TORONTO

REPORT FOR ACTION

Zoning for Payday Loan Establishments

Date: December 15, 2021
To: Planning and Housing Committee
From: Chief Planner and Executive Director, City Planning
Wards: All

SUMMARY

On December 16, 2020, City Council adopted GL19.3 with respect to updates to the licensing for payday loans. Council also requested the Chief Planner to report to the Planning and Housing Committee on the necessary steps required to amend the zoning classification for payday loan establishment to remove it from the category governing banks and credit unions, and that the report include consideration for regulations related to the location and spacing of this use.

This report responds to the direction from the December 16, 2020 City Council meeting, and was prepared with input from the Municipal Licensing and Standards Division.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. The Planning and Housing Committee receive this report for information.

FINANCIAL IMPACT

The City Planning Division confirms that 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

As outlined in the summary above, City Council on December 16, 17 and 18, 2020, adopted GL19.3 with respect to updates to the licensing regime for payday loans (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL19.3). At this meeting, Council considered the report titled Further Updates to Toronto Municipal

Code, Chapter 545, Licensing – Payday Loan Establishments from the Executive Director, Municipal Licensing and Standards which responded to various outstanding directives. Council also requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Housing Committee on the necessary steps required to amend the zoning classification for payday loan establishment to remove it from the category governing banks and credit unions, and that the report include consideration for regulations related to the location and spacing of this use.

On June 29, 2020, City Council adopted MM22.15 – Predatory Lending by Councillor Paula Fletcher, seconded by Councillor Joe Cressy (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM22.15), which requested the Executive Director, Municipal Licensing and Standards to report to the September 14, 2020 meeting of the General Government and Licensing Committee on any and all steps taken to respond to City Council's October 2019 decision on Item GL7.15 and to include all requests made of the Provincial and Federal governments.

On October 2, 2019, City Council adopted GL7.15 – including the report from the Executive Director, Municipal Licensing and Standards titled Update on the City of Toronto Municipal Code Chapter 545, Licensing of Payday Loan Establishments (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL7.15), which confirmed the regulations established in April 2018 for payday loan establishments in Toronto. City Council directed the Executive Director, Municipal Licensing and Standards to report back to the General Government and Licensing Committee on options to restrict advertising from payday loan establishments, the feasibility of creating a minimum separation distance between payday loan establishments and schools, and the feasibility of establishing a process for the local Councillor to object to the relocation of a payday loan establishment within the same Ward. City Council also directed that discussions be held with the financial services industry on improving access to financial products.

On April 24, 2018, City Council adopted LS24.3 – and the report from the Executive Director, Municipal Licensing and Standards titled Interim Regulations for Payday Loan Establishments and Consultation Plan (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.LS24.3), which established interim licensing regulations for payday lending, including a business licence for payday loan establishments and a cap on the number of provincially licensed payday loan establishments operating in Toronto, as the wards existed on May 1, 2018.

On January 31, 2017, City Council adopted motion MM24.15 - Payday Loan Act - Public Consultations (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM24.15) and directed MLS to host public consultations on payday loan businesses, review other jurisdictions' practices in regulating payday loan businesses, and to report findings to the Licensing and Standards Committee.

On March 31, 2016, City Council adopted motion MM17.8 - Establishing Regulations and Minimum Separation Distances for Predatory Lenders (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.MM17.8) and directed the Chief Planner and Executive Director, City Planning to submit a report outlining an appropriate approach to regulating new alternative financial services and requested the General Manager, Economic Development and Culture to convene and encourage regulated financial institutions to locate in all communities as well as to develop suitable services such as micro-credits. City Council also adopted recommendations to make requests of the Government of Canada and the Province of Ontario related to strengthening regulations and improving low-cost financial options.

COMMENTS

Regulations for Payday Loan Establishments

Through the Payday Loans Act, 2008, the Province of Ontario regulates the terms and conditions of payday loans (such as the cost of borrowing and interest rates), requires that payday lenders be provincially licensed, and prohibits certain predatory practices.

As of January 1, 2018, the Province of Ontario also provided municipalities with additional authority to regulate payday loan establishments through the Putting Consumers First Act, 2017. As a result of these changes, the City now has the authority to restrict the number and locations of payday loan establishments through business licensing.

The Putting Consumers First Act did not change the authority for municipalities to regulate payday loans through zoning. This authority still resides with Section 34 of the *Planning Act*.

City of Toronto

Licensing

As a result of the new authority from the provincial government, changes to the City of Toronto Act (COTA) gave the City the authority to restrict the number and locations of payday loan establishments through business licensing.

In April 2018, the City established interim regulations for payday lending, including a business licence for payday loan establishments and a cap on the number of provincially licensed payday loan establishments that could operate in the city. The licensing regulations were confirmed by Council in October 2019, and updated in December 2020. The current licensing regime for payday loans in Toronto can be summarized as follows:

- The number of payday loan licences is limited to the number of payday loan establishments licensed by the Government of Ontario and operating in Toronto as of May 1, 2018;
- The total number of locations is limited to the total number of locations operating within a ward (as each ward exists on the day it comes into existence);
- Operators are prohibited from relocating on or 500 metres within Woodbine Racetrack (555 Rexdale Avenue, which is also the location of Casino Woodbine);
- Licensees are subject to the general provisions of Toronto Municipal Code, Chapter 545, Licensing, including a prohibition on the transfer or sale of their business licence. When a business closes, the business licence expires. As only

licence renewals are issued, not new licences, the city-wide cap on the number of payday loan licences has declined from a city-wide total of 212 licences in May 2018 to 166 in December 2021.

Zoning

In Zoning By-law 569-2013, payday loan establishments fall under the defined term 'financial institution' which is defined as a "premises used to provide financial services to the public, other than exclusively through an automated banking machine." In addition to payday loan establishments, this definition includes traditional banks, and credit unions. Financial institution is a permitted use with no conditions in the CL, CR, CRE, EL, E and E zones, and with conditions in the RAC zone.

Consideration of Issues

Definition of Financial Institution

City Planning staff were directed to consider the applicable land use term for payday loan establishments and to distinguish them from the defined term 'financial institution' which includes banks and credit unions.

The approach taken in the City's general Zoning By-law 569-2013 was to keep land use definitions broad. For example, the defined land use term retail store includes the sale of "goods" without needing to have unique terms for specific types of retail stores such as a pet store or a flower shop. New land use terms and definitions were only created when there was a need to regulate a use on the basis of its land use impacts. For example, a medical office is distinguished from an office on the basis that there was a need to regulate parking differently between the two uses, since medical offices tended to have a greater parking demand. In addition to parking, other examples of land use impacts are nuisance issues like noise and odours.

Section 34 of the *Planning Act* allows municipalities to pass zoning by-laws to regulate land on the basis of use and their impacts. It does not provide authority to regulate a business or product unless there are specific land use impacts for doing so. In order to create a separate land use term or definition for payday loan establishments, there would need to be a clear distinction between the land use impacts of a payday loan establishment and those of a traditional bank or credit union. The principal activity of a payday loan establishment is to provide financial services to the public, which is the same as the principal activity of a bank or credit union. These uses all involve the public attending the business in person to participate in a financial transaction. The distinction in the uses is with respect to the type of financial products and services offered, but not the land use activity. Given that the activities in each of these land uses are the same, it follows that there are also no discernible land use impacts between a payday loan establishment and other more traditional financial institutions such as banks. The lack of distinction between the activities that take place in each of these uses would also likely create enforcement issues. Therefore staff are not recommending that payday loan establishments be distinguished from the existing defined term financial institution.

City Planning provided a similar opinion in recent years with respect to the use of the zoning by-law to regulate the sale of firearms and marihuana. In both of these cases, there were no discernible land use impacts to distinguish these as a separate land use that should be regulated separately from a retail store.

Regulations for Location and Spacing

In addition to the creation of a separate land use term in zoning for payday loan establishment, staff were also directed to consider regulations related to the location and spacing of this use.

Zoning regulations such as location or spacing of a use would need to be based on land use impacts. As discussed above, the land use impacts for a payday loan establishment are not discernible from those of a bank or credit union, where clients attend the establishment to complete financial transactions. Therefore, the question about regulating the location and spacing would be one that applies to all financial institutions.

Minimum separation distances and caps on the maximum number of establishments in a given area have been previously used in zoning for a wide range of uses. These types of regulations are often arbitrary and difficult to support with solid planning rationale. They should only be applied to a use where they can address specific land use impacts, such as separation of industrial operations for the purpose of blast impact protection.

Staff have previously reported on the potential to use minimum separation distances to regulate payday loan establishments. The staff report adopted by City Council on December 16, 2020 (see item GL19.3 in the Decision History above), summarizes the consideration of separation distances as follows:

> "In consultation with City Planning and SDFA, staff determined that additional minimum separation distances between payday loan establishments and schools are not recommended as there is insufficient evidence to suggest they accomplish greater consumer protection…. While separation distances could reduce the number of payday loan establishments over the longer term, they do not address the consumer's need for credit. 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 may compel some consumers to borrow online and inadvertently borrow from an unlicensed lender."

City Planning is not recommending the use of either separation distances or caps for financial institutions in the zoning by-law, since there are no land use impacts that would be addressed by doing so. In addition, if the City were to regulate payday loan establishments through its zoning by-law, the *Planning Act* also provides opportunity for operators to amend zoning by-law land use permissions or restrictions, as well as the applicable development standards in the zoning by-law. This can be achieved through zoning by-law amendments or Committee of Adjustment variances. It should also be noted that if zoning regulations were to include separation distances or caps, these could not be applied retroactively against existing establishments, and therefore would only apply to new establishments.

Since the introduction in May 2018 of the cap on the number of licenses and locations, and the restriction on the transfer or sale of payday loan licences in the new licensing regime, the number of payday loan establishments in the city has decreased by over 20%. It is likely that this reduction through attrition will continue over time, making additional locational restrictions beyond what is already included in the licensing by-law, unnecessary.

Other City Actions on Payday Loan Establishments

In addition to the licensing of payday loan establishments, which has resulted in fewer establishments across the city, the City is also taking the following actions to continue addressing the potential socio-economic impacts of payday loan establishments and improve consumer protection:

- City Council requests to the Federal Government around: lowering the maximum interest rate in the Criminal Code of Canada, and encouraging the development of low-cost alternatives.
- City Council requests to the Government of Ontario around: strengthening regulations regarding advertising of payday loans, strengthening enforcement of online payday lending, and developing new regulations for high-cost installment loans.
- Social Development, Finance and Administration Division is exploring options to advance the development of low-cost and accessible financial products as part of the Poverty Reduction Strategy 2019-2022 Action Plan.

Equity

The negative economic pressures of the COVID-19 pandemic have had a disproportionate impact on Indigenous and equity-seeking communities, who are already more likely to be in poverty. Research shows that vulnerable households are more likely to use payday loans, typically in emergency situations and to pay necessary expenses.

Despite this, many communities do not have access to traditional financial services. Residents who cannot access traditional financial services often turn to payday loans as they lack suitable alternative options.

Additional restrictions on where payday loans can locate, may result in additional cost and travel time which could lead to consumers turning to more convenient, but riskier alternatives such as borrowing from an unlicensed lender online.

The City's current approach to regulating payday loan establishments through licensing balances the demand for payday loans, with the need for consumer protection. In addition, the Social Development, Finance and Administration Division is exploring options to advance the development of low-cost and accessible financial products as part of the Poverty Reduction Strategy 2019-2022 Action Plan.

Conclusion

Staff are not recommending zoning by-law amendments to regulate payday loan establishments. The authority to use zoning as a means of regulating impacts of a use is limited to land use impacts. While there are potential socio-economic impacts of payday loan establishments, these are appropriately addressed through licensing, and improvements to consumer protection and access to low-cost financial services.

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SIGNATURE

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