

IMPROVING MUNICIPAL OVERSIGHT OF PAYDAY LENDING BUSINESSES

EXECUTIVE SUMMARY

On 2014 October 07, Council directed Administration to report on “options and impacts relating to regulating payday loan businesses”. Amendments to Land Use Bylaw 1P2007 were to be considered which would include a definition for payday loan businesses and provisions for a minimum separation distance between payday loan businesses. In addition, an amendment to Business License Bylaw 32M98 was also to be considered to create a specific category and fee structure for payday loan business applications.

Administration reviewed information regarding separation distances between payday loan stores, and between payday loan stores and other uses, in a number of municipalities in Canada, and the United States. Where present, zoning provisions addressing specific payday loan operational characteristics were also noted. Administration also consulted with local stakeholders from the payday loan industry and from a non-profit organization partnered with the working poor in Calgary.

Stakeholders from the payday loan industry contend that they are providing a needed service to the public and are not targeting low income customers. They are opposed to The City of Calgary adding a layer of municipal requirements or restraints on a business practice that is already regulated by the province and the federal government.

Stakeholders from the non-profit groups support The City of Calgary’s regulation of payday loan businesses. They allege these businesses are predatory and target the working poor, resulting in a perpetual cycle of debt and poverty. Consequently, their belief is that municipal regulation should be part of an overall strategy to limit their proliferation and operations.

Administration does not recommend inserting provisions addressing payday loan operations into either Land Use Bylaw 1P2007 or Business License Bylaw 32M98. Rather, Administration recommends a concerted effort should be made by The City to work with the provincial government to tighten controls regulating and enforcing the maximum annual interest rate and service fees charged to borrowers. It is also recommended that The City initiates a task force with the objective of convincing mainstream financial institutions to provide opportunities for short-term small loans and financial counselling services conducive to providing low income earners with some form of financial empowerment and control of their financial situations.

ADMINISTRATION RECOMMENDATION(S)

That the SPC on Planning and Urban Development recommends Council:

1. Receive this report for information;
2. Direct Community & Neighbourhood Services to assemble a task force to work with appropriate agencies and organizations to petition the provincial and federal governments to amend maximum annual interest rates and other payday loan business practices to better protect the financially vulnerable from predatory lending practices; and to influence mainstream financial institutions to re-engage low income earners with the ability to access short-term small loans and financial counseling services and education; and
3. Direct Administration to report back to Council through the SPC on Community and Protective Services with details of the task force’s progress by no later than the end of Q2 2016.

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RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2015 MARCH 11:

That Council:

1. Receive this report for information;
2. Direct Community & Neighbourhood Services to assemble a task force to work with appropriate agencies and organizations to petition the provincial and federal governments to amend maximum annual interest rates and other payday loan business practices to better protect the financially vulnerable from predatory lending practices; and to influence mainstream financial institutions to re-engage low income earners with the ability to access short-term small loans and financial counselling services and education; and
3. Direct Administration to report back to Council through the SPC on Community and Protective Services with details of the task force's progress by no later than the end of Q2 2016; and
4. **Direct Administration, in consultation with the Task Force identified in Recommendation 2, to develop provisions for inclusion in the Business License Bylaw to better identify and regulate payday lending businesses, and other fringe financial institutions with particular consideration of curtailing proliferation and regulating geographic distribution, and report back to the SPC on Planning and Urban Development no later than Q4 2015; and**
5. **Direct Administration to bring forward amendments to the Land Use Bylaw related to payday lending businesses and other fringe financial institutions, and report back through Calgary Planning Commission no later than Q3 2015.**

Excerpts from the Minutes of the Regular Meeting of the SPC on Planning and Urban Development, held 2015 March 11:

"SPEAKERS

1. Darrell Howard, Vibrant Communities Calgary

DISTRIBUTIONS

At the request of Darrell Howard and with the concurrence of the Chair, the Legislative Assistant distributed copies of the following documents, with respect to Report PUD2015-0096:

- A powerpoint presentation entitled "Payday Lending" from Vibrant Communities Calgary, dated 2015 March 11; and
- A letter from Dan'l Johnson and Susan Gwynn on behalf of Poverty Talks."

Approval(s): Stanley, Rollin concurs with this report. Author: Makale, Nick
City Clerk's: D. Williams

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“3. Jileen Kosko

DISTRIBUTION

At the request of Jileen Kosko and with the concurrence of the Chair, the Legislative Assistant distributed copies of a document entitled “SPENT! CASH STORE: Community Conversation” dated 2014 September 30, with respect to Report PUD2015-0096.”

“6. Alison Karim-McSwiney, Business Revitalization Zone – International Avenue

RECEIVE FOR CORPORATE RECORD, at the request of Alison Karim-McSweeney and with the concurrence of the Chair, the Legislative Assistant received the following documents for the Corporate Record, with respect to PUD2015-0096:

- Speaking Notes from Alison Karim-McSweeney
- A packet of Coloured Pictures and Maps from Alison Karim-McSweeney
- A packet entitled “Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions: A Guide for Advocacy Groups and Government Officials” dated November 2007 by Kelly Griffith, Linda Hilton and Lunn Drysdale.”

“7. Mike Brown, Public Policy Coordinator, Momentum

DISTRIBUTIONS

At the request of Mike Brown and with the concurrence of the Chair, the Legislative Assistant distributed copies of the following documents, with respect to Report PUD2015-0096:

- A Powerpoint Presentation by Mike Brown, Public Policy Coordinator – Momentum, entitled “Municipal Action on Payday Lending” dated March 11, 2015
- A document entitled “Momentum, Opportunities for Municipal Action on Payday Lending” dated July 2014
- An undated document entitled “Municipal Action on Payday Lending – Environmental Scan
- A document entitled “Momentum, The Real Cost of Payday Lending, dated June 2014
- A document with no Bylaw number entitled “Being a Bylaw of The City of Calgary to Amend the Land Use Bylaw 1P2007”. ”

“And further, that all submissions and distributions received with respect to Report PUD2015-0096 be attached to the report prior to being forwarded to Council.”

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PREVIOUS COUNCIL DIRECTION / POLICY

On 2014 October 07 Council adopted notice of motion NM2014-39 to address improving municipal oversight of payday loan businesses. Moved by Councillor Pincott and seconded by Councillor Chabot, NM2014-39 directed Administration to “report to the SPC on Planning and Urban Development with options and impacts relating to regulating payday-loan businesses, such options and impacts to include but not be limited to consideration of:

- (a) a clear definition of the “payday-loan business” in order to differentiate this type of facility so as not to preclude development of other facilities that fall under the same definition;
- (b) potential amendments to Land Use Bylaw 1P2007, that would outline a minimum distance requirement between payday-loan businesses in order to limit their prevalence;
- (c) potential amendments to Business License Bylaw 32M98, that would create a separate category and fee structure for payday-loan business applications.

And further be it resolved that Council receive the committee report no later than March 2015.”

BACKGROUND

The Canadian Consumer Handbook describes a payday loan in its simplest form as “a loan that you have to pay back out of your next paycheck”. Alberta’s *Payday Loans Regulation AR 157/2009* definition is more descriptive and comprehensive, defining a payday loan as:

“any advancement of money with a principal of \$1500 or less and a term of 62 days or less made 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, pawn brokering, a line of credit or a credit card.”

The Parliamentary Information and Research Service’s report, entitled *Payday Loan Companies in Canada: Determining the Public Interest* (2006 January), observed that to be eligible for a payday loan, a borrower is required to have identification, a personal chequing account, and proof of regular income. To obtain a loan, the borrower needed to provide the lender with a post-dated cheque or an authorization for a direct withdrawal from the chequing account for the amount of the loan plus interest and service fees. The due date of the loan would be the borrower’s next payday (generally two weeks or less). The report advised that the rapid growth of the payday loan industry in Canada, first emerging in the early to mid-1990s, appeared to be driven primarily by the “continued willingness of consumers to pay” relatively high annual interest rates.

Currently, there are 63 payday loan businesses operating throughout the city (note this does not include online services). The map in Attachment 1 shows their locations and reveals that, in Calgary, they tend to locate primarily along main roadways. While many are stand alone operations, there are six clusters of payday loan stores containing groups of three or more of

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these businesses with separation distances of approx. 400 to 600 metres (approx. 5 to 7.5 minutes walking distance) between them. Details regarding these clusters are in Table 1.

Table 1 - Main Payday Loan Business Clusters

Location	Area	# of PD Stores	Land Use Designation(s)
Macleod Trail S	Elboya/Parkhill	4	DC; C-COR2
Centre Street N/ 16 Avenue N	Tuxedo Park/Crescent Heights	5	DC; C-COR1, C-COR2
Edmonton Trail N	Greenview/Skyline West	3	C-COR2, C-COR3
17 Avenue SE	Forest Lawn/Southview/Radisson Heights	8	DC, C-COR1, C-COR2, C-C2
17 Avenue SW	Beltline	3	C-COR1
17 Avenue SW	Glendale/Rosscarrock	3	C-COR1, C-COR2

Sources: Canadian Payday Loan Association and City of Calgary, City Wide Policy and Integration, Graphics Modelling and GIS

Under the present Land Use Bylaw's provisions, payday loan uses are included under the Information and Service Provider category, which is a permitted use in existing buildings in C-C2 and C-COR 1, 2 & 3 districts.

A survey conducted by Environics Research Group in 2012 for the Canadian Payday Loan Association, provided specific information regarding who uses payday loan services and what the loans are mostly being used for. The study's respondent profile for those using payday loan services in the provinces of Alberta, BC, Manitoba and Ontario is detailed in Attachment 2 of this report. The study indicates that a payday loan borrower in Alberta is more likely to be male, aged between 35 and 54, married or in a common law relationship, with an education level of high school or less, either working full time or self employed and making between \$25,000 and \$49,00 per year.

Sourced from the same survey noted above, Table 2 shows the main reasons borrowers in Alberta make use of a payday loan.

Table 2 - Main Reasons for Needing a Payday Loan*

Reasons for needing a Payday Loan	All that Apply	Primary Reason
Emergency cash for necessities	56%	35%
Unexpected expense	37%	28%
Avoid late charges of routine bills	23%	11%
Temporary reduction in income	22%	9%
Buy something I wanted	14%	8%
Avoid bouncing cheques	12%	5%
Other (not specified)	2%	3%
Don't know	1%	1%

*Compiled from Payday Loan Users Study data collected by Environics Research Group, February, 2013

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Table 3 reveals the main reasons borrowers choose a payday loan instead of another type of financial assistance.

Table 3 - Main Reasons for Choosing a Payday Loan*

Reason for Choosing a Payday Loan	Pick All that Apply
Quick and easy process	58%
No other alternative for borrowing	17%
A more convenient location	10%
Other Reasons included in survey: Bad credit/no credit check, I needed the money, Less expensive, Short term forces quick payback, greater privacy and Less harm to my credit.	

*Compiled from Payday Loan Users Study data collected by Environics Research Group, February, 2013

Based on a review of several studies and reports from both the United States and Canada, Administration concluded that payday loans are not predominantly being borrowed to support gambling, alcohol or drug addictions or supplement extravagant lifestyles. Rather, the money appears to be required to take care of everyday living expenses as well as unexpected expenses that wages cannot be stretched to cover, particularly for those with lower income earnings. In addition, the convenient location of payday loan businesses emerged as the main reason this type of loan is favoured by borrowers. Given the combination of money needed for necessities and unexpected expenses convenience of location and lack of alternative small loan options, payday loan businesses prosper.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

In its investigation of the payday loan issue, Administration considered three options as potential methods for reducing the impacts payday loan businesses may have on financially challenged small and short term loan borrowers.

Option 1 – Insert Restrictive Provisions into Land Use Bylaw 1P2007

The planning effects of payday loan stores may be fundamentally no different than those of other businesses. As a result, it can be problematic to make a legal or planning argument to restrict a use for social reasons without a connection to a land use matter or concern (visibility, parking, access, noise, compatibility with neighbouring buildings, etc).

Consequently, Administration does not recommend the insertion of separation distance requirements or any other related provisions for payday loan businesses into Land Use Bylaw 1P2007.

The land use bylaw has used separation distances to regulate liquor stores (150 metres from the nearest property line of a school and 300 metres from other existing liquor store) and adult mini-theatre use. A similar separation requirement could be applied to a payday loan businesses addressing appropriate land use district(s), a definition, separation distances from other uses and other payday outlets, signage, associated uses (such as pawn brokering, title

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loans and cheque cashing), parking and so forth could be proposed as an amendment to Land Use Bylaw 1P2007.

Administration found examples from the United States where municipalities adopted bylaw provisions in an attempt to limit payday loan operations. Common regulation included separation distance requirements from similar uses and residential uses; hours of operation; and a maximum number of outlets. An overview of these examples is provided in Attachment 3.

Feedback from US cities where this approach was taken revealed that once municipal provisions were put in place to regulate payday loan business locations, further demands for such locations ceased. As a result any new payday loan businesses locating in these cities went to the internet or shifted to title loans, which are more difficult to regulate through zoning due to their similarities with banks.

Information for similar bylaw regulations in Canada was limited. Administration reviewed bylaw information for the ten most populous cities and noted either a decrease in requests for new payday loan businesses or no further new requests at all with speculation that the market for such uses had been saturated many years before any municipal restrictions were put in place. Only Winnipeg currently has land use bylaw provisions in place. Results of the research are provided in Attachment 4.

Administration concludes little would be achieved by amending Land Use Bylaw to regulate location and operation requirements for payday loan businesses. It is unclear that such provisions will assist in reducing the proliferation of these businesses. Rather it appears this action is more likely to aid in accelerating the onset of online payday loan services, which are not subject to Alberta's *Payday Loans Regulation*, the *General Licensing and Security Regulation AR187/99* or Canada's *Criminal Code*. In fact, advertisement of online payday loan services has already commenced in Calgary and can be found in the local newspapers, on local television broadcasts and on billboards. Regulating payday loan activity through land use, does not address the conditions that lead borrowers to use payday loan services in the first place.

Option 2 – Insert Provisions into Business License Bylaw 32M98

Business Licence Bylaw 32M98 administers several licensing regulations, which encompass six basic reasons for licensing businesses in Calgary. These reasons are: public safety, consumer protection, legislative compliance, negative neighbourhood spill over, conflicting morals and to limit unfair business advantages. The goal is to encourage responsible business practices by ensuring the requirements of the business bylaw, the needs of business owners and the safety of the public are met.

This use is already regulated and licensed under the province's *Fair Trading Act* and *Payday Loan Regulation AR157/2009*. Consequently, The City cannot impose stricter regulations than the province already has in place. In addition, while there is some indication in the research that increased licensing fees might actually force some payday loan storefront operators out of business, concern has been expressed that unregulated and, possibly, even illegal payday operations may replace those businesses. This could then result in a greater degree of vulnerability to the public and does nothing to address the conditions that lead borrowers to

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payday loan services initially. Further, and as identified in Option 1 above, the imposition of increased licensing fees is likely to be made redundant as payday loan services switch to other forms of credit lending, including online lending ventures. Administration does not recommend the inclusion of a business license fee specifically for payday loan services.

Option 3 – Advocacy and Education

The City of Calgary already has a strategy in place to reduce poverty in the city. The Calgary Poverty Reduction Initiative (CPRI) has been established to “address the root causes of poverty and eliminate rather than alleviate it” [The City of Calgary and United Way of Calgary and Area]. Identified in the CPRI’s report, *Enough For All* (May, 2013) are a number of actions and strategies to address poverty reduction, including “providing financial literacy education, advice and services, developing or expanding savings programs for adults and children, and working with the banking industry to develop programs and services that provide access to banking services by all Calgarians.”

In addition, the Momentum Community Economic Development Society (Momentum), an organization that partners with businesses, government and the non-profit sector to address poverty issues in Calgary, has connections in the community with public and private businesses. When it is considered appropriate, The City could collaborate with Momentum to support educational opportunities for the public that increase small loan borrowers’ financial understanding of the options and alternatives available to them and the impacts of their decisions on their financial well being.

It would, therefore, seem appropriate that Community & Neighbourhood Services along with the support of other business units establish a task force, utilizing these and other resources, with the primary objectives of obtaining access to mainstream financial institutions for small/short term loan borrowers, and promoting provincial level reform of the present *Payday Loans Regulation*. This reform could encompass ways to better address and tighten how payday loan businesses are operated, improve interest rate and service fee maximums to reduce borrowing costs, explore more stringent controls for preventing rollover or back-to-back loans, encourage a more rigorous enforcement of the regulations and promote increased fines and penalties for breaching those regulations. Administration recommends this option as the most effective way to achieve results that will reduce and prevent predatory payday lending practices in Calgary. In this regard, The City must become the principal leader and motivating force for this cause.

Equally as important is the involvement of local banking institutions. Payday loan businesses appear to have thrived and expanded because small/short term loan services have not been available from and administered by the banks and credit unions. Consequently, Administration suggests The City led task force mentioned above should actively petition the local banking industry to engage in providing financial literacy education that will assist borrowers currently caught in the cycle of payday loan borrowing to break free of it, as well as provide better financial options and understanding of the ramifications of their decisions for those seeking small/short term loans.

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Stakeholder Engagement, Research and Communication

The primary stakeholders consulted in the preparation of this report were the Canadian Payday Loan Association, Momentum Community Economic Development Society, the Calgary Poverty Reduction Initiative and a representative from Money Mart. Representatives from The City's City Wide Policy & Integration, Inspections & Permit Services, Law, Community & Neighbourhood Services, and Animal & Bylaw Services business units also contributed to this report.

Strategic Alignment

The recommendations presented in this report align with the approved Action Plan 2015 – 2018. Specifically, the recommendations, if adopted, would carry out a Council Priority to “implement with partners the Calgary Poverty Reduction Strategy” (Action Plan 2015 - 2018, page 234). The recommendations also support the objective and policies set out in subsection 5.2.1 and 5.2.1(c) of the Municipal Development Plan: the objective being to maintain strong relationships with, key stakeholders within Calgary, and work with these stakeholders on matters of municipal process and policy.

Social, Environmental, Economic (External)

Social

According to The City of Calgary Action Plan 2015 – 2018, “approximately 11 per cent of Calgarians are living on low income and....spend a larger share of income on basic needs, which often results in income deficits and increased debt....Evidence suggests that social problems are associated with income disparity, which is increasing in Calgary.” Consequently, Administration considers the recommendations of this report will support social programs already in place to help achieve meaningful results on the social impacts created by payday loan businesses.

Environmental

No implications identified.

Economic

There is no impact or affect on the pace of economic activity in Calgary. Increased economic stability and debt reduction for low income Calgarians is potentially achievable if the report's recommendations are acted upon.

Financial Capacity

Current and Future Operating Budget:

No implications identified.

Current and Future Capital Budget:

No implications identified.

Risk Assessment

Administration concludes the adoption of Option 3 is the most rational approach to addressing the issue of payday loan businesses and their potential impacts on the working poor. To fail to

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undertake the advocacy and educational objectives outlined will allow the cycle of debt and poverty for many low income borrowers to continue.

Adoption of either Option 1 or 2 will not address the reasons that payday loan businesses persist, nor will it create better financial options and services or reduce the reasons people use payday loans. Further, adding provisions to the land use bylaw to control this use is problematic as this can be challenged through the courts as being beyond the scope and intent of proper land use planning and instead, be contested as an attempt to manage a social concern rather than a land use planning issue. In addition, Option 2 could place The City in conflict with the provincial *Payday Loan Regulation*. It is also anticipated that increased fees and other associated expenses or requirements arising from any provisions the Business Bylaw might attach to payday loan businesses would hasten the conversion of payday loan storefront operations to online services as operators seek to avoid costs that cut into profits.

REASON(S) FOR RECOMMENDATION(S):

Administration considers Option 3 – Advocacy and Education – to have the best potential for achieving meaningful results that address the social impacts created by payday loan businesses addressing the root of the problem and the potential to resolve or substantially reduce it.

ATTACHMENT(S)

1. Map – Payday Loan Service Providers (PLSP) and Demographic stats for PLSP clusters
2. Payday Loan User Study Demographic Comparisons
3. Summary of Separation Distances (US Examples)
4. Summary of Separation Distances (Canadian Examples)
5. **Submissions and Distributions**