

Clarington

Staff Report

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Report To: General Government Committee

Date of Meeting: January 4, 2021 **Report Number:** LGS-001-21

Submitted By: Rob Maciver, Director of Legislative Services

Reviewed By: Andrew C. Allison, CAO **By-law Number:**

File Number: L2030-02-59E **Resolution#:** GG-025-21

Report Subject: City of Oshawa Licensing of Payday Loan Establishments

Recommendation:

1. That Report LGS-001-21 be received for information.

Report Overview

This report provides a summary of the existing Provincial regulation and licensing requirements for payday lenders, options available to the Municipality to regulate the location of payday loan establishments, and additional commentary relevant to the regulation of payday loans.

1. Background

- 1.1 The agenda for the September 14, 2020 Joint Committee meeting included [correspondence from the City of Oshawa](#) that pertained to the regulation of payday loan establishments. The details of the City of Oshawa proposal to license payday loan establishments is contained in [Oshawa Report CNCL-20-76](#) (the “Oshawa Report”).
- 1.2 At the Joint Committee meeting of September 14, 2020, a motion was introduced (#JC-094-20) to endorse the position of the City of Oshawa as contained in their correspondence.
- 1.3 The motion was then referred to Staff to report back to the General Government Committee (#JC-095-20).
- 1.4 Several questions were raised by members of the Joint Committee meeting with respect to Provincial regulation of payday loan establishments, zoning by-law considerations, and the prevalence of payday loan establishments within Clarington. This report will attempt to address these questions, as well as provide some additional commentary about the licensing system proposed by the City of Oshawa.
- 1.5 Oshawa is the first municipality within Durham Region to initiate business licensing of payday loan establishments, although it is known to occur in the cities of Toronto, Hamilton, Kitchener, and Sarnia.

2. Provincial Regulation of Payday Loans

- 2.1 Payday loans are regulated by the Province of Ontario pursuant to the *Payday Loans Act, 2008*, S.O. 2008, c. 9 (the “PLA”).
- 2.2 Pursuant to the PLA, a “payday loan” means an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.
- 2.3 The PLA provides for a comprehensive system of licensing, and all payday lenders are required to be licensed by the Province.

- 2.4 The PLA also includes several provisions to protect borrowers and prohibits lenders from a variety of aggressive business practices.
- 2.5 Pursuant to the PLA, the prescribed limit on the cost of borrowing is \$15 for every \$100 advanced by the payday lender.
- 2.6 The PLA is applicable to in-person loans, but also to remote payday loans (e.g. online) which are growing in popularity. Remote payday loans eliminate the need for a borrower to attend at the physical offices of the payday lender.
- 2.7 In 2017, the PLA was amended to provide that payday lenders shall not operate an office in an area prohibited by a Municipal by-law enacted pursuant to section 154.1 of the *Municipal Act, 2001* (the “Municipal Act”).
- 2.8 Under most circumstances, section 153 of the Municipal Act prevents a municipality from refusing to grant a licence for a business by reason only of the location of the business.
- 2.9 However, under the special provisions of section 154.1 of the Municipal Act, a local municipality may, as part of a business licensing by-law, define 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. The only limitation on this regulatory power is that a municipality shall not completely prohibit the operation of all payday loan establishments in the municipality.
- 2.10 In reliance on this authority, it is the intention of the City of Oshawa to restrict the number of payday loan establishments to 2 per ward to a maximum of 10 in the City, and to prohibit new payday loan establishments in the Downtown Urban Growth Centre as defined in the Oshawa Official Plan. The City’s proposal includes appropriate transition (i.e. “grandfathering”) provisions for existing establishments, and since the current number of payday loan establishments in the City already exceeds the maximum of 10 locations, any new locations in the City are effectively prohibited.

3. Setbacks

- 3.1 The Oshawa Report stipulates that no payday loan establishment should be located within 150 metres of any other such establishment, or any elementary or secondary school.

- 3.2 Oshawa proposes to implement the setback requirement as a part of their licensing by-law. This approach is consistent with that taken by the City of Toronto. An alternative approach used by some municipalities (e.g. the cities of Ottawa and Barrie) has been to provide for zoning regulations to establish minimum distances from other payday loan establishments, or other uses considered to be vulnerable (e.g. gambling establishments).
- 3.3 The Clarington zoning by-law 84-63 does not currently include a definition for “payday loan establishment”. These businesses are classified in the zoning by-law within the general category of “retail commercial establishment” and are permitted in most commercial zones. These businesses are subject to the same setback regulations that would be applicable to any other retail commercial establishments located in the same specific zone. These setbacks are currently minimal and do not relate to proximity to other payday loan establishments, schools, or other uses.

4. Prevalence

- 4.1 A preliminary search suggests there are currently a total of three payday loan establishments operating within Clarington. There are two payday loan establishments in the east end of Bowmanville near the Bowmanville Mall, and one location in Courtice near Townline Road.

5. Additional Commentary

- 5.1 The Oshawa Report acknowledges concerns related to the high cost of payday loans, and the potential for borrowers to become cyclical users of payday loan services. Some of the research has found a positive correlation between payday lending and higher incidences of violence, property crime, and increased need for social assistance.
- 5.2 However, there is other research to suggest that restrictions on the number of payday loan businesses creates an “oligopoly for small-dollar loans with existing locations having an almost permanent, government-protected and enforced oligopoly on the service, limiting available credit options for certain consumers”. Additionally, there is research to suggest that anti-clustering attempts may “discourage price competition among payday lenders” rather than leading to improvements in borrowing conditions.

6. Concurrence

Not applicable.

7. Conclusion

It is respectfully recommended that Council receive this report for information.

Staff Contact: Rob Maciver, Director of Legislative Services & Municipal Solicitor, 905-623-3379 ext. 2013 or rmaciver@clarington.net.

Attachments:

No Attachments.

Interested Parties:

There are no interested parties to be notified of Council's decision.