

# Toronto Ponders Controversial New Parking Tax to Help Balance City Books

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By Clare Burns and Maralynne Monteith

On June 28, 2016, before breaking for the summer, the City of Toronto's powerful Executive Committee met and reviewed an earlier study by KPMG which looked at various new revenue-generating policy proposals with an eye towards addressing the City's estimated \$582 million operating shortfall for 2017.

Among those new taxes considered, which include a hotel tax, an alcohol tax, and an entertainment/amusement tax, the KPMG report recommended that the City institute a tax of between \$0.50 to \$1.50 per day, per space on commercial parking spaces within Toronto. According to the report, such a charge would bring \$171-535 million annually into the City's coffers and could be used to fund necessary transit and infrastructure operations and upgrades.

Proponents of a parking tax argue that it is not a novel concept – in fact, cities such as Montreal and Melbourne have instituted some form of parking tax, and these generate between \$20-40 million per year.

Opposing a parking tax are Toronto real estate associations, including the Real Property Association of Canada (REALpac), the Building Owners and Managers Association of Toronto (BOMA), the Building Industry and Land Development Association (BILD) and the Toronto Financial District BIA. These associations have joined together to form the "Toronto Real Estate Coalition" in order to lobby the City and have previously succeeded in convincing City Council to reject a similar tax in 2013.

It is important at this point to note a key distinction between two of the policy options under consideration by the City. While one of the options is the parking tax described above, another option is to create a parking sales tax on the cost of paid parking in Toronto. Based on a proposed rate of 5-20%, KPMG estimates that such a sales tax would raise between \$30-121 million annually for the City.

There are a few key considerations that will need to be addressed by the City if it decides to move forward with instituting a parking tax:

First, there is a basic objection that a new parking tax would be fundamentally unfair in that it would be "double taxation" of parking lots. Commercial parking lots, whether standalone or part of shopping centres, are already explicitly valued by MPAC in calculating commercial property tax, and the Toronto Real Estate Coalition has argued that the imposition of an additional parking tax would be akin to raising the commercial property tax rate by 44%.

Second, and more practically, many real estate industry voices have raised opposition to KPMG's estimates about how much money could potentially be raised by such a tax. While KPMG estimated that there are 1.05 million parking spaces in Toronto, over 200,000 of these – belonging to hospitals and other public institutions – would likely be exempt from any parking tax. Furthermore, large (and even not-so-large) landlords will seek to appeal their new assessments, further lowering municipal revenue, while adding significant administrative costs. This problem is exactly what occurred in Vancouver when it introduced a similar tax in 2006: of 29,600 parking

lot assessments, 5,100 were appealed by landowners in the first year.

Third, proponents of the parking tax argue that it will act as a form of “sin tax”, discouraging people from driving their cars due to the higher cost of parking, thereby reducing congestion and improving the environment. Unfortunately, the way parking taxes are structured, the additional cost will fall on landowners (and will likely be passed along to tenants, where possible, as part of operating costs). Since drivers will not bear the additional financial burden of parking, it does not follow that a parking tax will lead to any decrease in automobile traffic. Conversely, unlike a parking tax on landowners, a parking sales tax will directly hit drivers and so may actually produce the desired behavioural change.

Finally, and perhaps most relevant, is the fact that the City already has the power to create a parking tax under the City of Toronto Act. Conversely, the City does not have the ability under its governing legislation to create a parking sales tax, which would necessitate negotiations with the Province. Therefore, it would seem like the path of least resistance (at least in terms of delegated authority) lies through creating a parking tax rather than a parking sales tax.

At the end of its June meeting, the Executive Committee moved that the proposed revenue tools be referred to the City Manager to be studied over the summer and incorporated into the Long-Term Financial Direction in Fall 2016, which is anticipated to be presented to City Council in December 2016.

If you have any questions about the ongoing status of the parking tax proposal or the consultation and approval process, or are concerned about the potential impact of such a tax on your business, please contact our offices for more information. Karsten Lee, a Partner in our Commercial Leasing Group, can be reached at [klee@weirfoulds.com](mailto:klee@weirfoulds.com) or by telephone at 416-947-5062.

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Clare Burns is an experienced litigator who acts in complex and highly sensitive matters. Her practice focuses on trusts, estates and capacity litigation. In 2014, Clare received the Lexpert Zenith Award for her demonstrated excellence and thought leadership in trusts and estates.

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