



TO: GENERAL COMMITTEE

SUBJECT: MINIMUM DISTANCE SEPARATION

PREPARED BY & KEY CONTACT: M. KALYANIWALLA, ACTING DIRECTOR OF PLANNING SERVICES
EXT. 4314

SUBMITTED BY: M. KALYANIWALLA, M.C.I.P., R.P.P.
ACTING DIRECTOR OF PLANNING SERVICES 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.Sc., P. ENG.
GENERAL MANAGER OF INFRASTRUCTURE, DEVELOPMENT & CULTURE 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: JON M. BABULIC, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the Official Plan be amended by adding a sentence to Section 4.3.2.2 (b) (The City Centre) of the Official Plan as follows:

"Commercial uses shall be located so as to avoid an undue concentration of uses that reduce the quality of the pedestrian environment or have the potential to negatively impact the City's downtown revitalization efforts."

2. That Zoning By-law 85-95 be amended by adding a new Section as follows:

6.3.13 Tattoo Parlours, Body Piercing Parlours, Pawn Shops, and Payday Loan Establishments

Within the Central Area Commercial (C1) and Transition Centre Commercial (C2) Zones, no lot occupied by a tattoo parlour, body piercing parlour, pawn shop, or payday loan establishment shall be located closer than 50 m to another lot occupied by a tattoo parlour, body piercing parlour, pawn shop, or payday loan establishment.

AND

That the new Comprehensive Zoning By-law 2009-141 be amended by adding a new Section as follows:

6.2.6 Tattoo Parlours, Body Piercing Parlours, Pawn Shops, and Payday Loan Establishments

Within the Central Area Commercial (C1) and Transition Centre Commercial (C2) Zones, no lot occupied by a tattoo parlour, body piercing parlour, pawn shop, or payday loan establishment shall be located closer than 50 m to another lot occupied by a tattoo parlour, body piercing parlour, pawn shop, or payday loan establishment.

PURPOSE & BACKGROUND

Purpose

3. The purpose of this staff report is to recommend amendments to the City's Official Plan and Zoning By-law to address minimum separation distance for lots occupied by tattoo parlours, body piercing parlours, pawn shops, and payday loan establishments.
4. On February 22, 2010, Council passed Motion 10-G-042 directing staff to investigate this issue as follows:

That staff in the Planning Services Department investigate the following and report back to General Committee:

- a. *The City of Oshawa's recent efforts to address the clustering of uses in their core area, and the potential to apply these policies to Barrie.*

Location

5. The proposed amendments shall apply to lands within the City Centre Planning Area which are zoned Central Area Commercial C1 and Transition Commercial C2.

Background

6. The City of Oshawa has incorporated a policy into its Official Plan which states, for the Central Business District:

"The following criteria shall be generally used to determine permitted uses along the main shopping and pedestrian streets in the Zoning By-law:

- (e) *avoid an undue concentration of uses that reduce the quality of the pedestrian environment;"*

7. To implement the policy, Oshawa has placed a regulation in its Zoning By-law which states:

"Within the hatched area shown on Schedule "G" to this By-law, no payday loan business, tattoo parlour or pawn shop shall be located closer than 50m to another lot occupied by a payday loan business, tattoo parlour or pawn shop."

8. The City of Barrie has no "Minimum Distance Separation" (MDS) in its Zoning By-law for the uses listed in the Oshawa By-law. The purpose of the Council Motion 10-G-042 was to initiate a review of the existing policies in the City's Official Plan and standards in the Comprehensive Zoning By-law to assess the feasibility and appropriateness of including similar provisions.
9. Over the course of the summer of 2010, staff investigated this matter and the purpose of this report is to advise Council on the findings and to recommend amendments to the Official Plan and Zoning By-law to address this issue.

Public Meeting

10. A public meeting was held on September 27, 2010 to present the proposed amendments and to receive public input. The following comments were received at that time.

11. Mike Fox of the Barrie Downtown Neighbourhood Association stated that the association is in support of separation distances for the noted uses, and that the by-law should also include unregistered massage and body rub parlours as well as rooming and lodging houses. He stated the separation distance should be increased to 100 metres. He advocated similar measures for bars and nightclubs in the downtown area.
12. Steve Riddell indicated support of the by-law changes, but that the separation distance should be 300 metres as it currently is for adult entertainment parlours. He stated agreement with a separation distance (300 metres) for bars and nightclubs.
13. Cindy Giller stated that the separation distances will support efforts to revitalize the downtown and create a positive, safer, and family friendly environment in the downtown.

ANALYSIS

Other Municipalities

14. Staff contacted staff of the Oshawa Planning Department with regard to the separation distances for pawn shops, tattoo parlours, and payday loan businesses. The initiative aims to "avoid an undue concentration of uses that reduce the quality of the pedestrian environment", and to "contribute to a positive downtown image." A concern was a concentration of pedestrian activity near the establishments. The City established a basis for the zoning provisions in its Official Plan, as it is felt it is necessary to support the Zoning By-law measures.
15. Oshawa staff indicated that the provision has had the effect of forcing new such uses outside of the identified downtown area. However, enforcement has been difficult as the particular uses are not included in their Business License By-law. If a new use does not require a rezoning or licensing, the provisions of the By-law are not applied. Thus, the City is considering amending their License By-law to include them. The City of Oshawa is satisfied with the results of the measures to date.
16. A survey of other municipalities revealed that the Cities of Brantford, Kitchener, London, Brampton, and Burlington do not have MDS provisions in their Official Plans or Zoning By-laws. The City of Burlington does not permit tattoo parlours, adult entertainment parlours, and adult video stores in its downtown. Staff at those cities, and Oshawa, were not aware of MDS provisions other than those of Oshawa.

Barrie Downtown

17. A survey of the uses in downtown Barrie does not reveal a significant clustering of pawn shops, tattoo parlours, body piercing parlours, and payday loan businesses, although several are present and a clustering is possible in the future without MDS provisions. Ten examples of these types of businesses are found in C1 and C2 Zones in the City Centre area. Four are within a 50 metre radius of one another (79 Dunlop Street West and 34 Mary Street are 10.9m apart, and 27 Dunlop Street West and 9 Dunlop Street West are 39m apart). No observations have been made or reported to the Planning Services Department with regard to undue pedestrian activity or loitering in the vicinity of the uses identified in this report.
18. Discussions with representatives of the Downtown Barrie Business Association and the Barrie Downtown Neighbourhood Association revealed general concerns about the nature of some of the businesses in the Downtown. They expressed general support for By-law provisions similar to those of the City of Oshawa, and had other concerns about shops that sell items believed to be used for illegal drug use. The latter issue is beyond the scope of Zoning By-laws. Although separation distances for body rub parlours was also advocated at the public meeting, it should be

noted that their establishment is prohibited throughout the city; only legal non-conforming (grandfathered) body rub parlours are permitted at this time.

19. The Business Association has further indicated that, while it believes separation distances will be of some assistance in enhancing the downtown environment, its main concern is with the quality of establishments of all types of uses in the downtown. The Association has not observed the same type of pedestrian and loitering concerns as expressed by the City of Oshawa.
20. The uses identified are legal and legitimate business activities. While any business could also be involved in illegal activities, it is uncertain that Minimum Distance Separation By-laws would have any influence on such activities.
21. The Barrie Police Services indicated it did not have any statistics or other evidence to identify the uses as particular problem areas. Nevertheless, it preferred not to see them closely clustered in the downtown or at any location in the City.
22. If a similar MDS is to be applied in the City of Barrie, a policy basis for such provisions should be first established in the Official Plan to legitimize the zoning provisions, as was done in Oshawa. Currently, the business licensing by-law requires licenses for pawn shops, tattoo parlours, and body piercing parlours but does not define or require licenses for payday loan businesses. The provisions of the zoning by-law are stand alone and not contingent on a business license. Municipal Law and Prosecution Services have advised that that licensing of payday loan establishments simply for the purpose of addressing the zoning would be inconsistent with our established principles for licensing.
23. If a 50 m MDS were applied, four existing uses located at 79 Dunlop Street West and 34 Mary Street and at 27 Dunlop Street West and 9 Dunlop Street West would become legal non-conforming uses. All affected owners will be contacted per City policy to advise of this report being considered by General Committee.

Legal Issues

24. The Legal Department has advised that a solid planning rationale for the MDS must be clearly established for it to withstand potential challenges at the Ontario Municipal Board or courts. Planning policies as set out in the Growth Plan for the Greater Golden Horseshoe and the City of Barrie Official Plan provide much of the rationale for a strong vibrant downtown. The Growth Plan identifies an Urban Growth Centre for Barrie which corresponds with the City Centre in the Official Plan, and sets goals to make it a focal area for residential, commercial, cultural, institutional, and entertainment uses. This approach is mirrored in the Official Plan, and sets the stage for the development of a mixed use community with a significant residential component. In the interests of making the Urban Growth Centre an attractive and accommodating environment for all demographic groups including families, the pattern of land uses must be carefully directed.

Planning Basis

25. In staffs' assessment, the problems identified by the BIA and Downtown Neighbourhood Association are based on the perception of the undesirability of these uses including the perception that these uses may be associated with poor quality establishments or illegal activities. The issue of congestion and loitering on the streets around these establishments as identified in Oshawa has not been established as a concern in Barrie at present, but may develop as a potential future concern.
26. Further, based on the comments made at the public meeting, it appears that there is an appetite to regulate a variety of other uses through application of a minimum distance separation, and to increase the minimum distance separation to address concerns which are of a social nature as

opposed to a land use planning consideration. Staff is concerned that this may set a precedent for similar restrictions which may prove difficult to justify from a planning perspective.

27. Staff are unable to substantiate an existing or future potential problem for these specific uses, nor can staff confirm that similar concerns could not potentially apply to a variety of other uses which are currently permitted, if not encouraged to locate in the downtown. For example, cinemas or theatres, convention centres, liquor stores, ice-cream parlours.
28. One of the important characteristics of a successful downtown is the development of a diversity of uses. The City's Official Plan encourages such diversity by identifying the City Centre as a place for residential, commercial, and institutional uses. This includes providing an inviting living environment for all segments of the population. In staffs' view, this suggests inclusivity as opposed to exclusivity. Any number and type of uses which may be excluded from operating in the downtown simply reduces the opportunity to cater to a diverse and full and rich urban experience.
29. Over-regulation of uses that naturally gravitate to the downtown and which may naturally agglomerate to allow for comparison shopping in a competitive environment may have some unintended effects which may ultimately be more detrimental to the downtown, and the quality of these existing businesses, than if they were left to market forces.
30. In the case of Oshawa, the experience was that the regulation tended to drive these new uses out of the downtown, the same would likely apply in Barrie, which then favours existing uses located in the downtown, and potentially further entrenches them. In staffs' view, regulation may not be necessary as the market for these types of uses will at some point be saturated.
31. Staff note that several buildings have recently been vacated in the downtown. In staffs' view, the impact of an unused vacant boarded up property may be more detrimental to the quality of the downtown than if these were occupied by any of the proposed uses intended to be regulated. A vacant unoccupied building not only reduces our ability to attract businesses to the downtown, but also detracts from a sense of safety, more so, than a building that is occupied and which draws pedestrian traffic. It is an accepted planning precept that busier active streets impart a greater sense of security and the fact that there are "*eyes on the street*" acts as a deterrent to anti-social behaviour or criminal activity.
32. The presence of tattoo parlours, pawn shops, payday loan establishments, and body piercing parlours has not resulted in specifically identified problems for pedestrians, traffic, or any other land use related matters. Nevertheless, in terms of long term plans for revitalization and diversification of the downtown, and community desire, provisions are being proposed to avoid potential future concentration of certain uses in the downtown.
33. One of the founding principles of the Downtown Revitalization initiatives is that the downtown is a unique community asset that warrants investment from beyond its geographic boundaries. To that end, the City and private sectors have over the past several years invested a significant amount in the downtown under a variety of initiatives:
 - The Downtown and Allandale Revitalization and Community Improvement Plans (CIPs) offer financial incentives to encourage investment and improvement of downtown properties. To date, we have spent in excess of \$600,000 on grants and forgivable loans under the Downtown and Allandale CIPs. Significant developments benefiting from the financial incentive programs include two banks on Collier Street and a 34 unit residential rental units on Bayfield Street. In addition, a number of smaller projects including interior and facade improvements to existing buildings in the downtown have been funded as part of the revitalization efforts in the Downtown.

- The City has actively promoted opportunities in the downtown and continues to seek out potential private sector investment in mixed use commercial office, hotel convention centre and residential uses in the downtown. The development of the Collier Street Parking Garage is one such example of successful private public partnership which involved considerable investment from the City.
 - Two significant approved intensified residential developments include the Blue Sails Condominium development and 15 Maple Avenue proposal which support our goals of intensified residential development in downtown.
 - In 2005, the City prepared a Downtown Commercial Master Plan. The City has implemented some of the recommendations of the Downtown Commercial Master Plan by investing in improvements such as streetscaping on Collier Street; the Mews, between Lakeshore Drive and the waterfront and the south end of Mulcaster Street.
 - The City is also partnering with the BIA in rebranding Barrie to lay the groundwork to promote Barrie and attract investment and commerce to the City.
34. In order to protect this significant and ongoing investment in the downtown and to continue the vision to create a strong healthy and vibrant core that provides a social and cultural focus for the community; a place where people can come to do business, and fulfill their shopping needs, but also a place where people can gather and meet, to enjoy the unique experiences of urban living, it is considered appropriate to apply special measures to protect the core from potential land use concentrations which may detract from this vision.
35. However, in the longer term staff recommend that over regulation of the downtown is not the ideal method of achieving the vision. There is a need to consider other ways to stage the downtown as an area that will offer a variety of opportunities for engagement and create nodes of activity, which would allow for the natural phenomenon of clustering while still ensuring that particular businesses serving a small niche do not dominate the downtown offerings. Our best efforts should be utilized to attract a variety of businesses to the downtown; which may mean the use of other tools such as creation of incentive programs, promotion and marketing that may be quite aggressive, as opposed to regulation.

ENVIRONMENTAL MATTERS

36. There are no environmental matters related to the recommendation.

ALTERNATIVES

37. There are two alternatives available for consideration by General Committee:

Alternative #1

General Committee could maintain the existing policy/procedure/by-law with respect to no Minimum Distance Separation for Downtown uses.

This alternative would not implement the regulations envisaged by Council and the stakeholder community to pro-actively prevent future potential concentrations of these types of uses in the downtown should they occur. As a result, we would not be positioned to address some of the potential negative impacts that concentrations of this type of use may have in the downtown, similar to those experienced in Oshawa.

Alternative #2

General Committee could prohibit these uses from locating in the downtown, which would leave only the existing uses permitted as legal non-conforming.

This alternative would be contrary to the objectives of providing a diverse, vibrant and rich downtown which caters to the broad cross section of the population and a variety of interests.

FINANCIAL

38. There are no financial implications for the Corporation resulting from the proposed recommendation.

LINKAGE TO COUNCIL STRATEGIC PRIORITIES

39. The 2010-2014 Council's Strategic Priorities have not been established as of the time of writing of this report.