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**Date** November 12, 2019 **Report No.** 2019-594

**To** Chair and Members  
Committee of the Whole – Operations and Administration

**From** Catharine Brubacher  
General Manager of Corporate Services / City Treasurer

Paul Moore  
General Manager of Community Development

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### 1.0 Type of Report

Consent Item   
Item For Consideration

### 2.0 Topic **Payday Loan Establishments – Business Licensing Proposal and Information Update [Financial Impact: Licence Fee Revenue Increase \$5,070]**

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### 3.0 Recommendation

- A. THAT Report 2019-594, Payday Loan Establishments – Business Licensing Proposal and Information Update, BE RECEIVED; and
- B. THAT a by-law to amend Chapter 326 of the City of Brantford Municipal Code – General Provisions Issue of Licences BE PRESENTED to City Council for adoption to licence Payday Loan Establishments in the City of Brantford as outlined in Report 2019-594 with the following conditions:
  - i. Confirmation that the use is permitted in accordance with the Zoning By-law

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- ii. 150m minimum separation distance between Payday Loan Establishment location and identified sensitive land uses;
  - iii. A limit of ten Payday Loan Establishments Business Licences within the City of Brantford;
  - iv. Proof of a valid Provincial Licence pursuant to the *Payday Loans Act, 2008*;
  - v. Commercial General Liability Insurance in the amount of \$2,000,000; and
  - vi. Additional responsibilities of the Operator/Licensee as outlined in Report 2019-594.

C. THAT staff BE DIRECTED to provide to report back to Council after the first full licensing year including with an update on the Licensing Program as it relates to Payday Loan Establishments.

#### **4.0 Purpose and Overview**

Staff from the City's Licensing, Planning and Corporate Initiatives and Community Strategies Departments have undertaken research and public consultation regarding the operation of Payday Loan Establishments within the City of Brantford and the former County lands now within the City's boundary. Staff is recommending that these establishments be licensed under the City's Business Licensing program.

#### **5.0 Background**

City Council, at its meeting held September 18, 2018, adopted the following:

A. THAT Staff BE DIRECTED to report back to Council with respect to potential amendments to the City of Brantford Zoning By-law 160-90 to regulate the location of payday loan establishments in the City of Brantford, including minimum separation distances between payday loan establishments and minimum separation distances from various sensitive land uses, including, without limitation:

- i. social service locations;
- ii. methadone clinics;
- iii. group homes;
- iv. schools; and
- v. halfway houses; and

- B. THAT Staff BE DIRECTED to report back to Council with potential amendments to Chapter 326 of the City of Brantford Municipal Code to add a schedule to license payday loan establishments, and to include in said schedule a cap on the number of payday loan establishments permitted in the City of Brantford; and
- C. THAT the Mandate of the Healthy Brantford Task Force BE AMENDED to include the investigation of and research into the possibility of working with credit unions and other social agencies to investigate more affordable and sustainable lending alternatives for those currently dependent on short term lending or in need of access to short term loans; and
- D. THAT Staff correspond with Willem Bouma, MPP, regarding the introduction of a Bill to amend the *Payday Loans Act* to reduce the consumer borrowing interest rate.

The correspondence referenced in Clause D was sent to Willem Bouma, MPP, Brantford-Brant on September 21, 2018 as directed by City Council. This report addresses the direction to staff within the remaining Clauses (A – C).

## 6.0 Corporate Policy Context

### High Quality of Life and Caring of All Citizens

Brantford will be recognized as a safe and healthy community – one that promotes and enables the well-being of its citizens, and supports access of all citizens to a range of health and community services.

### Economic Vitality and Innovation

Brantford will build a strong, diversified economic base that provides opportunities for both citizens and potential investors while supporting and enhancing innovation and education.

## 7.0 Input From Other Sources

### 7.1 Technical Liaison Response

Staff collaborated to gather data and complete an analysis involving the following areas: Clerk's Department, Community Development, Corporate

Initiatives and Community Strategies Department, Legal and Real Estate Services, and, Social Assistance and Homelessness Services.

## 7.2 Public Survey Response

Consultation took place in the form of a survey to the public, patrons and business owners of Payday Loan Establishments. The survey was made available for all interested parties and was directly circulated to existing Payday Loan Establishments, post-secondary institutions, the Brantford Brant Chamber of Commerce, and the Downtown Brantford Business Improvement Area. The survey was open for two (2) weeks and was promoted on the City's website and social media platforms.

237 responses were received and the general themes of the feedback are outlined in the table below:

Question Topic	Comments from Respondents	Outcome
Limit the Number of Payday Loan Establishments	<p>Limiting the number of establishments will only increase the value of the market share to the operator.</p> <p>No more than ten (10) locations within the City. One (1) per 10,000 people seems reasonable.</p>	<p>Staff is recommending a limit of ten (10) locations within the City. Caps within individual wards are not recommended at this time, to allow choice for consumers and competition for brokers.</p>
150m Minimum Separation Distance	<p>People will travel to get a loan.</p> <p>The casino should be included as a sensitive use and part of the minimum separation distance.</p>	<p>Staff is recommending a 150m minimum separation distance from Gambling Establishments as defined in the City's Zoning By-Law, which includes casinos.</p>
Communication Material at Payday Loan Establishments	<p>Charts should include a visual for payments and the implications of not paying the loan back in full.</p>	<p>The <i>Payday Loans Act, 2008</i>, prescribes signage requirements relative to poster size, font size and content. The <i>Collection and Debt Settlement Services Act, R.S.O. 1990</i> prescribes the exact debt</p>

		management literature to be issued by the Payday Lender to consumers with each loan.
Payday Loan Establishment – Business Licence Fee	Proposed fees are too low.	City Business Licensing Fees are applied consistently across all Schedules of Chapter 326 of the Municipal Code, and are based on a formula as outlined in Section 9.0.
Additional Comments: Alternatives to Payday Loans	Multiple responses included comments in relation to the lack of low barrier banking alternatives, access to small dollar loans, and cycles of debt.	Appendix B references low barrier banking alternatives and discusses how Social Services is implementing strategies to support Clients with financial administration.

## 7.3 Comparator Research

### 7.3.1 Business Licensing

Licensing Staff conducted a review of six (6) municipalities that currently require Business Licences for Payday Loan Establishments to operate within their jurisdiction: Chatham-Kent, Hamilton, Kitchener, Kingston, London and Toronto. Research indicates that regulations imposed by comparator municipalities include a limit on the number of Payday Loan Establishments per ward, proof of insurance, background checks, copies of lease agreements and master business licences.

### 7.3.2 Zoning

Planning Staff conducted a review of eight (8) other Ontario municipalities including Waterloo, Kitchener, Hamilton, Kingston, Toronto, London, Barrie and Oshawa. Half of those municipalities have incorporated some regulations in their Zoning By-laws to regulate Payday Loan Establishments. It is important to note that two (2) of these By-laws are currently under appeal; however,

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these appeals may be related to other broader issues because in the two (2) cases under appeal (Kitchener and Waterloo), the municipalities involved had passed new comprehensive Zoning By-laws. The other municipalities (Hamilton, Kingston, London and Toronto) use licensing only as the mechanism to regulate Payday Loan Establishments. Of the municipalities reviewed who incorporated regulations in their Zoning By-laws, none applied minimum separation distances from sensitive land uses. Most of the municipalities restricted the zones where Payday Loan Establishments could locate. In some cases, the Zoning By-law further restricted the distance to other Payday Loan Establishments on certain streets or provided distance separation from “uses that reduce the quality of pedestrian environment” (eg. tattoo or body piercing parlours, or pawn shops) rather than sensitive land uses.

## **8.0 Analysis**

Staff deployed a coordinated approach to review Payday Loan Establishments and have prepared recommendations in keeping with the overall direction provided by City Council. The Analysis Section of this Report has been divided into the following areas for Council’s consideration:

- 8.1 General Information on Payday Loan Establishments
- 8.2 City of Brantford - Licensing Proposal
- 8.3 City of Brantford and County of Brant - Zoning Implications (By-laws 160-90 and 61-16)
- 8.4 Healthy Brantford Task Force Information

### **8.1 General Information on Pay Day Loans Establishments**

#### **8.1.1 Payday Loan Establishments**

A Payday Loan Establishment offers short-term loans often associated with high fees. The borrower is required to pay the loan back from their next paycheque, and if they can’t repay the loan on time, they incur additional fees and interest charges, which in turn, increase their debt.

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### 8.1.2 Current City of Brantford Landscape

There are currently ten (10) Payday Loan Establishments within the City, and operating under provincial licences for lenders. The locations of the ten (10) establishments form two (2), evenly split clusters of five (5) in the north and south ends of the City. One (1) cluster is concentrated on King George Road between Powerline Road and Fairview Drive, while the others appear to be centralized in and around the downtown on Darling Street, Dalhousie Street, Colborne Street and Brant Avenue.

The name and locations of the existing establishments are as follows:

Brant Loans 'Til Payday Inc.	151 Darling Street, Rear
Cash 4 You (2)	212 King George Road 63 Brant Avenue, Unit C
Cash Money (2)	196 Dalhousie Street, Unit 1 250 King George Road, Unit 4
Cashco Loans	325 King George Road, Unit B
ENCA\$H	603 Colborne Street E, Unit 15
CASHMAX	190-192 King George Road
National Money Mart Company (2)	265 King George Road, Unit 116B 114 Dalhousie Street

### 8.1.3 Provincial Licensing

Payday Loan Lenders must obtain and continue to maintain a provincial licence from the Ministry of Government and Consumer Services, Consumer Protection Ontario program to operate legally.

Operators must maintain a bank account, adhere to a records retention plan, file financial statements, submit to inspections, address contraventions resulting from inspections within a specific timeframe that is prescribed by the inspector. Operators may be subject to administrative penalties or can also be charged with an offence under existing Provincial legislation.

## 8.2 City of Brantford - Licensing Proposal

### 8.2.1 General Business Licensing

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The City of Brantford's Business Licensing Program aims to support:

- 1) Health and Safety of the community
- 2) Consumer Protection measures
- 3) Nuisance Control measures

Staff utilizes the above principles to administer a consistent and equitable licensing program. Many businesses in the City must be licensed by the municipality to operate legally. The comprehensive Business Licensing program includes approximately 1,000 licences issued over the following 13 current licensing categories:

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|----------------------------|--|
| 1) Amusement Arcade        | 7) Temporary Sales                               |
| 2) Food Premises           | 8) Personal Service Settings                     |
| 3) General Building Trades | 9) Plumbing Trades                               |
| 4) Lodging House           | 10) Public Halls                                 |
| 5) Food Service Vehicles   | 11) Salvage Yards                                |
| 6) Pawnbroker              | 12) Clothing Donation Bin                        |
|                            | 13) Hotels and Motels<br>(Added in October 2019) |

## **8.2.2 Proposed Licensing Program – Payday Loan Establishments**

Chapter 326 of the Municipal Code, General Provisions - Issue of Licences, establishes overall regulations for City business licences, and a new Schedule A-14, is recommended to specifically address Payday Loan Establishments. The following information will provide details on the program that would be included within said Schedule.

### **8.2.2.1 Definitions**

The following definitions shall apply when reviewing the potential for business licensing of Payday Loan Establishments:

“Payday Loan Establishment” shall mean any premises or any part of them in respect of which a licensee within the meaning of the *Payday Loans Act, 2008* may operate a business pursuant to a licence issued under that Act. 2017, c. 5, Sched. 2, s. 27.;

“Licensee” shall mean a person who holds a licence under the *Payday Loans Act, 2008*;



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“Payday Loan” shall mean an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawn broking, a line of credit or a credit card;

“Loan broker” shall mean a corporation, partnership, sole proprietor, association or other entity or individual that assists a borrower in obtaining a payday loan or that holds oneself out as available to provide such assistance; and,

“Lender” shall mean a corporation, partnership, sole proprietor, association or other entity or individual that makes a payday loan to a borrower or that holds oneself out as available to make such a loan.

#### **8.2.2.2 Exceptions**

Financial Institutions as defined in the *Bank Act*, and Credit Unions as defined in the *Credit Unions and Caisses Populaires Act, 1994*, will be exempt from the proposed program to license Payday Loan Establishments. A number of regulatory bodies govern these financial institutions in Canada.

#### **8.2.2.3 Regulating the Number of Payday Loan Establishments to a Limit of 10 City-wide**

The following municipalities have recently implemented a limit on the number of Payday Loan Establishments licensed to operate, in an effort to control saturation in certain areas:

Chatham-Kent, Hamilton, Kingston, Kitchener, Toronto

In 2016, amendments to the *Payday Loans Act, 2008* and the *Municipal Act, 2001*, provided municipalities with the authority to regulate the locations and the number of Payday Loan Establishments. Currently, there are no legal provisions that would permit a municipality to completely prohibit Payday Loan Establishments.

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While limiting the number of establishments per ward has been implemented by some comparator municipalities, research indicates that this practice may actually provide establishments with a monopoly in the area, by limiting both choices for consumers, and competition for brokers. For these reasons, Staff recommends that the available Business Licences for Payday Loan Establishments not be limited per City ward, but rather, be limited to ten (10) establishments City-wide. If adopted by Council, Staff will include a review of the number of licences issued following one (1) year of licensing.

#### **8.2.2.4 150 Metre Minimum Separation Distance Requirement – Include in Licensing Program**

Council's direction included a review of potential amendments to the City of Brantford Zoning By-law 160-90 to regulate the location of Payday Loan Establishments in the City of Brantford, including minimum separation distances between Payday Loan Establishments and various sensitive land uses. In reviewing comparator data in both licensing and zoning parameters, staff recommends that the distance separation requirements be addressed through the Business Licensing schedule rather than the City or County Zoning By-Laws. This will allow for greater flexibility for change, a consistent approach to licensing application reviews and increased collaboration with licensing stakeholders. The specific zoning information is addressed in more detail in Section 8.3 of this Report.

Section 154.1(1) of the *Municipal Act 2001*, as amended, , allows a municipality to define the area "in which a payday loan establishment may or may not operate and limit the number of payday loan establishments in any defined area in which they are permitted." In accordance with Council's direction, staff recommends that licencing for a Payday Loan Establishment be conditional upon confirmation that the use is permitted in accordance with the Zoning By-laws and the location has a minimum separation distance of 150 m from selected sensitive land uses. In order to Staff to confirm the location satisfies the separation requirement, Staff recommend requiring the location not be within 150m of the following defined uses contained within

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in the City of Brantford Zoning By-Law 160-90 and County of Brant Zoning By-law 61-16, as applicable:

Crisis residence; gaming establishment; group correctional home; group correctional residence; group home; group residence; medical clinic (Brantford); medical office (Brant County); mini-group home; or schools of all types (arts, commercial, elementary, post-Secondary, private, public, secondary, and separate).

Eight (8) of the ten (10) locations currently operating as Payday Loan Establishments within the City, meet the proposed minimum separation distance of 150m. It is recommended that the remaining two (2) existing locations be recognized as operating before the minimum separation distance was introduced. As such, their locations will be noted as permitted non-conforming until such time as they cease operating or fail to obtain and maintain a municipal business licence. A map of the existing locations, including distance separation outlines, is attached hereto and marked as Appendix A.

Conversely, should one (1) of the sensitive land uses identified move into the proposed minimum separation distance parameters where a Payday Loan Establishment is licensed to operate, it is recommended the Payday Loan Establishment be recognized as meeting the required pre-existing distance until such time as they cease operating or fail to obtain and maintain a municipal business licence.

In either case as described above, the transferring of the acknowledgement of the locations not satisfying the minimum separation distance requirement of Payday Loan Establishments will not be permitted and will remain only with the original applicant/licensee. This will be closely monitored. In addition, all licensees will have their locations reviewed annually upon business licence renewal. Staff will include information on this process within its information update to Council post one (1)-year of licensing.

#### **8.2.2.5 Debt Collection Literature**

The *Payday Loans Act, 2008*, requires Payday Loan Establishments to post signage for payday loan agreements and

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further, prescribe criteria specific to the minimum font size, sample loan amounts with the associated cost of borrowing.

The *Collection and Debt Settlement Services Act*, requires that a debt agency or collector includes “Debt Collection: Information About Your Rights” when corresponding with a debtor, as prescribed by the province and Consumer Protection Ontario.

Staff recommend including the requirement for the operator/licensee to comply with the above-noted legislation at all times as a condition to obtaining and maintaining said Licence from the City.

#### **8.2.2.6 Additional Licensing Application Requirements**

Staff reviewed comparator municipalities licensing requirements as well as standard inclusions within the City’s licensing programs. All Licensing Schedules include details on specific conditions which aid in achieving the aims and objectives of the licensing program. Payday Loan Establishment licensing specifically looks at Consumer Protection. In combination with the comparator data, and to aid in achieving the objective of the program, the following are recommended for inclusion in the proposed Business Licensing Schedule:

- 1) Confirmation has been received from the Chief Building Official that the use is permitted in accordance with the Zoning By-law.
- 2) Confirmation has been received from the Planning Department that the use will be located outside of 150 m from sensitive land uses as described in Section 8.2.2.4 of this Report.
- 3) Circulation of application to Brantford Police Services.
- 4) Confirmation of Provincial Licensing - Proof submitted with application and maintained.
- 5) Certificate of Insurance Requirements

Proof that the applicant has obtained and will maintain a Commercial General Liability insurance policy with a policy limit of not less than \$2,000,000 per occurrence and keep in force during the term of the License, Commercial General

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Liability Insurance satisfactory to The Corporation of The City of Brantford.

6) Specific Licensing Requirements

Every Payday Loan Establishment operator will be responsible to:

- a) Ensure that either the operator or individual who is responsible for the operation of the premises is present and available at the premises at all times;
- b) Post in a visible place the required signage and communication material as prescribed by the *Payday Loans Act, 2008*; and
- c) Ensure the establishment meets all requirements of the *Payday Loans Act, 2008* and its regulations, the *Collection and Debt Settlement Services Act, R.S.O. 1990* and its regulations, the *Consumer Protection Act, 2002* and its regulations, the *Building Code Act, 1992* and its regulations, the *Fire Protection and Prevention Act, 1997* and its regulations, the *Health Protection and Promotion Act* and its regulations, and any applicable by-law.

### **8.2.3 Implementation Plan**

Following adoption of the By-law to amend Chapter 326 of the City of Brantford Municipal Code as referenced in Recommendation B, Licensing Staff will initiate an implementation plan for the new licensing program. Direct contact with existing Payday Loan operators within the City will be coordinated.

Staff will also undertake compliance initiatives including, but not limited to:

- 1) Educating owners/lenders on requirements;
- 2) Working with applicants to complete their applications by March 31, 2020; and
- 3) Updating the City's business licensing section of the website with the new requirements.

Further, Staff recommend that the initial year of licensing commence upon the effective date of the by-law and provide operators an

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opportunity to be granted a licence that expires March 31, 2021. This opportunity is subject to a successfully completed application, including a new application fee being received by March 31, 2020. This provides operators the opportunity to gain compliance with the program and aligns with the current expiration timelines contained within the City's business licensing program.

After the March 31, 2020 deadline, Staff will proceed with appropriate enforcement initiatives in accordance with Chapter 326 of the City of Brantford Municipal Code.

### **8.3 City of Brantford and County of Brant - Zoning Implications (By-laws 160-90 and 61-16)**

As noted in Section 5.0 of this Report, Council also directed that Staff report back in regard to potential amendments to the City of Brantford Zoning By-law 160-90 to regulate the location of Payday Loan Establishments in the City, including minimum separation distances between these establishments and various sensitive land uses. Section 8 of the January 1, 2017 Boundary Agreement between the City and the County provides that the County's Zoning By-law continues to remain in force for the annexed lands. In this regard, Planning Staff also reviewed the County of Brant Zoning By-law 61-16 as it relates to the former County lands.

Currently, Payday Loan Establishments are not defined in either the City of Brantford Zoning By-law 160-90 or County of Brant Zoning By-law 61-16. According to Zoning By-law 160-90, they are considered to be a general office type use which is defined as: *"a lot and a building, or structure, or portion thereof, used as an office or offices for a profession, occupation, craft, non-profit organization, or business, and may include an industrial service office, but shall not include any other use herein defined"*. These types of uses are permitted in all commercial zones in the City with the exception of the 'Automobile Service Commercial Zone (C6)' or the 'Convenience Commercial Zone (C7)'. They are also permitted on lands which are zoned 'Industrial Commercial Zone (M1)' or 'Business Park Industrial Zone (M3)'. With respect to Brant County Zoning By-law 61-16, they are considered a financial institution type use and defined as: *"a building which is used to provide financial services directly to the public, and includes uses such as a bank, trust company, credit union, securities dealer, finance companies and stockbrokers"*. This use is only permitted

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on lands in the former County located in the area of Paris Road, Powerline Road and King George Road.

As outlined in Section 7.3.2 of this Report, Planning Staff reviewed eight (8) comparator municipalities. As outlined previously, zoning by-laws regulate the use of the land and do not regulate or restrict the individual activities that are unique to a specific business. They are also not a tool that is used to limit competition. If Council wants to pursue amendments to the City and County Zoning By-laws, Staff will need to develop a new definition for Council's consideration as well as associated regulations and identify minimum separation distances that require rationale, all of which are subject to appeal. The research, consultation and public process involved is lengthy and will not necessarily respond to the concerns of Council, especially if appealed. Further, even if successful, operators would continue to have the ability to submit applications for further amendments to the Zoning By-law (or variances) whereas there is no appeal mechanism in regard to licensing.

In the case of Payday Loan Establishments, these types of uses are legal uses, considered to be a general office or financial institution depending on the applicable Zoning By-law. If the purpose of regulating Payday Loan Establishments is to restrict the number of such establishments in the City and their location, then in Planning Staff's opinion, the most effective tool would be to apply licensing regulations. These types of uses are already regulated by the Province and the City could define any other regulations unique to the City, which can be easily changed as necessary. In general, the licensing process is quicker, more flexible and is not subject to appeal. Accordingly, as noted above, Planning Staff are of the opinion that the zoning process is not the most effective tool to use in order to regulate Payday Loan Establishments.

#### **8.4 Healthy Brantford Task Force and Social Services Initiatives**

Pursuant to Council's direction, staff also reviewed the potential for working with social agencies with respect to more affordable and sustainable lending alternatives for those individuals in need of access to short term loans. A detailed analysis is referenced in Appendix B to this Report.

### **9.0 Financial Implications**

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All Business Licence fees are based on a cost analysis review that includes the following:

- 1) Legislation preparation (i.e. by-law research, creation, council reporting)
- 2) Administration
- 3) Inspection Costs (Fire, Health, Building, Police)
- 4) Licensing Enforcement Costs
- 5) Licensing Prosecution Costs
- 6) IT Costs
- 7) Overhead and Infrastructure Costs
- 8) Licensing expenses

Based on this formula, the proposed Payday Loan Establishment fee would be:

New Application (due by March 31, 2020):       \$507

Annual Renewal Application:                       \$308

The additional licensing revenue for the 2020 licensing year is anticipated to be approximately \$5,070.

## **10.0 Conclusion**

Several sectors of the municipality have come together to develop a proposed licensing program that will regulate Payday Loan Establishments within the City of Brantford. The proposed licensing program aims to enforce a City-wide limit on the number of Payday Loan Establishments in operation, implements minimum separation distances from sensitive use areas, and includes application requirements for each licensee all in keeping with the direction provided by City Council. Once adopted by Council, Staff will communicate with all provincially licensed operators in the City of Brantford in order to educate and provide information on the new licensing requirements. Staff further commit to providing an information update after one (1) full year of licensing on the outcomes of the Payday Loan Establishment licensing program.





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Catherine Brubacher  
General Manager of Corporate Services  
/ City Treasurer



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Paul Moore, MCIP, RPP  
General Manager of Community  
Development



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Tanya Daniels  
Deputy Clerk/Manager, Licensing  
& Administrative Services



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Lucy Hives  
Director of Planning

Attachments (if applicable)

Appendix A – City of Brantford Map of Payday Loan Establishments

Appendix B – Healthy Brantford Task Force Analysis and Social Services Initiatives

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required  yes  no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk  yes  no

Is the necessary by-law or agreement being sent concurrently to Council?  yes  no