



Interim Regulations for Payday Loan Establishments and Consultation Plan

Date: March 28, 2018

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report provides an update on changes to the Payday Loans Act and the City of Toronto Act (COTA) as they relate to payday loan establishments. It recommends using the new authorities to create a licence for payday loan establishments, and to cap the number of stores to those that currently operate in Toronto and are licensed by the Province of Ontario, as of May 1, 2018. This report further recommends Municipal Licensing and Standards (MLS) conduct broad consultation and research on payday lenders and report back to the Licensing and Standards Committee in one year with final recommendations on regulations for the industry and any adjustments to the cap on City licences.

In 2013, the Province of Ontario began reviewing its regulation of payday lending. As a result of this review, the provincial government gave municipalities the authority to regulate payday loan establishments. Ontario Bill 59, Putting Consumers First Act, 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.

People need access to financial services to achieve economic stability. Traditional financial services, such as credit cards, loans and lines of credit, help individuals build credit and manage financially difficult times. Consumers who cannot or choose not to access traditional financial services often turn to alternative financial services, such as payday lenders.

Payday loans fill a gap in credit for some consumers, but they are an expensive way to borrow money. They are defined as short-term, unsecured, small-dollar loans. They are intended to bridge a borrower through a cash shortfall, until the borrower's next payday when the loan is expected to be repaid in full. The maximum cost of borrowing a payday loan is based on a set dollar amount per \$100. As of January 1, 2018, the maximum set dollar amount in Ontario is \$15 for every \$100. This represents an annual percentage rate (APR) of 390 percent.

While the Criminal Code of Canada, Section 347 makes it a criminal offence to charge more than an effective rate of 60 percent per year, there is a specific exemption for payday loans if the amount of the loan is \$1,500 or less, the term of the agreement is 62 days or less, and the payday loan establishment is licensed by the province.

The Payday Loans Act, enacted by the Province of Ontario in 2008, regulates the terms and conditions of payday loans (including the cost and interest rate), requires that payday lenders are provincially licensed, and prohibits certain predatory practices, such as concurrent and rollover loans.

This report recommends creating a municipal business licence for payday loan establishments and restricting the number of establishments permitted in the city. This is recommended as an interim approach, during which time MLS will conduct a comprehensive review and consultation on the issue and report back in a year with final recommendations. MLS will conduct research during the summer of 2018, including leading and working with an inter-divisional working group. Public and stakeholder consultations are planned for the fall of 2018 and will include consulting with other municipalities that have implemented a licensing regime for payday loan establishments, such as the City of Hamilton. A report with recommendations is expected in the second quarter of 2019.

This report was written in consultation with Social Development, Finance and Administration, Economic Development and Culture, Toronto Employment and Social Services, City Planning, Toronto Public Health and Legal Services.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards, recommends that:

1. City Council amend Toronto Municipal Code Chapter 545, Licensing, to create a new business licence category for payday loan establishments as an interim measure pending a full review of licensing requirements for payday loan establishments, as follows:

- a. any person or entity who holds a valid licence as a lender or a loan broker under the Payday Loans Act, 2008 shall obtain a licence under Chapter 545 and provide the following information:
 - i. name of applicant,
 - ii. address for business,
 - iii. address for main office (if different from business address),
 - iv. contact information (phone and email),
 - v. Payday Loans Act, 2008 licence number,
 - vi. primary contact person name, number, email address, and mailing address,
 - vii. criminal background check.

b. in order for a payday loan establishment in Toronto to obtain and continue holding a licence under Chapter 545, Licensing, that every applicant for a licence must provide proof of a valid licence under the Payday Loans Act, 2008 and continue holding a valid licence under the Payday Loans Act, 2008.

c. if a licence under the Payday Loans Act, 2008, is suspended, or revoked the licence under Chapter 545 shall be suspended.

d. a City licensee shall inform the Executive Director, Municipal Licensing and Standards immediately if their provincial licence ceases to be valid or is revoked.

e. a City licensee shall operate only at a location(s) authorized by the provincial licence.

f. the number of City licences be capped at the number of locations operating in the City and that are licensed under the Payday Loans Act on May 1, 2018.

g. no City licence shall be issued to any person or entity unless the person or entity holds a valid lender or loan broker licence issued by the Province of Ontario and is operating within Toronto, on May 1, 2018.

h. licence holders are permitted to change locations but will be required to submit an application for a re-issuance of the City licence and pay the applicable pro-rated licensing fee.

i. licence holders must notify the City within 5 business days of any changes to their business address.

2. City Council direct the Executive Director, Municipal Licensing and Standards to report back to the Licensing and Standards Committee within one year from the date that the bylaw comes into force, with a comprehensive review of payday lenders, including research, consultation, and the impact of the new licence and cap, and with recommendations on how best to regulate payday loan establishments, including possible additional licence requirements.

3. City Council amend Chapter 441, Fees and Charges, to include the following fees for the new payday loan establishment licence:

a. Payday loan establishment licence fee: \$632.87

b. Payday loan establishment annual renewal fee: \$308.99

4. City Council direct that the Payday Loan Establishment licence come into effect when the bylaw is enacted by City Council.

FINANCIAL IMPACT

This report outlines a proposed licence for payday loan establishments, and recommends amending Chapter 441 by adopting the same fee structure for payday loan establishments as pawn shops and precious metal shops. Table 1 illustrates the

anticipated annual revenues based on the current volume of 207 provincially licensed payday loan establishments operating in Toronto.

Table 1 – Fees and annual revenues

Service	Fee Description	Fee Basis	Fee	Annual Adjustment	Anticipated Revenue
Business & Trade Licensing	Application fee: Payday Loan	Application	\$632.87	Yes	\$131,004
Business & Trade Licensing	Renewal fee: Payday Loan	Application	\$308.99	Yes	\$63,961

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

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 MLS 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 Province of Ontario on the City's position and suggestions regarding changes to the Payday Loans Act.

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 Province 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.

On June 25, 2010 the Licensing and Standards Committee referred [LS31.6 - Payday Loan Offices](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.LS31.6>) to the Licensing and Standards Committee referred to the Executive Director, Municipal Licensing and Standards, and requested the Executive Director, MLS to submit an

update report on store front personal loan businesses within Etobicoke York District to the Etobicoke York Community Council.

COMMENTS

High Cost of Payday Loans

Compared to other financial products, payday loans are an expensive way to borrow money. For example, 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, but used a credit card it would cost the consumer \$6.15 (with an APR of 23 percent and fee of \$3.50).

In 2016, the Financial Consumer Agency of Canada (FCAC), an independent agency of the Government of Canada, conducted a national survey of payday loan consumers. Fewer than half of the respondents knew that a payday loan is more expensive than available alternatives. This is because the cost of a payday loan is presented as a fee (e.g. \$15 for \$100) while other credit types typically calculate the cost of borrowing as an APR (e.g. 23 percent on a credit card). The APR of \$15 for \$100 is 390 percent.

The APR is an annual rate charged for borrowing that represents the yearly cost of a loan. The cost of other loan products, such as mortgages and credit card interest, are often disclosed in APR. As of July 1, 2018, the Province of Ontario is mandating that all payday lenders show the cost of borrowing a payday loan as an APR in advertising or agreements. While payday loans are designed as short-term products, some borrowers use payday loans frequently. The APR format may better indicate the long-term costs of sustained loan use.

As a result of the high costs of payday loans, consumers can become trapped in debt cycles, where they use additional payday loans to cover previous ones. Compared to the general population, payday loan consumers are less likely to have emergency savings, or access to other, less expensive credit options, such as credit cards or lines of credit.

The Current Demand for Payday Loans

Payday loans are obtained online or at retail payday loan establishments. While some consumers are unaware of the high costs of payday loans, others choose to use them because they do not have access to credit, or payday loan establishments are a more convenient and quicker alternative. In the FCAC survey, 90 percent of respondents said payday lending was the fastest or most convenient option and 74 percent of respondents said it was the best option available to them.

Some payday loan consumers also prefer payday loan establishments: 55 percent of the FCAC respondents noted that payday lending offered better customer service and 13 percent noted that they did not want to get money from a bank or credit union. Whether it is access to credit, convenience, or customer service, there are a number of reasons why consumers continue to use payday lenders.

Governmental Jurisdiction

Although widely used by consumers, payday loans were effectively illegal in Canada until 2007. Under Section 347 of the Criminal Code, it is a criminal offence to charge more than a 60 percent annual interest rate. In 2007, the federal government amended the Criminal Code to exempt payday loans of less than \$1,500 or less and for a term length of 62 days or less. The federal government also gave the provinces and territories the authority to regulate payday loans.

The Government of Ontario introduced legislation for payday loans in 2008. Through the Payday Loans Act, the provincial government licenses payday lenders as well as regulates the terms and conditions of payday loans. The Act also provides various protections for consumers including, providing a means of enforcement and preventing licensees from engaging in prohibited practices, such as concurrent and rollover loans.

Although the City of Toronto cannot regulate the terms and conditions of a payday loan, COTA gives the City the authority to pass bylaws to license payday loan establishments, including, as of January 1, 2018, limiting the number and location of payday loan establishments. Currently, the City does not license payday loan establishments. However, the City licenses pawn shops and precious metal dealers, some of which will also offer payday loans.

Zoning bylaws have been used in other jurisdictions to regulate payday loan establishments. The difficulty with zoning bylaws is that the use is not distinguishable on a land use and planning basis from other financial institutions. Consequently any attempt to regulate payday loan establishments could also impact the permissions for other financial institutions such as Banks and Credit Unions. If the City were to regulate payday loan establishments through a zoning bylaw, the Planning Act provides opportunity for operators to amend the zoning bylaw land use permissions or restrictions, as well as, the applicable development standards in the zoning bylaw. This can be achieved through zoning bylaw amendments or Committee of Adjustment variances.

Changes to the Payday Loans Act

The Putting Consumers First Act amended the Payday Loans Act, including lowering the maximum set dollar amount charged for every \$100 borrowed from \$18 to \$15. In addition, the Payday Loans Act, as of July 1, 2018, will:

- Make it mandatory for payday lenders to provide consumers with an extended payment plan if consumers take out three or more loans with the same lender within a 63-day period.
- Prohibit payday lenders from lending more than 50 percent of a borrower's net pay per loan.
- Require payday lenders to disclose the cost of borrowing a payday loan as an annual percentage rate in advertisements and agreements.

Changes to the City of Toronto Act

As of January 1, 2018, the City has the authority to restrict the number and locations of payday loan establishments through business licensing. Other municipalities in Ontario are currently moving forward with similar actions, including the City of Hamilton. The City of Hamilton recently passed a licensing bylaw that would restrict the number of payday loan establishments by limiting (a) the number of payday loan establishment business licences to no more than 15 and (b) the locations of payday loan establishments to no more than one per ward. The new rules will apply to new establishments only, as existing payday loan establishments are grandfathered.

The changes to COTA authorize the City of Toronto to limit payday loan establishments in number or by location. For example, the City could cap the number of payday loan establishments in the city, or cap the number of payday loan establishments in a ward or neighbourhood. The City could also introduce minimum separation distances for payday loan establishments. Previously, this may have only been possible through a zoning bylaw. Despite this new authority, the City cannot completely restrict (ban) payday loan establishments from operating in the city.

Licensing and Limiting Payday Loan Establishments

Provincial Licence

According to the Province of Ontario, there are currently 207 provincial licences for payday lending in Toronto. Under the Payday Loans Act, 2008, all Ontario payday lenders and loan brokers are required to be licensed by the province. Provincially licenced lenders must provide the province with information about their corporation and all individuals involved in the corporation, and disclose the following information about the applicant and all directors and officers of the corporation:

- business involvement in other industries;
- business involvement in other jurisdictions;
- involvement in bankruptcy proceedings (current or in the past);
- unpaid or outstanding judgements (current or in the past);
- registration or licence refusal, suspension, revocation, or cancellation under any law of any jurisdiction (excluding driver's licences);
- convictions of an offences under any law in any jurisdiction;
- any current charges of an offences under any law in any jurisdiction; and
- termination of employment or business relationship for breach of trust or confidentiality, deceit, fraud, theft, forgery, misappropriation of funds, harassment or assault or other similar conduct.

The province collects a licence application fee of \$750 for the main payday lender office and a fee of \$990 for each branch office. The issuance, suspension and revocation of a licence is at the discretion of the Payday Loan Registrar, a person appointed by the Deputy Minister of the Ministry of Government and Consumer Services (MGCS). The Registrar is also responsible for the inspection and enforcement of payday loan establishments.

Proposed City of Toronto Licence

As an interim step, City staff recommend using the new authorities provided under COTA to stop the proliferation of payday loan establishments in the city. Staff propose the following:

- Creating a new business licence for payday loan establishments;
- Placing a cap on the number of establishments in Toronto; and
- Requiring that establishments be licensed for payday lending by the Province prior to applying for a City-issued licence.

Applicants for the new business licence would have to provide the City with the following information:

- Name of applicant,
- Address for business,
- Address for main office (if different from business address),
- Contact information (phone and email),
- Payday Loans Act, 2008 licence number, and
- Primary contact person name, number, email address, and mailing address.
- Criminal background check

This proposed interim approach will provide the City with a mechanism to mitigate the proliferation of these establishments while staff conduct a comprehensive review of the industry and develop final recommendations for regulation of payday loan establishments. Capping the number of businesses to those that are in existence and licensed by the province as of May 1, 2018 will prevent new stores from opening during the review time. The review will include continued research and broad public and stakeholder consultations to better understand the best approach for the City.

Licensing payday loan establishments will provide the City with information on the number of and locations of these businesses to better enable staff to monitor and assess their impacts in neighborhoods and on consumers.

Businesses will be subject to general provisions within Chapter 545, Licencing, including those prohibiting the transfer or sale of a licence to another person. This means that business licences cannot be traded or sold to other operators. When a business closes, the business licence is cancelled and another would not be issued in its place. Therefore the cap on the number of Payday Loan Establishments may decrease over time.

Licensees will be permitted to move their business location with their City-issued business licence if they inform the City within 5 days of the change, are approved for a licence re-issuance, and pay the applicable prorated licence fee.

Staff propose that the new payday loan establishment cap take effect on May 1, 2018. Those applicants who have a valid licence with the province at that time will be eligible for a licence. Applicants not licensed by the province or become licensed after May 1, 2018 will not be eligible for a licence and will not be permitted to operate in the city.

Upon Council enactment, staff will share information on the new rules and provide next steps for payday lenders. It is anticipated that payday lenders will be able to apply for a City licence within a few months of the adoption of the bylaw. Staff will provide information to payday lenders as appropriate on the licencing process when it is available.

City of Toronto Action on Payday Lending to Date

Public Consultation Feedback

In March 2018, staff sought public input on the proposed licence and cap on payday loan establishments. Staff held a public meeting on March 21, 2018 at North York Civic Centre. The meeting was publicized on the City's website and Twitter account, and to relevant stakeholders and divisions. MLS also received feedback through its MLS Feedback e-mail account.

Stakeholders agreed that individuals require quick access to cash for necessary expenses. Staff heard that banks and credit cards are not accessible alternatives for some consumers for a variety of reasons.

Support for the proposal to licence payday loan establishments was mixed. Representatives from ACORN, an anti-poverty organization, support the proposed licence as a way to stop the growth of payday lenders in Toronto. They also said that this is just one part of a broader approach to the issue. They suggest that the City encourage other levels of government to further increase efforts to provide alternative banking services to individuals who currently rely on payday loans and to improve consumer protection.

Representatives of the payday loan industry generally did not support the proposal. Staff were told that the perception that payday loan establishments have grown in number in Toronto is inaccurate; representatives questioned whether a cap is necessary. Staff were also told that the public often does not realize how highly regulated the industry already is. The industry believes further regulation will reduce competition, negatively impact consumers and cause more stores to close, resulting in reduced access to regulated lenders and consumers turning to the online market. The payday loan industry suggested that the City focus on encouraging traditional lenders, such as credit unions, to offer services that meet this consumer need.

Payday Loan Survey and Comments to the Province of Ontario

In the summer of 2017, the Ministry of Government and Consumer Services released a consultation paper entitled "Strengthening Protection for Consumers of Alternative Financial Services – Phase One", seeking input in developing regulations for payday lenders and alternative financial services.

MLS promoted the province's survey and conducted a survey of its own in August 2017. MLS sought feedback on the issues listed in the provincial consultation paper as well as highlights of Ontario Bill 59 including, amending COTA to permit the City to regulate the number and location of payday loan establishments. The survey was hosted on

toronto.ca and promoted cross-divisionally, and through the City's social media channels. There was a total of 317 responses.

Those respondents that have used payday lending services were generally younger (19-39 years of age) and had a total household income less than \$60,000. Those who have not used payday lending services were more evenly distributed across age, but were more likely to have a household income of \$80,000 or greater. Respondents were distributed throughout the city of Toronto.

Of the respondents, 58 percent stated they had used payday lending services and more than half of these had done so two or more times. The majority of the respondents who had used payday lending services had accessed them by visiting a store (83 percent). The most likely reason for accessing payday lending services was access to credit or more credit (64 percent).

When asked if there should be a limit on the number of payday loan establishments on any one street, or in any given geographical area, those respondents who have used the services largely disagreed with the statement (65 percent) and those who have not used the services largely agreed (60 percent). Other questions throughout the survey drew similar differences in opinions - with respondents who have used payday lending services not supporting stricter requirements on payday lenders and those who have not used payday lending services supporting stricter requirements.

The results and analysis of the City's survey were forwarded to MGCS.

Toronto Employment and Social Services

The City of Toronto provides a number of financial empowerment programs through Toronto Employment and Social Services (TESS). Social assistance clients and other residents can access information about financial services and supports in their communities. TESS also provides targeted programs, such as the Mpower Money Coaching Program piloted in 2016. Thirty volunteer professional financial planners, trained to provide financial coaching to people with low incomes, supported 96 social assistance clients and job seekers to identify, plan for, and achieve financial goals. Fifty-two percent of all participants achieved a financial goal and 80 percent of those who attended three or more sessions with a financial planner achieved a financial goal. Financial goals included paying off payday loans, reducing debt, improving credit scores and successfully implementing saving plans. TESS continues to develop new approaches to support the financial literacy and empowerment of their clients and residents.

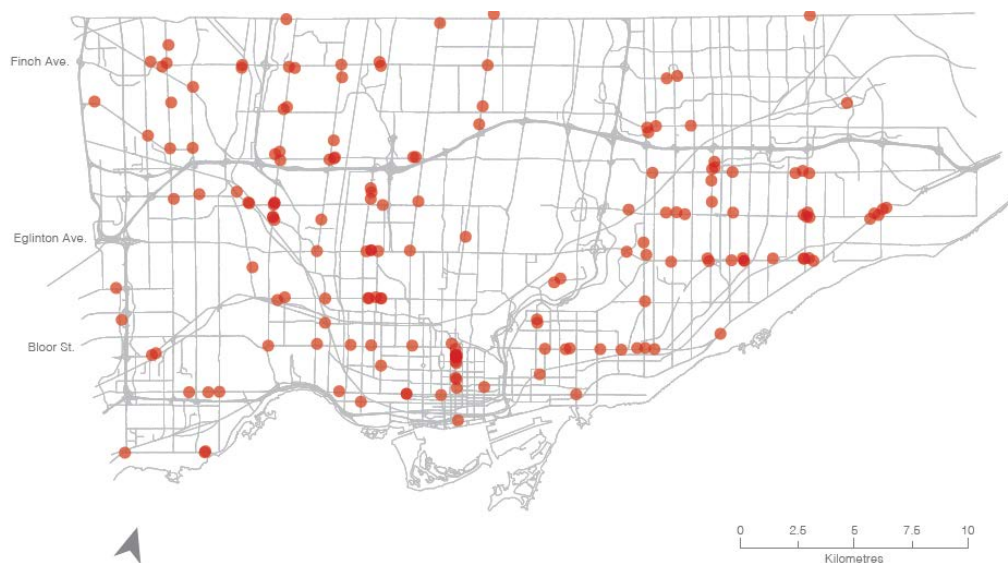
Some consumers do not have access to, or do not want to access a traditional bank account. TESS introduced a TESS Payment Card (formally called the City Services Benefits Card) in 2012 to enable clients to electronically receive and access social assistance payments through a TESS issued payment card. The TESS Payment Card reduces the need for clients to cash their social assistance cheques at alternative financial services, such as payday loan establishments. Since 2010, there has been an 83 percent decline in issuing, in-person cheques. Today, approximately 88 percent of the City's Ontario Works caseload use electronic payments, either through a traditional

bank or a TESS Payment Card, to receive their financial support. TESS actively promotes the use of direct bank deposit. Having a bank account promotes a myriad of benefits for residents, including less reliance on payday loan establishments.

Payday Lending in the city of Toronto - Data and Complaints

Payday loan establishments are distributed throughout Toronto, as demonstrated in figure one. However, there is some clustering of payday loan establishments on Yonge Street, south of Bloor Street.

Figure 1 - Distribution of Payday Loan Establishments as of August 2017



Complaint Data

As payday loans are regulated under provincial legislation, complaints against payday loan establishments are received by MGCS. If an individual takes out a payday loan and is unable to pay it back, it is not grounds for a complaint. According to MGCS, a complaint requires documented evidence of a payday lender violating the Payday Loans Act. Prior to filing a consumer complaint, a consumer must also first try to resolve a complaint with a payday loan establishment.

MLS received the following complaint data from MGCS in February 2018:

	2013	2014	2015	2016	2017	Total
Total Complaints for Payday Lenders and Loan Brokers in Ontario	43	5	6	8	3	65
Complaints in Toronto	12	2	2	4	1	21
Complaints in other cities	31	3	4	4	2	44

Approximately one third of the complaints received by MGCS are about payday loan establishments in the city of Toronto. However, given that the city is the most populous in Ontario, with the highest number of payday loan establishments; the higher proportion of complaints may be expected.

Jurisdictional Scan

Several Ontario municipalities requested the authority to restrict the number and location of payday loan establishments from the Province of Ontario. At this time, the City of Hamilton is the only municipality to use this new authority. Other municipalities, including Ottawa, Brantford, and Thunder Bay, are currently exploring whether they will license payday loan establishments and will report later in 2018/2019.

The Cities of Oshawa and Barrie currently regulate payday loan establishments through a zoning bylaw. In Oshawa, payday loan establishments cannot be within 50 m of one another, and in Barrie, payday loan establishments cannot be within 100 m of one another. Outside of Ontario, the City of Calgary and the City of Winnipeg also regulate payday loan establishments through a zoning bylaw (separation distance of 400 m and 1000 feet, respectively). The Cities of Halifax and Regina do not regulate payday loan establishments.

Next Steps

In the coming months, staff will conduct additional research and consultation to review the payday loan industry in Toronto and examine its impacts. If City Council approves the interim licensing approach recommended within this report, which will cap the number of payday lenders in the City, staff will monitor the outcomes of the approach as part of the review.

Research - May - August 2018

Research will include reviewing academic research on payday loans; reviewing the possible licensing conditions for payday loan establishments; analyzing provincial and Better Business Bureau complaints about payday loan establishments in Toronto; and leading an interdivisional working group with Social Development, Finance and Administration, Economic Development and Culture, Toronto Employment and Social Services, City Planning, Toronto Public Health, and Legal Services to align recommendations with the City's economic and poverty reduction goals. The first interdivisional meeting occurred in February 2018 and was used to discuss current divisional work related to payday loans.

Monitoring and Evaluation of Interim Licence and Cap - Throughout review

If Council adopts the recommendations within this report to licence and cap payday loan establishments, staff will monitor the impact of the new regime on Torontonians, compliance rates, and enforcement efforts throughout the review period and identify successes, challenges, and the need for possible Bylaw changes.

Consultation - September - November 2018

Staff will conduct comprehensive public and stakeholder consultations on any proposed changes. Staff will also conduct an in-depth jurisdictional scan, including discussions with municipalities who have already implemented a licencing regime for payday loan establishments and municipalities that are considering it.

Recommendations Report - Second quarter of 2019

Staff will report back to the Licensing and Standards Committee in the second quarter of 2019, based on the research and feedback received with final recommendations.

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