

CITY OF VANCOUVER

POLICY REPORT
URBAN STRUCTURE

Report Date: August 8, 2005
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Meeting Date: September 15, 2005

TO: Standing Committee on Planning and Environment

FROM: Director of City Plans in consultation with the Chief License Inspector and the Director of Social Planning

SUBJECT: Payday Lending Businesses

RECOMMENDATION

- A. That Council instruct staff to forward the "Payday Lending Businesses" report to the Chair of the Consumer Measures Committee requesting that the information in the report be taken into consideration when developing regulations for the payday loan industry, and in particular noting Council's interest in reducing the cost of borrowing and diminishing the social impacts on individuals repeatedly using payday loans to address financial difficulties.
- B. That Council instruct staff to report back on the impact of regulations on payday lending businesses after federal and/or provincial regulations have been implemented.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the above noted recommendations.

COUNCIL POLICY

There is no applicable Council Policy.

PURPOSE AND SUMMARY

On April 14, 2005, after considering the payday lending issue, Council directed staff to report back on the number and location of existing payday lending businesses and policy options to manage such businesses, specifically including recommendations on the following:

- Policy to guide future land use decisions regarding payday lending businesses
- Policy to regulate payday lending businesses, and
- Steps to encourage existing lending institutions to provide low income people with better access to lending services

Council also directed that letters be written to the provincial and federal governments to develop and enforce regulations for the payday loan industry.

This report responds to Council direction. It provides background information on the payday lending industry, as well as information about the number and distribution of payday lenders in Vancouver. It describes the activities of the industry association, federal and provincial government initiatives, and regulation at nearby municipalities. It also looks at the profile of the average borrower, the cost of a payday loan, and alternative lending sources. Staff note that the letter urging the federal and provincial levels of government to develop and enforce regulations has been sent.

Staff identified 46 businesses which offer payday loans in Vancouver, a number which has been reasonably stable over the last few years. The stores are distributed in commercial locations throughout most of the City. While there are no land use conflicts or neighbourhood impacts related to this use, there are concerns regarding the cost of payday loans, the ease of obtaining the loan, and the potential for loan rollovers, which can result in a debt cycle that is difficult to break.

The payday lending industry has joined together to form the Canadian Association of Community Financial Service Providers, and developed a Code of Best Business Practices. Federal and provincial officials are studying payday lending, and developing proposals to regulate this industry. A few provinces have some limited form of licensing or regulation. Locally, staff found that, to date, only Langley and Abbotsford have implemented regulations restricting where payday lending and cheque cashing businesses may operate.

While the profile of the average borrower is not easy to ascertain, there is agreement that the average borrower has a steady income and a bank account, likes the convenient hours and locations and ease of obtaining a loan, and secures more than 5 payday loans per year. There are numerous alternatives to payday loans, such as arranging payment plans with creditors to small consumer loans from banks or finance companies; these cost less, but are not available in small loan amounts, nor are they as convenient or as easy to obtain. As there are also social implications for those borrowers who are unable to manage their finances, increased consumer education regarding alternative lending sources and regulations resulting in a lower cost of borrowing would be helpful.

This report provides two recommendations. The first recommends that Council instruct staff to forward the report to the Chair of the Consumer Measures Committee requesting that the information in the report be taken into consideration when developing regulations for the payday loan industry, and in particular noting Council's interest in reducing the cost of

borrowing and diminishing the social impacts on individuals repeatedly using payday loans to address financial difficulties. The second recommendation asks Council to instruct staff to report back on the impacts of regulation on payday lending businesses after federal and/or provincial regulations have been implemented.

BACKGROUND

A payday loan is a small, unsecured loan; the average loan amount is \$279, and the average term of the loan is 10 days. To qualify, the borrower must have a steady source of income and a bank account. Payday loans are provided by businesses such as MoneyMart, which also provide a variety of other financial services such as cheque cashing, bill paying, currency exchange and money sending.

There has been an increase in the number of businesses offering payday loans in the last decade. It is estimated there are about 1200 businesses offering payday loans in Canada today. MoneyMart, with about 330 stores in Canada, is the industry leader.

The reasons for the rapid growth in the number of payday loan businesses are as follows:

- Consumers have higher debt to income ratios and lower savings to disposable income ratios, resulting in limited savings to cope with unexpected expenses.
- Salary advances from employers are less available
- Banks have consolidated their operations and closed community branches
- Charges for NSF cheques, ATM machine usage and credit card fees have increased

Payday loans are also marketed online by internet payday lending companies and are made and repaid using online application forms, direct deposit, and electronic withdrawal. While internet payday lending is a rapidly increasing industry, this report is limited to payday lending businesses with a physical premises in the City.

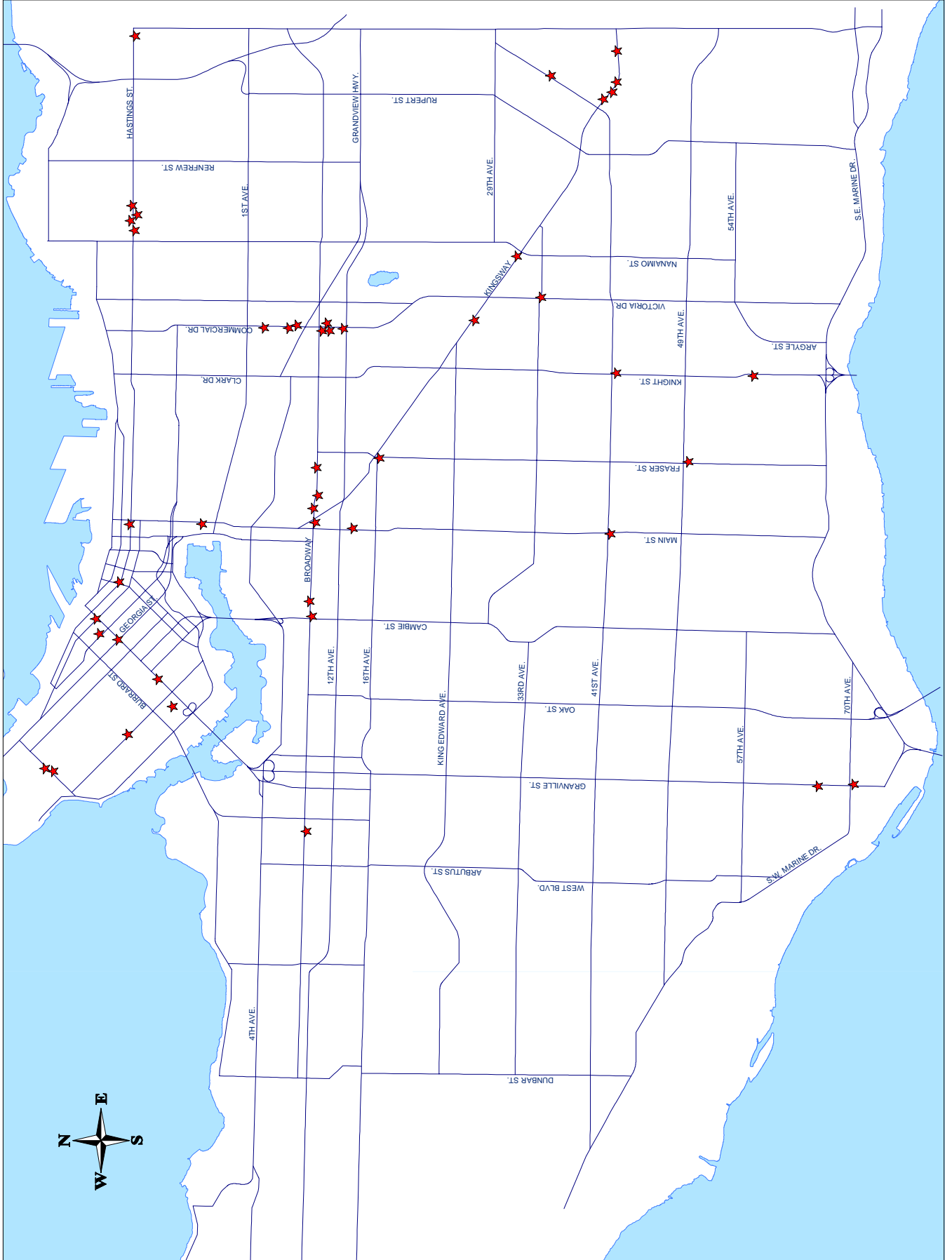
DISCUSSION

1) Existing Situation and Policies to Guide Future Land Use Decisions

a) Payday Lending Businesses in Vancouver

Staff identified 46 businesses offering payday loans in Vancouver. The majority of these businesses are located with other retail uses on busy arterial streets, typically with good transit service. There are also a few payday loan businesses that are located on the upper floors of office buildings with no signage or street presence. The map on the following page shows the distribution of payday loan businesses in the City.

The map shows a broad distribution of payday lending businesses, with clusters around Commercial Drive, Kingsway near Boundary, Broadway near Kingsway, and Granville Street in the downtown. Discussions with payday lending business representatives revealed that the optimal locations for such businesses are in downtown areas or commercial nodes in proximity to other high traffic uses, such as Starbucks, Blockbuster, 7-11 stores, and large pizza chains; the target customer is younger and values convenience.



Payday Lending Businesses in Vancouver, May 2005

Staff researched the change in the number of payday lending businesses over time and found that the number of businesses offering payday loans has remained relatively stable at between 40 and the current 46 in the last few years. It should be noted, however, that MoneyMart only introduced payday loans as a service about 6 years ago. Vancouver's payday lending businesses generally operate within normal business hours. Further, payday lending businesses have limited parking and loading requirements, factors which sometimes generate neighbourhood impacts. In addition, it is an outright use in most zones, and therefore guidelines do not apply.

Discussions with property use inspectors revealed no complaints associated with this land use. The Financial Crime Unit of the Vancouver Police Department (VPD) indicated that only a single complaint was made at the beginning of 2005 (refer to VPD comments on page 9).

With regard to the Zoning and Development By-law, businesses that provide payday loans are considered a retail use (retail store), and are permitted as an outright use in all commercial and historic area districts and in some industrial districts and as a conditional use in some multiple dwelling districts and other industrial districts. All existing businesses providing payday loans are outright uses located in commercially zoned areas.

b) Regulations in other Local Municipalities

Most local municipalities do not regulate payday lending businesses. The municipalities of Abbotsford, Burnaby, Coquitlam, Langley, New Westminister, North Vancouver District, Richmond and Surrey were contacted regarding the existence of by-law or other regulations for this use. Of these, only Langley and Abbotsford regulate these types of businesses using provisions in their zoning by-laws.

The City of Langley passed by-laws earlier this year which rendered current licensed payday loan, cheque cashing and currency exchange businesses as legal non-conforming and restricted any new such businesses to locations within a shopping mall, with access from within the mall. This was done in response to concerns raised by the Downtown Langley Merchants Association that these types of businesses were not beneficial to the ongoing revitalization and community atmosphere being developed in the area.

In Abbotsford, the Downtown Abbotsford Commercial Zone (C7) limits certain types of uses, including thrift stores, recycling depots and cheque cashing businesses, with a view to encouraging and attracting a higher calibre of retail uses.

New Westminister and Surrey, like Vancouver, are in the process of investigating payday lending businesses to determine whether municipal regulation is warranted.

c) Conclusion

Given the number and distribution of this land use and its lack of neighbourhood impacts, staff do not recommend any changes to the existing zoning, nor any policy to limit this use at this time. These uses are located in commercial areas of the City, generally well served by transit, and provide a valuable service to local residents.

2) Policy to Regulate Payday Lending Businesses

There are various layers of regulation related to the payday lending industry.

a) City's License By-Law

The City's License By-Law has a Money Services license category which includes the following four business types: currency exchange; cheque cashing; money lending service and money sending service. The businesses under consideration in this report have either a cheque cashing licence, a money lending licence, a currency exchange licence or a combination of all three. As most payday lending businesses today also offer cheque-cashing, money sending and currency exchange services, staff are looking into an administrative change that would collapse the four business types into one Money Services.

b) Canadian Association of Community Financial Service Providers (CACFS)

In early 2004, many payday lenders joined together to form the Canadian Association of Community Financial Service Providers (CACFS). Membership is voluntary (approximately 60% of payday lending businesses in Canada belong) and members agree to comply with a Code of Best Business Practices. This Code addresses many of the concerns raised regarding payday lending. CACFS members agree to:

- Fully disclose the terms and conditions of the loan, including the costs of borrowing and costs arising from failure to repay.
- Provide each customer with a copy of every document signed by the customer to obtain the loan.
- Offer customers the right to rescind the loan transaction at no cost on or before the close of the following business day.
- Abide by the "No Rollover" policy.
- Abide by fair collection practices.
- Safeguard confidential information and ensure customer privacy protection

In addition, the CACFS has established a 1-800 line for customer complaints.

A comprehensive study done by the Public Interest Advocacy Centre (Ottawa) notes that the CACFS Code of Best Business Practices goes a long way towards meeting consumer concerns but notes that self-enforcement is a concern. Furthermore, about 40% of the existing payday lending businesses in Canada are not members and are not bound by these practices. Currently in Vancouver, 22 of the 46 existing payday lending businesses (less than 50%) are CACFS members.

b) Activities at the Provincial and Federal Level

The federal and provincial governments have been studying regulation of the payday lending business for about five years. This issue has been undertaken by the Consumer Measures Committee, which is comprised of consumer and business regulators from the federal and provincial governments and chaired by the federal Minister of Industry. This Committee is drafting regulations which will be discussed at an upcoming conference of all provincial and territorial ministers responsible for consumer affairs. The intent is to develop a national

regulatory framework to ensure that payday lending business practices effectively protect consumers and are enforceable.

Currently, New Brunswick, Nova Scotia, Newfoundland, Quebec and Saskatchewan have some limited licensing or registration requirements for payday lenders. The provinces are reluctant to license an activity that involves aspects that are illegal under federal law (Criminal Code, Sec. 347 which sets the maximum interest rate at 60%) .

Based on Council direction in April, letters of support were sent to the governments of Canada and B.C. supporting their work aimed at regulating the payday lending industry.

c) Conclusion

In summary, the City, through both the Zoning and License By-laws, is able to monitor this land use. The payday lending industry also has regulations that many payday lenders follow. In addition, the provincial and federal governments are working towards a regulatory framework. Given these factors, staff recommend no policy changes at this time and a report back after federal and provincial regulations have been implemented.

3) Improving Access for Low Income People

a) Consumer Profile of Payday Loan Borrowers

A number of studies have been conducted regarding payday loan borrowers in order to confirm or refute that the industry “preys upon the poor.” The research findings have been inconsistent.

An independent study by the Public Interest Advocacy Centre in Ottawa, 2002, found that the average borrower is similar to the average Canadian in terms of age (38) and household income (\$51,400). The study also found that specific vulnerable groups (single mothers for example) were not heavily represented. The employment rate of customers was found to be slightly higher than the Canadian average.

This study found that the pawnshop sub-sector more correctly fits the “preying on the poor” characterization, as their customers’ average household income was about \$20,000 less than the Canadian average, and their employment rate about 20% less than the average.

More recently, a 2005 study commissioned by the CACFS found that only 5% of Canadians use payday lending businesses. The average borrower has a post-secondary education, a full-time job, an average income of about \$41,500 and is more likely to be between 18 and 29 years of age than over 50.

Other studies found that borrowers are likely to be low income earners who become trapped in a debt cycle where they repeatedly pay the service fee for the loan every two weeks or so, yet are unable to repay the principal. Still other studies found that in recent years, payday lending businesses have moved out of low-income areas and are focussing on the suburban, middle-class market.

Studies do agree that the average payday lending customer:

- Uses credit cards less than the average Canadian
- Likes the convenient hours/locations and the ease of getting a loan; and
- Uses payday loans upward of 5 times a year.

b) What does a payday loan cost?

The payday lending industry is often criticized for the high cost of a payday loan. While rates vary greatly, the combination of fees and interest charged typically result in a cost of \$15 to 25 per \$100 loaned, which works out to an interest rate well in excess of the 59% allowed by the Criminal Code of Canada. An example of the costs of a payday loan is included in Appendix A.

While the fees and interest charged exceed the limit allowed, the Criminal Code provision is not frequently enforced, due to the low dollar amount associated with each potential contravention and the volume of activity.

A further cost is related to rollovers - where the outstanding loan is not repaid, but rather rolled over for another 2 week period, for another fee payment. The ease of obtaining a payday loan and its cost, combined with the possibility of rollover, lead to the concern that some consumers become trapped in a debt cycle that they are unable to break. The CACFS Code of Best Business Practices does not permit rollovers.

c) What are the alternatives?

Consumer associations point to a number of alternatives to payday loans. Borrowers can seek payment plans with creditors or advances from employers, thereby dealing more directly with their need for money. In some cases, overdraft protection, or a cash advance on a credit card may be possible and less costly. Seeking a loan from a traditional financial institution or a finance company is also a possibility, one which offers a longer payback period and substantially lower borrowing costs.

Staff investigated traditional financial institutions and finance companies as alternative loan sources, focussing on the following factors:

- Convenience: number of locations in the city and hours of operation
- Minimum amount of loan granted
- Secured versus unsecured loans
- Ease of getting a loan: credit checks, amount of paper work, amount of time required
- Interest rate and fees charged

Staff found that, in contrast to payday lending businesses, traditional financial institutions:

- Have more locations but less convenient hours
- Do not make small loans (\$1500 - \$5000 minimum), nor unsecured loans
- Include a credit check and a lot of paperwork
- Loans may not be available on the same day
- Interest rates are low

There are limited finance companies providing small loans; staff researched one, HSBC Finance, and found:

- One Vancouver location generally operating during regular business hours
- Makes small, unsecured loans (\$500 minimum)
- Includes a credit check, some paperwork
- Loans often granted within the hour to same day
- Interest rate is about 30% with no fees, considerably lower than the cost of a payday loan.

Staff also researched Vancouver's Pigeon Park Savings as an example of community based banking. Pigeon Park Savings, a partnership between VanCity Savings and Credit Union and the Portland Hotel, provides cheque cashing, deposit and bill paying services for a few hours each weekday in a Downtown Eastside location (92 E. Hastings Street). It does not offer any lending type services.

Another alternative to payday loans is credit counselling. Staff at the traditional financial institutions provide credit information and advice to customers seeking loans. The Credit Counselling Society of BC also offers services to anyone who needs help handling money and reducing or eliminating debt. Further, all payday lending businesses that are members of the CACFS display credit counselling information in their premises.

d) Conclusion

Staff conclude that there are alternatives to payday loans available to consumers at much lower overall cost. However, they are not available in the small dollar amounts characteristic of payday loans, nor as convenient or as easily obtained. Increased consumer education regarding alternative lending sources by both traditional financial institutions and payday lending businesses is supported.

POLICE (FINANCIAL CRIME UNIT) COMMENTS

In regard to the question of police investigations of payday loan businesses, the Vancouver Police Department (VPD) has never engaged in such investigations. One complaint was forwarded to the VPD at the beginning of 2005, however an investigation was not entered into for a number of reasons. These are as follows and would apply to any similar future complaints:

- 1) The VPD does not have the investigative resources to take on such investigations. Existing resources must be carefully allocated and every investigation undertaken means that another will not be investigated.
- 2) The specific amounts mentioned are minimal and do not come near the VPD's threshold requirements to initiate an investigation. The point that an extrapolation of the impact on a large number of customers may possibly lead to much higher value is only speculative and only one complainant has ever come forward.
- 3) The monetary levels involved place such complaints in the category of Summary Conviction Offences. These must be dealt with within 6 months. In the case of the one complaint received by the VPD, the time period had already expired.

4) The proper avenue of complaint should be through a civil process. Another avenue that could be explored by a complainant would be to take their concerns to the Financial Institutions Commission of the BC Ministry of Finance. That organization investigates and regulates the provincially mandated financial institutions (such as credit unions). It may be interpreted that payday lending businesses are acting as such an institution by providing loans.

5) It is the understanding of the VPD that Section 347 is currently under a federal review and that it may be rescinded. For this reason, it would be difficult to find any agency willing to investigate a possible offence under a section that may be repealed in the near future.

SOCIAL IMPLICATIONS

There are social implications for those individuals who are experiencing financial difficulties and are repeatedly using payday loans as a short term solution. For these individuals, the ease of obtaining the loan and the cost of paying it off may make it more difficult to seek a long term solution. On the other hand, for the occasional borrower, the higher costs are viewed as reasonable, given the convenience and the ease of obtaining the loan.

Changes being considered by the federal and provincial governments which bring down the cost of borrowing will diminish the social impacts somewhat. Furthermore, changes providing for increased consumer education will also help consumers seeking alternative lending sources.

CONCLUSION

The number of payday lending businesses in Vancouver has remained fairly stable over the last few years; they are widely distributed across the city with clusters at some high traffic commercial locations. Staff believe no zoning or licensing policy changes are required at this time.

Both the federal and provincial governments, through the Consumer Measures Committee, have been studying payday lending and are working on proposals to regulate this industry. While staff have no land use concerns, there are social concerns related to those individuals who use payday loans repeatedly to address financial difficulties. For this reason, staff recommend that Council instruct staff to forward the report to the Chair of the Consumer Measures Committee requesting that the information in the report be taken into consideration when developing regulations for the payday loan industry, and in particular noting Council's interest in reducing the cost of borrowing and diminishing the social impacts on individuals repeatedly using payday loans to address financial difficulties. Also, it is recommended that Council instruct staff to report back on the impacts of regulation, when implemented, on the local payday lending industry.

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Description of Payday Loan

A payday loan is a small, unsecured loan that is usually repaid within two weeks. Between 1.0 and 1.4 million Canadians have used a payday lending service over the last three years. The borrower writes the payday lender a postdated cheque in the amount of the loan plus interest and fees. The payday lender gives the borrower the amount of the desired loan, in cash. No credit check is run as part of the process, and the lender keeps the cheque as collateral until the loan is repaid, or deposits the check on the date the loan is due (typically one day before payday). The due date is set as the day before payday to enable the payday lender to have the post-dated cheque in the banking system when the borrower's pay cheque is deposited by the employer.

Cost of Payday Loan

The cost of a payday loan is typically comprised of interest and fees. While the stated rate of interest for a payday loan is often 59% (1% less than the rate allowed by the Criminal Code of Canada), the associated fees and charges, which are sometimes optional or avoidable, can result in an effective rate of interest in the range of 300 - 900%.

In response, the industry notes that the examination of the interest rate is not particularly helpful in looking at the cost of a short term loan. They note, for example, that if a lender grants a loan of \$100 for five days and charges \$1 in interest, the loan transaction equates to 106.8% effective annual interest.

The following charges would apply for a one week \$100 payday loan from MoneyMart:

\$100.00	Loan amount
\$.89	Interest for one week (59% per annum)
\$ 7.99	Cheque cashing fee - flat rate of \$7.99
\$ 10.08	Cheque cashing fee - based on 9.99% of the face value of the cheque (loan amount plus interest)

\$118.96	Total maximum cost

Both the \$7.99 and \$10.08 fee can be avoided if the borrower returns on or in advance of the due date and pays off the loan. If the borrower wishes, he/she may choose to have the payday lender deposit the post-dated cheque that secured the loan, and would thereby incur both of the cheque cashing fees.

Rollovers of Payday Loans

When the borrower is unable to repay the loan when it is due, some payday lenders will "roll over" the loan for another short term, and charge the fees again. In the above example, with no prohibition on rollovers, if the original \$100 loan were rolled over 6 times, the fees paid (\$113.76) would exceed the principal, which would still be outstanding. However, staff note that members of the Canadian Association of Community Financial Service Providers (CACFS) have a "No Rollover" policy.