GL19.3

REPORT FOR ACTION

Further Updates to Toronto Municipal Code, Chapter 545, Licensing – Payday Loan Establishments

Date: November 16, 2020
To: General Government and Licensing Committee
From: Executive Director, Municipal Licensing and Standards
Wards: All

SUMMARY

This report builds upon regulations for payday loan establishments adopted by City Council in 2018, recommends that future work is undertaken through the Toronto Poverty Reduction Strategy and responds to the following outstanding directives to explore:

- the feasibility of creating minimum separation distances between payday loan establishments and schools;
- the feasibility of establishing a process for the local Councillor to object to the relocation of a payday loan establishment; and
- options to restrict advertising, and discussions with the financial services industry on improving access to financial products.

Capping the number of payday loan establishments to those that existed and were provincially licensed as of May 1, 2018 has provided the City with a mechanism to mitigate the proliferation of establishments, while enabling operators to continue to provide a product to meet consumer demand. Future work is required to address consumers' need for credit and explore options for low-cost lending alternatives through an anti-poverty lens.

Research suggests that the number of residents who take out high-cost lending options (such as payday loans) may increase due to the ongoing financial effects of the COVID-19 pandemic. Due to the current absence of low-cost alternatives, there are concerns that if City Council were to further limit the number or location of payday loan establishments, residents would turn to higher risk or higher cost options. Potential further restrictions, such as minimum separation distances between schools and payday loan establishments, do not address the consumer's need to access low-cost financial products and services. The City's Poverty Reduction Office, under Social Development, Finance and Administration, will work to increase access and to advance inclusive economic development in Toronto and will report on the status of this work to City Council in 2021, as part of their Poverty Reduction Strategy Update.

This report recommends technical amendments to the By-law, such as updating the licensing regime to reflect the 25-ward model, and simplifying language in the By-law to provide clarity to residents and operators on the cap on the number of licensees and locations.

With respect to advertising, under the *Payday Loans Act, 2008*, the Government of Ontario prohibits payday loan establishments from advertising misleading or false information and requires all advertisements that mention the cost of borrowing to disclose specific information such as the maximum allowable cost of borrowing and the actual cost of borrowing. It is recommended that City Council request the Government of Ontario take further action by proclaiming Subsection 77.16.1 of the *Payday Loans Act, 2008*. Once this Subsection is proclaimed, the Government of Ontario can make regulations governing advertising or signage in any medium with respect to a payday loan, including the content, location and size of advertising or signage, and/or prohibiting advertising or signage. Payday loan establishments are prohibited from advertising on City property under *Toronto Municipal Code, Chapter 545, Licensing*. Adding restrictions that duplicate provincial requirements is not recommended and going further than the province could lead to a freedom of expression Charter challenge.

As directed by City Council in June 2020, staff engaged with the traditional financial services sector and reviewed feedback collected under the City's recovery and rebuild engagement process. Feedback collected by the Toronto Office of Recovery and Rebuild (TORR) highlighted the financial challenges that residents are experiencing as a result of COVID-19, the lack of low-cost credit alternatives and the increased digitization of financial services. More information is included in Attachment 1.

In addition, this report provides an update on recent changes to the provincial *Payday Loans Act, 2008*. As part of the *COVID-19 Economic Recovery Act, 2020*, the Government of Ontario amended the *Act* to cap interest rates and fees on defaulted loans. While this amendment offers relief for new users of payday loans (that is, after August 20, 2020), it does not address the initial high cost of borrowing (that is, $15 for every $100) or the lack of low-cost alternatives. Staff are concerned that due to the increased digitization of financial services, accelerated by the COVID-19 pandemic, more payday loans and high-cost installment loans are being obtained online.

The Government of Ontario is responsible for the enforcement of online payday lending and in previous conversations, has indicated challenges with enforcement. While attempts are made to make the online lender aware of the requirements of the *Payday Loans Act, 2008,* it is often difficult to determine the location of the online operator. In addition, high-cost installment loans (that is, loans above $1,500 but with interest rates as high as 59.9%) are not subject to the *Payday Loans Act, 2008* or other consumer protection legislation such as the *Consumer Protection Act, 2002.* It is recommended that City Council request the Government of Ontario strengthen its enforcement of online payday lending and introduce consumer protection legislation for high-cost installment loans.

This report was written in consultation with Social Development, Finance and Administration (SDFA), Economic Development and Culture (EDC), City Clerk's Office, City Planning, Legal Services and the City Manager's Office.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

Toronto Poverty Reduction Strategy

1. City Council direct the Executive Director, Social Development, Finance and Administration Division, in consultation with the General Manager, Economic Development and Culture Division, to include an update on improving access to relevant financial products and services such as access to cash for Toronto residents, in partnership with the financial services industry and the For Public Benefit (not-for-profit) sector, in the forthcoming 2021 Poverty Reduction Strategy update report to Council.

Technical Amendments

2. City Council amend the City of Toronto Municipal Code Chapter 545, Licensing, as follows:

> a. Add to the provision addressing the limit on licences to clarify that the effect of § 545-538 is to reduce the total number of licences issued under this chapter as licences issued under the Payday Loans Act, 2008 or Toronto Municipal Code, Chapter 545, Licensing cease to be valid, are revoked or expire.
>
> b. Add a provision to clarify that 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) on May 1, 2018 which have been permitted by a licence under the Payday Loans Act, 2008.

Requests to the Government of Ontario

3. City Council request the Government of Ontario to:

> a. strengthen its enforcement of online payday lending, including unlicensed online payday lenders.
>
> b. introduce regulations for high-cost installment loans to better protect consumers from high-cost loans that fall outside the regulation of the *Payday Loans Act, 2008.*
>
> c. strengthen its regulation of payday lending advertising by proclaiming Subsection 77.16.1 of the *Payday Loans Act, 2008* into effect, enabling the provincial government to make regulations to further govern and enforce advertising or signage in any medium with respect to a payday loan or a payday loan agreement, including the content, location and size of advertising or

signage, and the ability to create regulations that prohibit licensees from making certain advertising or signage.

Implementation

4. City Council direct that changes to the City of Toronto Municipal Code Chapter 545, Licensing, come into force on January 1, 2021.

FINANCIAL IMPACT

There are no current or known future year financial impacts arising from the recommendations contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

EQUITY STATEMENT

A growing number of Toronto residents are experiencing job loss, growing personal debt and inability to pay necessary expenses as a result of the COVID-19 pandemic. It is also well-documented that the social, health and economic impacts of the pandemic have disproportionately affected vulnerable communities. COVID-19 cases and hospitalization rates are higher among racialized communities, newcomers, low income families, those with lower education and unemployed people. Barriers to accessing stable housing, food, services, and employment opportunities have also disproportionately affected these groups.

These economic pressures have a disproportionate impact on Indigenous and equity-seeking communities, who are already more likely to be in poverty. The use of payday loan establishments by residents living in poverty is therefore concerning as payday loans are an expensive way to borrow money. The high costs may lead consumers to become trapped in debt cycles. Research shows that vulnerable households are more likely to use payday loans, typically in emergency situations and to pay necessary expenses such as bills and repairs.

Nevertheless, research shows that up to 13 per cent of Canadians do not have access to traditional financial services. Without access to these services and affordable credit, individuals are unable to build credit and are at increased financial risk in financially difficult times. Residents who cannot or, in some cases, choose not to access traditional financial services often turn to payday lenders as they lack suitable alternative options.

The City's current approach to regulating payday loan establishments balances the demand for payday loans, with the need for consumer protection. However, it is recommended that further work is completed under the 2021 update on the Poverty Reduction Strategy, to improve access to low-cost financial products and services.

DECISION HISTORY

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 - Update on the City of Toronto Municipal Code Chapter 545, Licensing of Payday Loan Establishments. City Council also directed the City Manager and the Chief Recovery and Rebuild Officer to include all requests made of the Provincial and Federal governments as part of GL7.15 - Update on the City of Toronto Municipal Code Chapter 545, Licensing of Payday Loan Establishments, in their discussions with those governments and to highlight this issue at all of the Toronto Office of Recovery and Rebuild's Outreach, Engagement and Research Tables.

On October 2, 2019 City Council adopted GL7.15 - 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 prohibited payday loan establishments, pawnshops and cash for gold venders from advertising on City property and required all payday loan establishments in Toronto to provide sanctioned information on credit counselling services. 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 Social Development, Finance and Administration, Economic Development and Culture, Toronto Employment and Social Services, and Municipal Licensing and Standards to convene discussions with the financial services industry on improving access to financial products.

On April 24, 2018 City Council adopted LS24.3 - Interim Regulations for Payday Loan Establishments and Consultation Plan (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.LS24.3), which 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 operating in Toronto, as the wards existed on May 1, 2018. City Council directed the Executive Director, Municipal Licensing and Standards to report back within one year from the date the By-law was enacted with a comprehensive review of payday lenders, and in partnership with City Planning and Social Development, Finance and Administration, consider limiting the distances of payday loan establishments as they relate to the 31 identified Toronto Neighbourhood

Improvement Areas under the Toronto Strong Neighbourhoods Strategy 2020 (TSN2020).

On January 31, 2017 City Council adopted MM24.15 - Payday Loan Act - Public Consultations (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM24.15) and directed the Executive Director, Municipal Licensing and Standards 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. City Council also directed staff to provide comments to the Government of Ontario on the City's position and suggestions regarding changes to the *Payday Loans Act, 2008*.

On March 31, 2016 City Council adopted 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 requested the Government of Canada to recommend the addition of financial and banking services at Canada Post and the Government of Ontario to consider higher lender licensing fees, capping the annual interest rate for all lenders to 35 percent, directing lenders to review the borrowing patterns of clients and directing lenders to translate their fees into annualized interest rates.

COMMENTS

City of Toronto Regulations for Payday Loan Establishments

In 2018, Toronto City Council introduced new regulations for payday lending by creating a new business licence category and limiting the number and location of establishments. The number of payday loan licences was limited to the number of payday loan establishments licensed by the Government of Ontario and operating in Toronto as of May 1, 2018 (a city-wide total of 212 licences), and the number of locations where a payday loan establishment was permitted to operate was limited to the number of locations that existed in each of the City's 44 wards as of May 1, 2018. City Council also introduced a minimum separation distance to prohibit operators from relocating 500 metres on or within Woodbine Racetrack (555 Rexdale Ave, which is also the location of Casino Woodbine).

In addition to the above limitations, payday loan licensees are subject to the general provisions of *Toronto Municipal Code, Chapter 545, Licensing*, such as 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 212 in 2018 to 178 in September 2020 (a decline of 16 percent).

Changes to Ontario's *Payday Loans Act, 2008*

The *Payday Loans Act, 2008,* enacted by the Government of Ontario in 2008, regulates the terms and conditions of payday loans (including the cost of borrowing and interest rate), requires that payday lenders are provincially licensed, and prohibits certain predatory practices, such as concurrent loans (that is, offering a new loan agreement with a borrower before 7 days have passed since the full outstanding balance was paid on a previous loan) and rollover loans (that is, rolling a previous payday loan into a second loan).

In 2013, the Government of Ontario reviewed its regulation of payday lending. As a result of this review, the provincial government gave municipalities the authority to also regulate payday loan establishments. Ontario Bill 59, *Putting Consumers First Act, 2017* received royal assent in April 2017 and as of January 1, 2018, provided municipalities with the authority to limit the number and location of payday loan establishments.

As part of the Government of Ontario's response to the COVID-19 pandemic, the *Payday Loans Act*, *2008* was amended to cap interest rates and fees on defaulted loans. The *COVID-19 Economic Recovery Act, 2020* introduced a maximum interest rate of 2.5 percent per month (non-compounded) that can be charged on payday loans in default and a maximum fee of $25 that can be charged by lenders for dishonoured or bounced cheques and pre-authorized debits.

While these changes are aimed at strengthening consumer protection and offering relief to those who may be unable to repay new payday loans (that is, after August 20, 2020), they do not change the initial high cost of borrowing with payday loans. The cost of borrowing is set by the Government of Ontario and remains $15 for every $100. If a consumer borrows $300 for two weeks from a payday lender, it would cost the consumer $45. However, if the consumer borrowed the same amount of money using a credit card, it would cost the consumer $6.15 (with an APR of 23 percent and fee of $3.50).

It is important to note that previous changes to the cost of borrowing may have contributed to the closure of brick and mortar payday loan establishments. In 2018, the Government of Ontario reduced the cost of borrowing from $18 to $15 for every $100. In the following year, there was a 10 percent reduction in the number of brick and mortar payday loan establishments, largely attributed to the closure of independent operators who could not afford the changes. As heard through discussions with the payday lending industry, it is likely that the 2020 changes to interest rates on defaulted loans may lead to similar closures.

Proposed Changes to the City of Toronto's Regulations of Payday Loan Establishments

The licensing of and cap on the number of payday loan establishment licences continues to protect consumers by limiting the availability of establishments and by extension, the likelihood of prohibited practices such as concurrent and rollover loans. As discussed below, further restrictions, such as minimum separation distances, are not recommended in the absence of low-cost alternatives. The number of payday loan establishments continues to decline due to attrition and is likely to continue to decline due to recent changes to the *Payday Loans Act, 2008*.

Regulations that further limit the number of brick and mortar payday loan establishments (therefore, diminishing the convenience of borrowing) may influence consumers to choose other options, such as online payday lending or unregulated lending options, which may be riskier financial alternatives. In the absence of low-cost borrowing alternatives (for example, credit unions or not-for-profits that offer affordable, small loans), consumers are still exposed to the risks associated with other unsecured small loans, particularly during financially challenging times.

Feedback heard during MLS' engagement process and collected as part of TORR's process has largely focused on the continued high cost of payday loans and the lack of available alternatives. It is recommended that additional work on financial literacy (including digital) and the availability of low-cost alternatives is completed under the Poverty Reduction Strategy. Additional technical amendments are recommended to further improve the licensing and enforcement of payday loan establishments. Outlined below is a discussion of these issues, including proposed changes to the By-law. Additional research and engagement feedback is included in Attachment 1.

1. Include Access to Low-Risk Financial Products in the 2021 Update of the Poverty Reduction Strategy

Research:
Feedback heard through this review and TORR's engagement process highlighted the need for low-cost financial products and services. For example, the financial challenges faced by vulnerable residents has only been exacerbated by the COVID-19 pandemic, potentially driving residents to higher-cost financial products such as payday loans.

In a survey of Canadians in May, Statistics Canada highlighted that financially vulnerable Canadians lack sufficient liquid assets to make ends meet in the absence of employment or government transfers. Research from groups such as the Black Creek Financial Action Network demonstrate that residents turn to payday loan establishments when they need emergency funding to pay for unexpected but necessary costs, such as food and housing. This dynamic highlights the need to work with partners to identify new and innovative forms of financial services and community microcredit that is tailored specifically for the needs of vulnerable and marginalized residents.

Through the City's community-based emergency response mechanisms, such as the Community Connections Program, the City also heard about difficulties in accessing financial supports, such as the CERB (though this program is shifting direction). Many vulnerable and marginalized residents are finding it difficult to navigate the processes required to access financial supports that are available. To assist vulnerable and marginalized residents in accessing government supports, resources were quickly developed by community partners to assist residents in accessing emergency benefits. However, there continues to be a need to strengthen and expand financial literacy and navigation supports. Otherwise payday loan establishments or other riskier alternatives will function as a faster, more convenient option to access needed funds.

Recommendation:
While limiting the availability of payday loan establishments through a licensing regime and cap enhances consumer protection, it does not address the consumer's need for credit or the lack of low-cost alternatives. Addressing these challenges requires multi-partner systemic responses. Work to develop effective, innovative, community-oriented interventions falls within the mandate of the City's Poverty Reduction Strategy and its goal to advance inclusive economic development in Toronto. This direction is included in the 2019-2022 Poverty Reduction Strategy Action Plan, adopted by City Council in November 2019. Specifically, Activity 10.2.4 directs staff to "work with the financial services industry and the For Public Benefit sector to improve access for low-income residents to relevant financial products and services and financial empowerment supports".

In consultation with EDC, SDFA's Poverty Reduction Office will identify multi-stakeholder partnerships and pilot programs that can begin to fill the gaps in financial services and supports, redirecting users of payday loan establishments towards low-cost alternatives. This will include engaging with all orders of government, including the Department of Finance Canada, the Office of the Superintendent of Financial Institutions and the Financial Consumer Agency of Canada to work with the financial services sector and community organizations to:

- Encourage the development, promotion, and adoption of lower-cost financial products (including digital solutions); and

- Explore the feasibility of ensuring low-income neighbourhoods have reasonable access to traditional brick-and-mortar banks and promoting their availability

An update of this work is expected in a 2021 report by SDFA to City Council.

2. Cap the Number of Payday Loan Establishment Locations at the Current 25-Ward Model

Current Regulations:
The locations of payday loan establishments are currently capped at the 44-ward model. However, in August 2018, the Government of Ontario passed *Bill 5, the Better Local Government Act* and reduced the number of City of Toronto wards to 25, aligning with current federal and provincial electoral ridings.

Recommendation:
To ensure the locations of payday loan establishments are restricted to the most recent ward-model moving forward, it is recommended that 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) on May 1, 2018. This amendment maintains the cap on the number of locations per ward established in 2018, but moves to the 25-ward model. Moving the cap to the 25-ward model ensures that the cap is reflective of the current geographic distribution of wards in Toronto and enables staff and Councillor Offices to provide better oversight (as it requires less need for interpretation). The geographic distribution of payday loan establishments in the new 25-ward model can be found in Attachment 2.

Overall, payday loan establishments are geographically located across the city of Toronto. In the 25-ward model, 52 percent of payday loan establishments are located on the borders of wards. This is to be expected as the ward boundaries are generally major roads/intersections and by extension, attractive locations for businesses. However, if a payday loan establishment seeks to move across the street, to maintain its proximity to its client base, it may enter a new ward. For example, the north side of Eglinton Avenue West is in Ward 8, Eglinton-Lawrence and the south side is in Ward 12, Toronto-St. Paul's. Payday loan establishments are permitted to move freely within their own Ward (with the exception of the minimum separation distance around Woodbine Racetrack), but may only move outside of their current Ward if the cap of the Ward in the proposed location has not been reached.

Responses to Other Identified Issues

In City Council's consideration of the October 2019 report, several other issues were identified for further exploration; in the sections below, staff respond to each in turn.

3. Minimum Separation Distances Between Payday Loan Establishments and Schools

Current Research:
As directed by City Council, staff explored the location of payday loan establishments in relation to elementary, secondary, post-secondary and private schools. A 500 metre buffer was used to determine this relation as it's considered a reasonable walking distance and it is the same distance used for the existing minimum separation distance between payday loan establishments and Woodbine Racetrack. Overall, the following was observed:

- 112 out of 178 (71 percent) payday loan establishments are within a 500 metre buffer of an elementary school (defined as schools in the Toronto District School Board (TDSB), Toronto Catholic District School Board (TCDSB), and French Public and Catholic);
- 51 out of 178 (29 percent) payday loan establishments are within a 500 metre buffer of a secondary school (defined as schools in the TDSB, TCDSB, and French Public and Catholic);
- 75 out of 178 (42 percent) payday loan establishments are within a 500 metre buffer of a private school (defined by the Ministry of Education Open Data Catalogue, excluding summer schools, and current as of September 2020); and
- 6 out of 178 (3 percent) payday loan establishments are within a 500 metre buffer of a post-secondary institution (defined as the main building for each university or college in Toronto).

In a review of other Ontario jurisdictions, Brantford, Oshawa and Ottawa have added minimum separation distances (ranging from 150 metres to 300 metres) between payday loan establishments and schools. However, the City of Brantford was the only municipality to add the minimum separation distance to its licensing by-law. Both the City of Oshawa and Ottawa added a minimum separation distance between payday loan establishments and schools in their respective zoning by-laws.

Recommendation:
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. The intention of the cap (that is, to stop the proliferation of payday loan establishments) is working, as the number of payday loan establishments has decreased due to attrition.

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.

If City Council were to introduce minimum separation distances between payday loan establishments and schools, they would have to be phased in to accommodate legally operating businesses, to avoid legal challenges. Similar to the City-wide cap, which reduces the number of payday loan establishment licences by attrition, payday loan establishment locations would only be subject to the minimum separation distances if they move.

With respect to zoning, Section 34 of the Planning Act allows municipalities to pass zoning by-laws to regulate land on the basis of use and its impacts. However, it does not provide authority to regulate a business based upon the products on offer, unless there are specific land use impacts for doing so. There do not appear to be any land use impacts to distinguish between a traditional bank and payday loan establishments.

While zoning by-laws have been used in other jurisdictions to regulate payday loan establishments, Toronto's Zoning By-law 569-2013 applies a broad definition of financial institution, and does not distinguish this land use based on the type of financial products being offered. Consequently, any attempt to regulate payday loan establishments could also affect the permissions for traditional banks and credit unions.

Furthermore, if the City were to regulate payday loan establishments through a zoning by-law, the Planning Act provides opportunity for an application to amend the zoning by-law permissions or restrictions. This can be achieved through a zoning bylaw amendment, or minor variance application.

4. Feasibility of Local Councillor Objection to Relocation

City Council also directed staff to explore the feasibility of establishing a process for the local Councillor to object to the relocation of a payday loan establishment within the same Ward.

In consultation with the City Clerk's Office and Legal Services, staff determined that establishing a process for the local Councillor to object to the relocation of a payday loan establishment is not recommended. As discussed above, there are concerns that additional restrictions on the location of payday loan establishments may result in residents turning to higher risk or higher cost options, particularly during times of financial hardship experienced as a result of the COVID-19 pandemic.

If City Council were to introduce a location change request process it is recommended that a payday loan establishment would submit a relocation request to MLS licensing staff. Staff are better positioned to ensure a set of criteria are met such as the absence of by-law offences and up-to-date fee payments. If approved, then the local Councillor could be provided an opportunity to consult or object to the relocation.

If such a process were introduced, there must be a mechanism in place for the license holder to appeal the objection of the local Councillor (for example, through Community Council). Amendments to Chapter 27, Council Procedures would be required to delegate final decision-making authority to the chosen body. Staff would also need to explore additional fees to recover the costs of administering a location change process.

5. Increased Enforcement of Online Payday Lending

Current Regulations:
The enforcement of online lending falls under the purview of the Government of Ontario. The *Payday Loans Act, 2008,* applies in respect of all payday loans if the borrower, lender or loan broker is located in Ontario when the loan is made or to be made. In addition, all provincial licensees must maintain at least one office that is physically located in Ontario.

When the Ministry of Government and Consumer Services (MGCS) is made aware of an online lender that is operating without a licence, MGCS attempts to contact the lender to advise them of the requirement for a licence. If this has no effect, the Ministry may attempt to determine the location of the lender and take enforcement action with the help of partners in other jurisdictions if necessary. In addition, unlicensed online lenders can be reported to the police if they are offering a loan above the criminal rate of interest - an offence under the Criminal Code.

In previous conversations with the province, enforcement of online lenders has been challenging, as it is difficult to determine the location (and therefore jurisdiction) of the lender. Previous research suggests that 10 percent of payday lending occurs online in Canada. Yet, in other jurisdictions with stricter regulations for brick and mortar establishments, online payday lending accounts for 30 to 80 per cent of all payday lending activity.

Recommendation:
It is recommended that City Council request the Government of Ontario strengthen its enforcement of online payday lending. Historically, the majority of payday loans in Ontario were taken out in person versus online. However, the industry continues to grow substantially quicker online. For example, in recent years, the value of loans advanced online grew by 49 percent, compared to 15 percent in brick and mortar establishments.

Staff anticipate that the acceleration towards digital transactions in the finance sector, coupled with the recent changes to the *Payday Loans Act*, *2008*, may contribute to the further closure of brick and mortar payday loan establishments. While municipal regulation has focused on limiting the proliferation of brick and mortar establishments, additional regulation and enforcement is required at the provincial level for online payday lending; particularly with respect to high-cost installment loans. According to a survey by the Financial Consumer Agency of Canada, nearly 50 percent of users who took loans over $1,500 (therefore, not a payday loan) did so in an online platform.

6. Regulation of High-Cost Installment Loans

Current Regulations:
The Government of Ontario has the authority to regulate other alternative financial services beyond payday loans, such as installment loans. An installment loan is a loan that is scheduled to be repaid in equal installments at equal periodic intervals. They are commonly referred to as consumer loans or personal loans. Installment loans may differ from typical payday loans as they can be repaid over a longer term (for example, more than two weeks or the borrower's next payday), are not repaid in a lump sum and may be secured by the borrower's personal property.

High-cost installment loans can have an interest rate that is more than 35% and in some cases as high as 59.9% (an effective annual rate of interest greater than 60% is an offence under the Criminal Code). While the interest charged on installment loans is significantly less than the annual percentage rate of standard payday loans (390%), installment loans are typically for larger amounts of money and for longer periods of time. As such, high-cost installment loans may put consumers at risk of financial harm.

Recommendation:
If Ontario were to strengthen the regulation of high-cost credit products, it would require amending the regulations under the *Payday Loans Act, 2008* and the *Consumer Protection Act, 2002*. When the Government of Ontario introduced changes to payday loan regulations in 2018, there was a preliminary review of installment loans; however, this review has not continued. This report recommends that City Council request the Government of Ontario review the rules and interest rates around installment loans to strengthen consumer protection. For example, the Government of Ontario could introduce a maximum interest rate for defaulted installment loans, similarly to what was done for payday loans.

7. Restrictions on Advertising

Current Regulations:
The advertising of payday loan establishments is regulated by the Government of Ontario through the *Payday Loans Act, 2008*. The *Payday Loans Act, 2008,* prohibits payday loan establishments from making or facilitating false, misleading or deceptive statements and requires all advertisements that mention the cost of borrowing, the amount advanced, the repayment of the loan or the term of a payday loan agreement, to disclose specific information such as the maximum allowable cost of borrowing and actual cost of borrowing (expressed as total amounts and annual percentage rates, terms expressed in days, etc.).

In October 2019, City Council prohibited payday loan establishments, pawnshops and cash for gold vendors from advertising on City property, including City Agencies and Corporations. Strategic Communications and MLS informed Astral Media who are responsible under contract with the City for advertising on road allowance, as well as all Agencies and Corporations, in November 2019, that payday loan establishments, pawnshops and cash-for-gold vendors are prohibited from advertising on City property.

In addition, City Council directed staff to require all payday loan establishments in Toronto to provide sanctioned information on credit counselling services. Although the implementation of this direction was delayed due to the COVID-19 pandemic, SDFA and MLS are currently working with 211 to promote financial literacy, support services and credit counselling in all payday loan establishments. A multi-lingual poster is being created that all payday loan establishments will be required to post in a conspicuous place. The poster will direct residents to contact 211 for various financial support services including local initiatives for the resident.

Recommendation:
Staff do not recommend further restrictions on advertising at the municipal level. Limits on advertising, such as prohibiting the use of misleading or false information or mandating what payday loan establishments are permitted to say, are duplicative of existing provincial legislation. As well, advertising is expression protected by the *Charter*. Any further restrictions on advertising would require an analysis to determine if the restrictions would be justifiable.

It is recommended that City Council ask the Government of Ontario to strengthen its regulations of payday lending advertising. Currently, there is a provision of the *Payday Loans Act*, *2008,* that has not been proclaimed; therefore, it is not in effect. If proclaimed, Subsection 77.16.1 would enable the provincial government to make regulations to govern advertising or signage in any medium with respect to a payday loan or a payday loan agreement, including the content, location and size of advertising or signage, and the ability to create regulations that prohibit licensees from certain advertising or signage.

Next Steps

It is recommended that the proposed changes come into effect on January 1, 2021. Staff will continue to monitor the effects of the ongoing COVID-19 pandemic and new provincial restrictions on the payday lending industry and on residents. Research will include monitoring changes to the number of payday loan establishments, exploring new academic research, and supporting SDFA and EDC in their update to the Poverty Reduction Strategy in 2021.

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SIGNATURE

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ATTACHMENTS

Attachment 1 – Research and Engagement Feedback
Attachment 2 - Payday Loan Establishment Locations with the 25-Ward Model