. Currently, COTA does not allow for adding MLTT arrears to the property tax bill and collecting in the same manner as property taxes and expressly provides that the City does not have a priority lien in respect of the MLTT. It is recommended that Council request the Province to file a regulation allowing MLTT arrears to be added to the property tax bill and collected in the same manner as property taxes, and to amend COTA to provide the City with priority lien status for outstanding MLTT.

(3) Interest/Penalties

The City will impose an interest and penalties on unpaid MLTT at the same rate as is imposed on other City collectibles. Penalties and interest will apply at a monthly rate of 1.25 percent from the first day after the day the registration occurred and interest will apply every 30 days thereafter on the principal amount owing during such time as the default continues (15 per cent per annum).

An NSF charge of \$35 will be applied to all payments returned by the bank.

The MLTT by-law will also allow the Deputy City Manager & Chief Financial Officer to impose the same penalties on taxpayers and on designated tax collectors as may be imposed by the Minister under the LTTA. These are set out in Appendix A.

(4) Offences

The City's MLTT by-law will create the same offences in respect of the MLTT as does the LTTA in respect of the Provincial LTT. These are set out in Appendix A. Fines will be set as close as possible to the fines set by the LTTA in respect of the Provincial LTT, but will vary slightly due to limitations imposed on the City's authority to impose fines as set out under COTA.

(5) Audit

The City will have to establish an audit process to review tax remittance, over-due accounts, rebate claims, lien administration and the like.

The City will require taxpayers to retain records related to MLTT for seven years, which is the same retention requirement as the Province. The MLTT by-law will provide for a right of entry for the purpose of records and document inspection by the City.

(6) Appeals

The City does not have the statutory authority to incorporate by reference into the MLTT by-law the taxpayer's right of appeal to the courts contained in section 14 of the provincial LTTA into a municipal by-law. It is recommended that the City establish an appeal and dispute resolution mechanism under the MLTT by-law, and as such designate its Government Management Committee to serve as the City's appeal and dispute resolution body for the MLTT. This appeal mechanism would only apply to appeals specific to the MLTT (ie. relating to rebates, etc. unique to the MLTT). With respect to any appeal which similarly affects the Provincial LTT, the City would honour all decisions of the Minister and of the court. It is recommended that the Province amend COTA to incorporate the equivalent of Section 14 of the provincial LTTA into the COTA, so that in the future all appeal rights could be incorporated by reference in the MLTT by-law.

II. Personal Vehicle Tax (PVT)

(a) Operating Parameters of the Current Provincial Vehicle Registration Permit Fee

The Province of Ontario administers vehicle permit issuance and validation in Ontario, through a network of approximately 280 Private Issuing Offices and 70 ServiceOntario Kiosks. Vehicle owners/drivers may also validate motor vehicle licence plates online at Service Ontario Driver and Vehicle Online Services. Motor vehicle licence plates are validated by purchasing and affixing a validation sticker on the licence plate. A renewal application is mailed to the vehicle owners/lessees approximately 60-days prior to the sticker expiry date. At the time of renewal, any outstanding parking fines, outstanding 407 ETR tolls and administrative fees and non-negotiable cheque amounts posted against the permit must be paid in full before a validation sticker is issued. All passenger cars,

vans, light trucks and sport utilities in the Drive Clean program areas must pass an emission inspection every two years, once the vehicle is 5 years old, to renew validation.

(b) Application of Rates

The vehicle tax was approved by Council on October 22 and 23, 2007, with annual rates of \$60 per passenger vehicle (including light commercial vehicles, such as SUV's which technically falls in the light commercial category under the provincial vehicle registration system) and \$30 per personal motorcycle/moped. The intention in including light commercial vehicles is to apply PVT to vehicles registered for personal use, not businesses.

(c) Discussions with the Province

City staff's proposal to proceed with the PVT is based on being able to secure appropriate collection and /or enforcement (compliance) agreements with the Province. While the tax option was still before Council City staff continued their discussions with staff from the provincial Ministries of Transportation, Municipal Affairs & Housing, and Finance, on the manner of co-operation required to implement a PVT in the City of Toronto. These discussions were premised on public comments by a spokesperson for the Minister of Finance in July 2007, that the Province would work with the City to establish an efficient tax administration system, should the City elect to pursue such a tax.

Briefly, the following issues have been discussed:

Collection and remittance: Staff have requested the Province to consider the feasibility of collecting the tax on behalf of the City utilizing the Ontario-wide network of Private Issuing Offices, ServiceOntario kiosks, internet and mail. It is understood that the necessary changes to the provincial systems would place demands on the provincial bureaucracy, disrupting current work plans and requiring a significant time commitment, including the retention of contracted system redesign services. The Province has asked that the City provide an estimate of the requirements and cost of administering its own system of billing and collection for comparison purposes. Development of various scenarios is currently underway. The Province has also indicated that the new tax must ensure transparency for the consumer and be clearly seen as a separation of City tax from the Provincial fees. The Province has indicated that a full cost recovery business model is required.

Enforcement (Compliance): The City has indicated that collection of unpaid vehicle taxes by the City would be difficult and expensive, and that ultimately enforcement of the tax would be impractical. Accordingly, staff have requested that the Province consider the necessary legislative or regulatory amendments that would make vehicle licence plate renewal conditional on payment of City PVT, similar to the way that outstanding parking tag payments are collected, or that the 'Drive Clean Certification' program is administered. Provincial staff are considering the issue, but note that the PVT is a unique application that will require special consideration. The Province has indicated that

potential privacy implications associated with the collection of the new tax will need to be assessed.

Application Issues: Further analysis and discussions with the Province are required to determine how best to administer and collect the tax in respect of certain circumstances such as the potential use by Toronto residents of a second address outside of the City as the address to which the vehicle is registered and the resulting potential for tax avoidance. Also, the treatment of leased and rented vehicles will require special attention. Leased vehicles would attract the tax when leased for personal use. Those leased by an employer for use by an employee would typically not be captured. Similarly, rental vehicles would avoid the tax due to the commercial exemption.

Timing: Given that the City determined that it would be proceeding with a PVT on October 22 and 23, 2007, the legislative and administrative issues to be worked out with the provincial ministries, the scheduling demands on both City and provincial staff involved in these initiatives, and the lead time required to provide appropriate notice to vehicle permit holders, it is suggested that implementation could reasonably be considered feasible no sooner than the late summer of 2008. A net revenue of estimate of \$20 million in 2008 was provided to Council.

This report recommends that the Deputy City Manager and Chief Financial Officer report back to Council by early 2008 on the progress of discussion with the Province on the collection and administration of the PVT and any additional approvals by Council that might be required.

III. GST Ruling on City of Toronto's Proposed New Taxes

Following discussions with staff from Canada Revenue Agency, the City Solicitor's office, on behalf of the City of Toronto, has submitted an application to the CRA for GST ruling on the MLTT and PVT.

Currently GST is charged only on new construction, not on resale of real property. If the City's MLTT is determined to be part of the 'consideration' (i.e. price of a newly constructed real property) for GST purposes, the MLTT would trigger corresponding GST as an additional cost to the purchaser of the real property. If applicable, collection of GST would be the responsibility of the purchaser's agent in the case of MLTT and the City's agent with respect to PVT.

It is recommended that, should the GST be applicable to the new taxes as part of the value of consideration for the transactions to which the taxes apply, that the Federal Government be requested to amend any federal regulations necessary to provide an explicit exemption for the MLTT and PVT, as is currently in place for the provincial land transfer tax and land transfer taxes collected by municipalities outside of Ontario,

Conclusions

On October 22 and 23 2007, Council adopted a municipal land transfer tax and personal vehicle tax, specifying the application of the taxes and the associated rates. This report identifies and recommends the required administrative design features for the municipal land transfer tax (MLTT) as set out in Appendix A of this report for incorporation into a City land transfer tax by-law. Certain related authorities and legislative amendments are requested in order to facilitate the administration of the new tax.

Additionally, this report recommends that the City enter into an agreement with Teranet Inc. in accordance with the terms identified in a confidential attachment, naming Teranet as the City's exclusive authorized MLTT collection agent for electronically registered land transactions.

The design of the personal vehicle tax is still the subject of discussions with the Province. Further details will be reported back early in 2008 in order to implement the tax during 2008.

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SIGNATURES

Shirley Hoy, City Manager

Joseph P. Pennachetti, Deputy City
Manager and Chief Financial Officer

Attachments:

Appendix A: Design Features of the Municipal Land Transfer Tax (MLTT)
Confidential Attachment 1: Terms and Conditions of the MLTT Master Agreement with Teranet

Appendix A

Design Features of the Municipal Land Transfer Tax (MLTT)

Structure of the MLTT

A. Structure of Tax and By-law:

- The MLTT will mirror the Provincial land transfer tax (“PLTT”), to the extent possible.
- The MLTT by-law will incorporate all relevant portions of the *Land Transfer Tax Act* by reference, thereby incorporating any changes to the *Land Transfer Tax Act*, or its regulations, into the MLTT. The exceptions to this are itemized below.
- All decisions made by the Minister of Revenue in respect of the PLTT will be honoured by the City in respect of the MLTT, for example refunds for tax paid in error, etc.

B. Taxable Transactions and Exemptions/Rebates: (Same as PLTT)

- MLTT will be imposed upon the same transactions as PLTT and is payable upon registration of a conveyance, or upon disposition of a beneficial interest in real property.
- All exemptions and rebates provided from the PLTT, under the LTTA or under other legislative authority, will be provided from the MLTT.

C. Tax Rates and Rate Thresholds

- MLTT will be imposed at graduated tax rates upon the value of consideration of the acquisition of real property (same as PLTT).
- The graduated tax rates are as follows (unique to MLTT):

Property containing at least one, and not more than two, single family residences, as defined in the Land Transfer Tax Act -

Values of consideration on conveyances:

: up to and including \$55K	@0.5%
: \$55K to \$400K	@1.0%
: Over \$400K	@2.0%

All other property – values of consideration on sales:

: up to and including \$55K	@0.5%
: \$55K to \$400K	@1.0%
: \$400K to \$40M	@1.5%

: Over \$40M

@1.0%

D. Additional Exemptions:

- In addition to all exemptions and rebates from PLTT, the City will provide the following exemptions:
 - (a) Exemptions required by the *City of Toronto Act, 2006*:
 - i. Crown and Crown agencies;
 - ii. Authorities, Boards, Commissions, Corporations, Offices and Organizations 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 Provincial Executive Committee;
 - iii. School Boards;
 - iv. Universities and Colleges of Applied Arts and Technology and post secondary institutions;
 - v. Hospitals;
 - vi. Nursing Homes, Homes for the Aged, and Rest Homes; and
 - vii. Other Persons and Entities as Lieutenant Governor of Ontario may prescribe
 - (b) Exemptions (unique to MLTT) are as follows:
 - i. Grandfathering Rebate – a full rebate of all MLTT payable on all conveyances registered on or after February 1, 2008 for which agreements of purchase and sale had been entered into on or before December 31, 2007;
 - ii. First-time Home Buyer Rebate – a rebate applicable to the purchase of new and resale homes up to \$3,725 MLTT payable (i.e. 100% rebate on homes with values of consideration on sale of up to \$400K) to all first-time home buyers (to be determined by the same rules as applicable to the PLTT);
 - iii. City Exemption - an exemption for all property purchases made by the City, its local boards, Toronto Economic Development Corporation, and Toronto Community Housing Corporation;
 - iv. Minimum Tax Exemption - all conveyances resulting in net tax revenue to the City of less than \$2.00 after Teranet's fee are exempt.

Administration of the MLTT

A. Collection:

Electronically registered conveyances:

- Teranet will be appointed the City's designated exclusive tax collector for all conveyances which are electronically registered and will collect the MLTT on the City's behalf (same as PLTT).
- Land transfer registration will not be withheld if MLTT is not paid (same as PLTT).
- In case of non-payment of MLTT due to insufficient funds in buyer's and/or agents account, Teranet will make one call to the buyer's lawyer requiring payment. If the outstanding amount is not paid, the matter will be forwarded to the City for collection (same as PLTT).
- Upon referral of the unpaid tax to the City, the Deputy City Manager and Chief Financial Officer ("CFO") will issue an assessment for MLTT owing to the taxpayer indicating the amount of tax and interest/penalty due and payable and requiring immediate payment (same as PLTT).
- The CFO may issue an assessment or reassessment to a taxpayer for amounts of MLTT owing under the City's by-law within four years of the date the tax was payable (same as PLTT).

Conveyances not electronically registered and dispositions of beneficial interests:

- The taxpayer is required to attend at Toronto City Hall or the North York Civic Centre to pay the MLTT (unique to MLTT);
- If the MLTT amount is not paid on the date of conveyance, the CFO will issue an assessment for MLTT owing to the taxpayer indicating the amount of tax and interest/penalty due and payable and requiring immediate payment (same as PLTT).
- The CFO may issue an assessment or reassessment to a taxpayer for amounts of MLTT owing under the City's by-law within four years of the date the tax was payable (same as PLTT).

B. Interest and Penalties:

- Penalties and Interest will apply at a monthly rate of 1.25 percent from the first day after the day the registration occurred and interest will apply every 30 days thereafter on the principal amount owing during such time as the default continues (15 per cent per annum) (Rate is unique to MLTT).
- Payments received directly from the property owner that are returned by the bank will attract a return cheque fee at the rate of \$35 (unique to MLTT).

- The following additional penalties may be assessed by the CFO (same as PLTT):
 - (a) Evasion of tax (fraud or wilful default) – minimum penalty of \$500 and maximum penalty of 25% of tax owing.
 - (b) Failure to pay full amount of tax – 5% of the difference between the tax payable and the amount actually paid.

- The following penalties may be assessed against the designated collector (same as PLTT):
 - (a) Failure to comply with a condition of designation (for designated collector of the tax) – up to \$5,000 per day for each day the failure continues.
 - (b) Failure by designated collector to provide security – up to \$5,000 per day for each day the failure continues.
 - (c) Failure of designated collector to collect tax – 110% of the amount not collected.
 - (d) Failure by designated collector to remit tax – 10% of amount not remitted.
 - (e) Failure by designated collector to provide information - \$10,000 per day for each day the failure continues.
 - (f) Failure by designated collector to comply with any guidelines set – not more than \$5,000 per day for each day the failure continues.
 - (g) Failure by designated collector to file a return - \$10,000 per day for each day the failure continues.

C. Enforcement:

- If payment is not received by the City within 30 days of the date of the assessment, the CFO is delegated the authority to determine the appropriate collection mechanism, in consultation with the City Solicitor where necessary, to collect the unpaid MLTT, which collection mechanisms include:
 - (a) bringing an action in the courts to recover unpaid MLTT;
 - (b) taking security for the payment of MLTT in the amount deemed advisable by the CFO;
 - (c) garnishment of amounts owing by a third party to the tax debtor;
 - (d) registration of a lien at the land registry office or with the registrar under the Personal Property Security Act; ((a) through (d) same as PLTT); and
 - (e) referral to a bailiff or collection agency (unique to MLTT).

D. Offences and Fines (mirroring PLTT but some fines are unique to MLTT as per limitations imposed by the *City of Toronto Act, 2006*):

- Making of false statements – minimum of \$500 or 50% of the amount owing and maximum of twice the amount of tax owing (not to exceed \$100,000).
- Failure to deliver a tax return – minimum of 25% of the tax payable and maximum of double the tax payable (not to exceed \$100,000).
- False statements in refund application – up to \$2,000.
- Interference with an audit (continuing offence) – \$50 per day for each day the default continues.
- Contravention of the by-law – up to \$10,000 where no other penalty is provided for the offence.

E. Audit:

- All persons who are required to file an affidavit or a statement, or who are required to deliver a return, under the City’s MLTT by-law will be required to retain all records and documents necessary to enable an accurate determination of the MLTT for 7-years (same as PLTT).
- The City will have the power to enter on land for the purpose of inspecting documents to ensure compliance with the MLTT (same as PLTT).

F. Dispute Resolution:

- The Government Management Committee of Council will act as the City’s appeal and dispute resolution body for the MLTT (in so far as the MLTT differs from the PLTT), and will be delegated the power to hold all hearings of such appeals, and will make recommendations to Council for final decision on the appeals. In doing so, the Government Management Committee will be bound by the procedures set out in the current procedural by-law of the City.
- The City will honour all Ministerial decisions and Court decisions in respect of appeals of the PLTT, as they apply to the MLTT.