TORONTO

REPORT FOR ACTION

Supplementary Report on Payday Loan Establishments

Date: January 28, 2022
To: City Council
From: Executive Director, Social Development, Finance and Administration;
Chief Planner and Executive Director, City Planning; and
Executive Director, Municipal Licensing and Standards
Wards: All

SUMMARY

The use of payday and other high cost loans is a significant issue, leading to increased financial precarity and poverty for many consumers of these products. The City of Toronto is taking a multifaceted approach to reducing the use of these products, including through the implementation of a licensing regime, as well as contributing to the research and development of equitable alternative financial products.

The Planning and Housing Committee, at its meeting of January 12, 2022, requested that reports be provided on the following matters directly to the February 2, 2022 City Council meeting:

1. A jurisdictional scan of zoning for payday loan establishments, including the cities of Ottawa and Hamilton;

2. Advocacy undertaken by the City on Payday lending, and the responses from relevant governments and industry organizations; and

3. The minimum distance required between payday loan licences in order to prevent clustering.

This report was developed by City Planning, Municipal Licensing and Standards, and the Social Development, Finance and Administration in consultation with the City Manager's Office, and provides a coordinated interdivisional response to these directives.

RECOMMENDATIONS

The Executive Director, Social Development, Finance and Administration, the Chief Planner and Executive Director, City Planning, and the Executive Director, Municipal Licensing and Standards recommend that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There are no financial implications resulting from the recommendations included in the report in the current budget or in future years.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Poverty Reduction Strategy

On December 16, 2020, City Council directed the Executive Director, Social Development, Finance and Administration, in consultation with the General Manager, Economic Development and Culture, to include an update on improving access to relevant financial products and services such as access to cash for Toronto residents, in partnership with the financial services industry and the For Public Benefit (not-for-profit) sector, in the forthcoming 2021 Poverty Reduction Strategy update report to Council. (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL19.3)

On June 8, 2021, City Council received an update on the Poverty Reduction Strategy, including efforts to reduce the use of and reliance on payday loan establishments. In this report, City staff indicated that disruption to the implementation of Poverty Reduction Strategy activities has been significant. The Poverty Reduction Strategy Office signaled its intent to convene a design group with strong community representation, to identify community-based banking solutions that could be developed by the financial services industry to provide an alternative to payday loan and other predatory loan services.
(http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX24.8)

On January 12, 2022, the Planning and Housing Committee directed the City Manager to report directly to the February 2, 2022 City Council meeting on advocacy undertaken by the City on Payday lending, and the responses from relevant governments and industry organizations.
(http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH30.9)

Licensing and Zoning

On January 12, 2022, the Planning and Housing Committee considered a report on Zoning for Payday Loan Establishments from the Chief Planner and Executive Director, City Planning. The Committee directed the Chief Planner to report to the February 2, 2022 City Council meeting on a jurisdictional scan for payday loan establishments. The Committee also directed the Executive Director, Municipal Licensing and Standards to report to the same meeting on the minimum distance required between payday loan licences in order to prevent clustering.
(http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH30.9)

Additional Decision History is provided in the December 15, 2021 report from the Chief Planner and Executive Director, City Planning on Zoning for Payday Loan Establishments.

COMMENTS

1. City of Toronto Advocacy Work for Financial Alternatives

From a poverty reduction perspective, the use of payday and other high cost loans is a significant issue. Many of these high cost loan products could be characterized as predatory and result in exacerbating the financial precarity of those who use them.

There are a number of reasons why residents use these services, despite their adverse impacts. Analysis from the Black Creek Financial Action Network identifies six specific factors that drive demand:

- Chronic poverty;
- Need for emergency funding (to pay unexpected health care costs, for example);
- Unexpected delays in income payments (but need for food and/or need to meet fixed payment due dates for rent, utilities, and the like);
- Low financial literacy combined with opaque contract information;
- No access to other forms of credit; and
- Better service (non-judgmental treatment of clients, for example) and convenience of payday loans and other similar financial products and services.

Lowering the use of payday loan and similar services is an identified priority for the City of Toronto's Poverty Reduction Strategy and requires an ecosystem approach that acknowledges the various ways in which systemic barriers lead to residents relying on payday loans. This includes regulatory interventions at the municipal, provincial and federal levels, initiatives that increase resident financial empowerment, and facilitating partnerships that can lead to the development of more equitable financial products for residents in poverty.

From a regulatory perspective, amendments have already been made to the Ontario *Payday Loans Act* that limit the amount of interest that a payday loan establishment may charge.

From a resident financial empowerment perspective, the City collaborates with numerous agencies and partners to deliver financial empowerment supports for social assistance clients to empower residents to find alternatives to utilizing payday loan centres. The City, through the Toronto Public Library is also engaged in a partnership with Prosper Canada to identify ways to embed financial empowerment services within other community based services.

However, regulatory and resident financial empowerment interventions are necessary but not sufficient to eliminate the reliance that residents have on payday loan establishments. Community advocates and academic researchers have argued that many consumers of payday loan establishments are aware of the predatory nature of these products and often feel that they have no other choice. Many community advocates have called for the development of financial service offerings that can complement or providing an alternative to existing market offerings.

To advance the development of alternative, equitable financial products, the City is engaging with a variety of stakeholders, including other orders of government and industry to conduct a needs assessment to understand the kinds of financial empowerment initiatives can address the specific factors that lead to residents in Toronto using payday loan establishments. While the City of Toronto does not have direct jurisdiction over financial institutions, it can use its convening power and relationships with community to catalyze these important conversations and develop concrete recommendations.

Engagement with Financial Consumer Agency of Canada

Since 2021, the City of Toronto has been engaging with the Financial Consumer Agency of Canada to develop and now implement the National Financial Literacy Strategy 2021-2026. The Financial Consumer Agency of Canada is responsible for advancing consumer protection across the country.

The national strategy takes a comprehensive approach, in alignment with the Toronto Poverty Reduction Strategy. It includes a specific outcome to ensure that "more Canadians have access to, and use, financial products and services that are tailored to their needs, vulnerabilities, and resource constraints" (Target Outcome 2.1). It also includes, as part of its scope, the design and offering of "financial products, services, and resources that account for barriers faced by consumers living with vulnerabilities." Currently an outcomes framework that will guide the work of multiple partners in the broader financial empowerment ecosystem is being developed.

Given the limited jurisdiction of the municipality, the specific jurisdiction of the Federal Government on regulating banking institutions, and the strong alignment between the Poverty Reduction Strategy and the National Financial Literacy Strategy, the City's Poverty Reduction Strategy Office will be working with the Financial Consumer Agency of Canada to ensure that any initiatives that are advanced by the City contribute to the broader work occurring nationally.

Engagement with the Financial Services Industry

In 2020, the City of Toronto, through the Economic Development and Culture Division, requested and received feedback from the Canadian Bankers Association on improving access to financial products and services.

Overall, the banking industry indicated that they believe that income is not a barrier to opening a bank account and that their obligation to open retail deposit accounts are carefully regulated by the Bank Act. They indicated that a high number of Canadians do have an account with a bank or credit union where they can get advice to help them make informed financial decisions. This includes no-cost or low cost accounts.

Their response also argued that banks may offer small, short-term loan and credit options such as overdraft protection, lines of credit and credit card cash advances, at significantly lower costs than those associated with payday loans.

From the perspective of cheque cashing services, which is a service offered by payday loan establishments, the financial services industry highlighted that, under bank regulations, banks will cash a federal government cheque of up to $1,500 (or, temporarily, $2,000 if it is a COVID-related federal government cheque) with no holds and at no charge, even if the individual does not have an account with that bank, as long as they can provide two pieces of identification from the government-mandated list. Bank regulations also stipulate that, for most other cheques under $1,500 deposited to an account, hold periods can be no more than 4 to 5 business days and the account holder should be given access to the first $100 per cheque immediately (or the next business day if the cheque is deposited at an automated banking machine). There are no holds at all when funds are deposited electronically directly into the account, as is done by most governments and many employers.

Finally, the industry articulated that banks are often able to help their clients work through financial problems by offering advice, debt counselling or a referral to a not-for-profit credit counselling agency. They highlighted that many banks support not-for-profit credit counselling agencies across Canada, including several that operate in the Greater Toronto region.

Engagement with Provincial and Federal Governments

In December 2020, Council requested the Federal government to:

- Require chartered banks to have branches in low-income neighbourhoods which offer credit lines to low-income people at the same rates they offer to other customers;
- Create a national database of payday loan establishment users to stop users from taking out loans to pay off other loans;
- Amend the Criminal Code of Canada to lower the maximum interest rate from 60 percent to 30 percent; and

- Work with partners such as credit unions, to encourage and steward the development of lower-cost financial products that can provide an alternative for users of payday loan establishments.

No formal response to these requests were received by City staff. Nonetheless, the Canadian Bankers Association has indicated that its members may offer lines of credit at significantly lower costs than those associated with payday loans, as noted above. Further, the Federal government has committed to lowering the criminal rate of interest. Should consultations occur, City staff will again convey Council's request for a 30 per cent maximum interest rate.

Council also requested the Government of Ontario take the following actions in December 2020:

- Strengthen its enforcement of online payday lending, including unlicensed online payday lenders;
- Introduce regulations for high-cost installment loans to better protect consumers from high-cost loans that fall outside the regulation of the *Payday Loans Act, 2008*; and
- Strengthen its regulation of payday lending advertising by proclaiming Subsection 77.16.1 of the *Payday Loans Act, 2008* into effect, enabling the provincial government to make regulations to further govern and enforce advertising or signage in any medium with respect to a payday loan or a payday loan agreement, including the content, location and size of advertising or signage, and the ability to create regulations that prohibit licensees from making certain advertising or signage.

While no formal response to Council's requests were received by City staff, the Province of Ontario has taken some action since Council's requests. In July 2020, the Province of Ontario amended regulations under the *Payday Loans Act* that limit the amount of interest and fees that a payday loan establishment may charge, as noted above. These amendments include limits on interest on default payments, a set fee on dishonoured instruments of payments, a prohibition on multiple fees for the same reason, and consequences for lenders that contravene the regulations. However, the Province has not proclaimed Subsection 77.16.1 of the *Payday Loans Act* addressing advertising of payday lenders as requested by Council.

2. Jurisdictional Scan of Municipal Regulatory Approaches

As of January 1, 2018, the Province of Ontario provided municipalities with additional authority to regulate payday loan establishments through the Putting Consumers First Act, 2017. As a result of these changes, municipalities now have the authority to restrict the number and locations of payday loan establishments through business licensing. Staff looked at Ontario municipalities that have recently developed or revised their payday loan regulations. These were: Ottawa, Oshawa, Hamilton, Barrie and Brantford. The details of the jurisdictional scan can be found in Attachment 1.

Following the 2017 changes to the provincial legislation, the majority of municipalities that considered the payday loan issue chose to add or amend licensing to regulate payday loan establishments. The changes recently adopted in Brantford, Oshawa and

Hamilton are for licensing only, and did not include changes to zoning for payday loan establishments.

Where separation distance requirements exist in zoning, these are, with the exception of Ottawa, the result of older regulations that pre-date the 2018 changes to the provincial legislation. Barrie requires a 100 metre separation from other payday loan businesses, tattoo parlours, body piercing parlours, or pawnshops but only within the Central Area Commercial and Transition Centre Commercial zones. As part of the review of Barrie's comprehensive zoning by-law, staff were directed to review the minimum distance separation and consider moving towards a new licensing regime. Oshawa requires 50 metres from other payday loans, tattoo parlour or pawn shop but only for certain streets in the Central Business District, and the requirement has been in place since 2008. Furthermore, the separation distance requirements for payday loan establishments in both Barrie and Oshawa are also required between payday loans and other uses such as tattoo parlours which suggests that the regulation is intended to address issues around various uses that may be seen as undesirable in certain areas.

Ottawa is the only city that defines payday loan establishments as a distinct land use. It is also the only city that has recently adopted regulations in both zoning and licensing and it has the most restrictive separation distance in zoning - one kilometre between payday loan establishments. The basis for the separation distance cited in the staff report relates to the social and economic impacts of payday loan establishments. For example the desire to limit the frequency with which residents see these businesses, in order to make it less likely that residents will access them.

3. Separation Distance in Licensing

As part of the report 2020.GL19.3 - Updates to Toronto Municipal Code, Chapter 545, Licensing - Payday Loan Establishments, the locations of payday loan establishments were mapped by Social Development, Finance and Administration. The results of this work, including the geographic distribution of payday loan establishments and the number of clusters that exist, can be found in Attachment 2. Note, since the completion of this work at the end of 2020, the number of payday loan establishments has further declined from 178 to 166.

Overall, payday loan establishments are located across Toronto with at least one payday loan establishment in every ward. There are 14 clusters of payday loan establishments in the city. For the purposes of this research, a cluster is defined as three or more payday loan establishments within 500 metres of another. A red dot on the map in Attachment 2 identifies a cluster.

To limit clustering, some municipalities have introduced regulations that require a minimum distance between payday loan establishments. Noted above, as of January 1, 2018, Ontario municipalities may define, through licensing, the area of the municipality in which a payday loan establishment may or may not operate and limit the number of payday loan establishments in any defined area in which they are permitted. In Toronto, Council introduced regulations for payday lending by creating a new business licence category and by limiting the number and location of establishments.

Capping the number and location of payday loan establishments provided the City with a mechanism to mitigate the proliferation of establishments while staff monitored the new licence and conducted further review of the industry. Through this review, staff found that maintaining a cap enables operators to continue providing a product for which there is demand, while protecting consumers by restricting widespread proliferation of establishments across the City.

Research has shown that the ease, simplicity, and speed with which consumers can access a payday loan are strong factors in determining where and how consumers elect to borrow. When additional cost and travel time are factored in, a consumer may find greater appeal in more convenient, but financially riskier alternatives. For example, restricting consumers' access to brick and mortar establishments by introducing further minimum separation distances may compel some consumers to borrow online and inadvertently borrow from an unlicensed lender.

The enforcement of online payday lending falls under the purview of the Government of Ontario. In previous conversations with the Province, enforcement of online lenders has been challenging, as it is difficult to determine the location (and therefore jurisdiction) of the lender. Previous research suggests that 10 per cent of payday lending occurs online in Canada. Yet, in other jurisdictions with stricter regulations for brick and mortar establishments, online payday lending accounts for 30 to 80 per cent of all payday lending activity.

In the absence of low-cost borrowing alternatives (for example, credit unions or not-for-profits that offer affordable, small loans), consumers are still exposed to the risks associated with other unsecured small loans, particularly during financially challenging times. Addressing these challenges requires multi-partner systemic responses. Work to develop effective, innovative, community-oriented interventions falls within the mandate of the City's Poverty Reduction Strategy and is currently underway, as noted in this report.

As this work continues, the licensing of and cap on the number of payday loan establishment licences continues to protect consumers by limiting the availability of establishments and by extension, the likelihood of prohibited practices such as concurrent and rollover loans. The number of payday loan establishments continues to decline due to attrition, and further restrictions are not recommended.

If City Council were to introduce minimum separation distances between payday loan establishments, they would have to be phased in to accommodate legally operating businesses, and to avoid legal challenges. Similar to the City-wide cap, which reduces the number of payday loan establishment licences by attrition, payday loan establishment locations would only be subject to new minimum separation distances if they move. However, there has been very limited movement by payday loan establishments (that is, three moves since the creation of the licence in 2018). In most instances, the moves were due to external factors such as the sale of their property, or in one instance, an expropriation by the City. Finally, the introduction of a minimum separation distance requirement does not address the consumer's need for credit, nor does it eliminate a consumer's access to high-cost loans.

Next Steps

Further research and engagement with communities needs to be undertaken to validate the specific barriers that Toronto residents are facing in accessing existing bank and credit union offerings. These findings will inform the recommendations that the City of Toronto will make as part of its contributions to the National Financial Literacy Strategy. These findings will also be used to identify the kinds of financial empowerment initiatives that the Poverty Reduction Strategy will pursue as part of its contributions to an inclusive economic recovery.

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ATTACHMENTS

Attachment 1: Jurisdictional Scan of Regulations for Payday Loan Establishments
Attachment 2: Geographic Locations of Payday Loan Establishments