

Recommendation to Council:

Enforce the policy position taken by City Council on December 18, 2018 to reject zoos, specifically Reptilia's application to open a zoo in Westmount Mall, by revoking the building permit that was issued in error on January 21, 2021.

Background

Reptilia is a business that keeps reptiles in captivity in a facility open to the public. They also take reptiles off-site in order to exhibit them at events such as birthday parties. Reptilia first indicated their intent to open at Westmount Mall several years ago. At the City Council meeting on December 18, 2018, the majority of council members rejected the idea of any zoo, reptile or otherwise, opening in the city. Subsequently, on January 21, 2021, a building permit was issued for interior alterations at Westmount Mall to accommodate Reptilia on the basis that Reptilia was a "place of entertainment" and therefore fit within the permitted uses of the Regional Shopping Area zone RSA2(2).

Discussion

1. For licensing purposes Reptilia is a "zoo", not a "place of entertainment"

Licensing is key because section 3.6 of London's Animal Control By-law states that the by-law "shall not apply to animals maintained in a public park, zoo, fair, exhibition or circus operated or licensed by a municipal or other governmental authority". Without a license, Reptilia would be limited to keeping only those animals allowed under London's Animal Control By-law.

A municipal license to keep animals in a zoo is not available in London. The Business Licensing By-law has no provisions for a zoo license. At the December 2018 city council meeting, council considered whether to amend the Business Licensing By-law to provide for a zoo license to be issued by the municipality. The majority of council members voted to not amend the by-law. The intent was to not provide a license and as a result to not allow zoos.

There is no Provincial "zoo license".

The only license available is one issued by the MNR&F under the Fish and Wildlife Conservation Act (FWCA). Section 40(1) of the Act states that "A person shall not keep live game wildlife or live specially protected wildlife in captivity except under the authority of a licence and in accordance with the regulations."

For purposes of the FWCA, Ontario Regulation 668/98 Wildlife in Captivity (WIC) provides that "A person who owns or operates a zoo may, in accordance with a licence issued under the Act, (a) keep or propagate game wildlife and specially protected wildlife; and (b) buy or sell game wildlife and specially protected wildlife." (WIC 3) The regulations define a "zoo" to mean "a place where game wildlife or specially protected wildlife is kept in captivity for display to the public and for conservation, educational or scientific purposes". (WIC 1(1))

Neither the FWCA nor the Regulations define or make any provisions for licensing a "place of entertainment". London's Animal Control By-law also does not exempt a "place of entertainment".

## 2. Zoos are not a permitted use in the Regional Shopping Area zone

The staff report presented to city council in December 2018 simply stated that the proposed land use falls within the definition of “place of entertainment” under the city’s Zoning By-law. That by-law defines a “place of entertainment” to mean “a building, or a part thereof, used for the general purpose of providing entertainment and includes cinemas, theatres, art galleries, commercial recreation establishments, auditoriums and all other places of amusement, but excludes amusement game establishments.” Despite zoos not being on the list, there was no analysis as to whether Reptilia fit within the category or was analogous to the types of businesses listed.

The staff report failed to consider that the list of permitted uses in a Regional Shopping Area zone excludes businesses that involve animals:

- Retail stores are allowed, but they are defined as selling “goods, wares, merchandise, substances, foodstuffs, farm produce, articles and things”. Retail stores under this definition cannot sell animals.
- Pet stores have a separate definition in the zoning by-law, and they are not permitted in the zone.
- Auctioneers are permitted, but only if selling merchandise. An auction of animals would not be permitted.
- Medical offices for people are permitted, but animal clinics and animal hospitals are not.

It would not be consistent to exclude pet shops and veterinarians but allow a zoo. Regardless of whether the purpose of the business is entertainment, amusement or something else, the exclusion of businesses that involve animals from a shopping mall is reasonable based on public health and safety. Serious health and safety concerns are well-documented in the use of certain species of exotic animals typically kept in zoos and mobile zoos, particularly where close interaction, including direct contact, is permitted.

## 3. The building permit was issued in error and should be revoked.

City council sets policy. Decisions on how to execute the policy are administrative and ordinarily would not be interrupted. This situation is different.

Regardless of whether the staff report was correct in its conclusion that Reptilia is a “place of entertainment”, it could not be relied on to justify issuing a building permit. The staff report was submitted before the December 18, 2018 meeting when city council voted to not amend the Business Licensing By-law to provide a zoo license. After that decision by city council, staff was or should have been aware of the direction by council. A building permit to allow alterations to the mall to accommodate a zoo was against the policy set by council and issued in error.

A building permit may be revoked if it was issued on mistaken, false or incorrect information, or if it was issued in error. (Building Code Act s. 10) It is important to not set a precedent. Revoking the building permit would cause minimal harm to Reptilia. In any case, Reptilia must bear the consequences of revocation given they were well aware of council’s decision in December 2018 to not amend the by-law to permit zoos and mobile zoos.