

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1992**

No. 70

Introduced by Council Members Eldridge, McCaffrey, Cerullo III, Fisher, Eisland, Spigner, Alter, Ognibene, Malave-Dilan, Foster, Pagan, Wooten, Abel, Berman, Castaneira-Colon, Clarke, Cruz, DeMarco, DiBrienza, Duane, Fields, Freed, Fusco, Harrison, Horwitz, Koslowitz, Linares, Marshall, McCabe, Michels, Pinkett, Powell IV, Robinson, Robles, Ruiz, Sabini, Ward, Warden, Watkins, White, Williams, Maloney and Dear.

A LOCAL LAW

To amend the Administrative Code of the City of New York in relation to requiring security measures at automated teller machine facilities located within the city.

Be it enacted by the Council as follows:

Section 1. Legislative intent. The Council hereby finds that the use of automated teller machines (ATMs) to conduct banking transactions has become a fact of daily life for millions of New York City's residents, commuters and visitors. According to a March 1992 report to the City Council prepared by representatives of the city's banking industry, New Yorkers use ATM machines nearly one million times each day. In 1991, there were 8.1 million active ATM bank cards in New York City—more than the city's total 1990 population of 7.3 million people—which were used to conduct over 326 million transactions. Further, more than 18 million cardholders in the NYCE-banking network have access to an ATM in New York City. According to the banking industry, there are approximately 2418 ATMs in 1038 locations located throughout the city; 780 of those locations, or 75%, are open 24-hours a day. The banking industry asserts that the popularity of ATM banking continues to grow.

From January 1990 to December 1991, the New York Police Department reported 743 robberies and attempted robberies associated with ATMs; the actual number of such crimes is believed to be much higher. Many of these were crimes of extreme violence, such as the shooting of a Manhattan Assistant District Attorney at an ATM in Brooklyn and the murder of Police Sergeant Keith Levine, who was trying to intervene in what appeared to be a robbery at a midtown Manhattan ATM.

The Council also finds that security measures currently used at the majority of ATM locations are inadequate to protect the public safety. At present, there is no uniform set of standards for security at ATM facilities. The banks report that only 33% of all ATM locations are equipped with surveillance cameras; only 10% have guards. Moreover, a Council survey of 231 ATM locations throughout the city revealed that access to an ATM facility is not limited to persons having ATM bank cards; virtually any card having a magnetic stripe will allow entry into an ATM location. Of the interior ATMs surveyed by Council staff, 26% had broken or faulty door locks; 6% provided "elevator mirrors" allowing users to see blind spots and 37% posted signs with consumer safety information. The safety of ATM facilities thus

frequently differs widely from location to location and the users of such facilities are often vulnerable to robberies and muggings.

The Council therefore concludes that it is necessary and appropriate for the protection and safety of the public to require banks and other institutions providing ATM services to install certain minimum security measures at each ATM facility. It is the Council's belief that these requirements, including adequate lighting, surveillance cameras, transparent windows, reflective mirrors and surfaces, and consumer safety warnings, will significantly enhance the safety and well-being of New York City's residents, workforce and visitors.

The Council recognizes the need for further technological developments to create a system by which access to ATM machines is limited, to the greatest extent possible, to holders of valid access cards issued by banks and other financial institutions. In order to facilitate the development of such technology, the bill calls for the formation of a task force of bank representatives and other appointees of the Mayor and Speaker of the Council to join in a cooperative effort to examine the technological feasibility of the limited access door requirement, and report to the Mayor and the Council no later than one year after its formation. If within six months after the submission of this report, an ATM facility is unable to comply with the limited access door requirement, the bill requires that at least one security guard be stationed within the ATM facility during those times, after regular banking hours, when the ATM facility is available to customers.

§ 2. Chapter one of title ten of the administrative code of the city of New York is hereby amended by adding thereto a new section 10-160 to read as follows:

§ 10-160 Security measures at automated teller machine facilities.

a. Definitions. For purposes of this section:

(1) "Access code" means a series of numbers or letters, unique to each banking customer, which when entered into an automated teller machine, grant the customer entry to the customer's account records.

(2) "Automated teller machine" means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(3) "Automated teller machine card" means an instrument authorized by a bank which permits a customer to gain access to an automated teller machine facility.

(4) "Automated teller machine facility" means the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

(5) "Bank" means any banking corporation, as defined in section 11-640 of the code, which operates, owns, or controls an automated teller machine facility in the city of New York.

(6) "Adequate lighting" with respect to an open and operating automated teller machine facility located on an exterior wall of a building open to the outdoor air, and any defined parking area, means lighting during nighttime hours according to the following standards:

(i) a minimum of ten candlefoot power at the face of the automated teller machine and extending in an unobstructed direction outward five feet;

(ii) a minimum of two candlefoot power within fifty feet from all unobstructed directions from the face of the automated teller machine. If such machine is located within ten feet of the corner of the building and the automated teller machine facility is generally accessible from the adjacent side, there shall be a minimum of two candlefoot power along the first forty unobstructed feet of the adjacent side of the building.

With respect to defined parking areas, "adequate lighting" means a minimum of two candlefoot power in that portion of the parking area within sixty feet of the automated teller machine facility.

With respect to an automated teller machine facility located within the interior of a building, "adequate lighting" means lighting, on a twenty-four hour basis, which permits a person entering the facility to readily and easily see all persons occupying such facility, and which permits a person inside the facility to readily and easily see all persons at the entry door of such facility.

(7) "Defined parking area" means that portion of any parking area open for bank customer parking which is (i) contiguous to any paved walkway or sidewalk within fifty feet of an automated teller machine facility; (ii) regularly, principally and lawfully used for parking by users of the automated teller machine facility while conducting transactions at such automated teller machine facility during nighttime hours; and (iii) owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the operator. The term does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine who are conducting automated teller machine transactions during nighttime hours. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

(8) "Nighttime hours" means the period of time beginning at sunset and ending at sunrise.

(9) "Candlefoot power" means the light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(10) "Regular banking hours" means the period of time during each weekday, Monday through Friday, commencing at nine o'clock a.m. and ending at three o'clock p.m.

b. Security measures. A bank shall maintain the following security measures with respect to each of its automated teller machine facilities:

(1) a surveillance camera or cameras, which shall view and record all persons entering, exiting, and moving within or about an automated teller machine facility located within the interior of a building, or which shall view and record all activity occurring within a minimum of three feet in front of an automated teller machine located on an exterior wall of a building open to the outdoor air. Such camera or cameras need not view and record banking transactions made at the automated teller machine. The recordings made by such cameras shall be preserved by the bank for at least thirty days;

(2) within six months after the submission of the report of the temporary task force required by subdivision c of this section, entry doors equipped with locking devices which permit entry to such facility only to persons using an automated teller machine card or access code issued by a bank for that purpose. Provided, however, that any automated teller machine facility located within the interior of a building that is not equipped with such entry door locking devices within six months after the submission of such report shall thereafter have at least one security guard stationed therein during the period of time after regular banking hours when such automated teller machine facility is available to banking customers;

(3) entry doors equipped with fire exit bolts pursuant to paragraph two of subdivision k of section 27-371 of the code;

(4) adequate lighting;

(5) at least one exterior wall made substantially of untinted glass or other untinted, transparent material, which provides an unobstructed view of the automated teller machine or machines within the automated teller machine facility;

(6) reflective mirrors or surfaces at each automated teller machine which provide the user a rear view;

(7) a reflective mirror or mirrors placed in a manner which permits a person present in the automated teller machine facility to view areas within such facility which are otherwise concealed from plain view; and

(8) a clearly visible sign, which at a minimum, states:

(i) the activity within the automated teller machine facility is being recorded by surveillance camera;

(ii) customers should close the entry door completely upon entering if the automated teller machine facility is located within the interior of a building;

(iii) customers should not permit entrance to any unknown person at any time after regular banking hours when an automated teller machine facility located within the interior of a building is available to banking customers;

(iv) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility; and

(v) complaints concerning security in the automated teller machine facility should be directed to the bank's security department or to the department of consumer affairs, together with telephone numbers for such complaints. Where emergency assistance is needed due to criminal activity or medical emergency, call 911 at the nearest available public telephone.

Paragraphs two, three, five and seven of this subdivision shall not apply to any automated teller machine facility located on an exterior wall of a building open to the outdoor air.

Paragraph five of this subdivision shall not apply to any automated teller machine facility located in (i) a landmark building or within an historic district, if compliance with paragraph five would require the approval of the landmarks preservation commission, and such approval has been sought and denied; or (ii) any building, if compliance with paragraph five would require the removal of a load-bearing wall as defined in section 27-232 of the code.

c. *Temporary task force.* There is hereby established a temporary task force to advise the mayor and the council as to the technological feasibility of the limited access entry door requirements of paragraph two of subdivision b of this section. Such task force shall be comprised of fifteen members, two of whom shall be representatives of federally-chartered banks, two of whom shall be representatives of state-chartered banks, and two of whom shall be representatives of savings and loan associations. The mayor and the speaker of the city council shall each appoint seven members; the chair of the temporary task force shall be jointly appointed by the mayor and the speaker. Not later than twelve months after the appointment of the last member of the temporary task force, the task force shall submit a report containing its conclusions to the mayor and the city council.

d. *List of facilities.* Any bank which operates an automated teller machine facility shall file a list of such facilities with the police department, the department of consumer affairs, and the department of buildings, including the street addresses, intersecting streets, hours of operation, method of security, and method of surveillance at each facility, and the telephone number of the bank's security department. The police department shall distribute to each police precinct a list of all automated teller machine facilities in the precinct which are available to banking customers.

e. *Violations and penalties.* (1) A bank found to be in violation of any provision of subdivision b of this section shall be subject to a civil penalty of not more than two hundred fifty dollars. Each violation of any provision of subdivision b of this section with respect to a particular automated teller machine facility shall be considered a separate violation thereof.

~~(2) Any bank found to be in violation of any provision of subdivision b of this section shall correct the violation within three days after such finding. Failure to correct the violation within three days after such finding shall subject the bank to a civil penalty of not less than five hundred dollars or more than one thousand dollars and an additional civil penalty of two hundred fifty dollars per day for each day such violation continues.~~

(3) Any bank found to be in violation of subdivision h of this section shall be liable for a civil penalty of not more than one thousand dollars for each automated teller machine facility for which a report has not been filed. Any bank which makes a material false statement or material omission in any report filed pursuant to subdivision h of this section shall be liable for a civil penalty of not more than five thousand dollars for each report.

(4) A proceeding to recover any civil penalty authorized to be imposed pursuant to this section shall be commenced by the service of a notice of violation which shall be returnable to the commissioner of consumer affairs. Such commissioner, after due notice and an opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this section.

f. Consumer safety information. Upon the original issuance or reissuance of an automated teller machine facility access card or code, or any other means or device permitting access to an automated teller machine facility, the issuing bank shall provide its customer with written information concerning safety precautions to be employed while using an automated teller machine facility. Such written information shall include at a minimum the information described in subparagraphs (i) through (v) of paragraph eight of subdivision b of this section. In addition, upon the effective date of the local law which added this section and for one year thereafter, such written information shall also include a statement indicating that notwithstanding efforts to restrict access to an automated teller machine facility located within the interior of a building to persons authorized to use an automated teller machine card or access code, entrance is sometimes obtained by persons who are not authorized to use the automated teller machine facility.

g. Enforcement; statistics. (1) The police department, the department of consumer affairs, and the department of buildings shall be authorized to enforce this section.

(2) Statistics of crimes associated with the use of automated teller machines compiled and maintained by the police department shall be made available upon the request of any bank.

(3) Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department of buildings pursuant to this section shall not be subject to review by the board of standards and appeals.

h. Certification of compliance. Within thirty days after the effective date of the local law which added this section, and each year thereafter, every bank which has an automated teller machine facility which is in operation on such date or on such date every year thereafter, shall submit a written report to the commissioner of buildings, on a form prescribed by such commissioner, certifying that such automated teller machine facility is in compliance with the provisions of this section, or if such facility is not in compliance with the provisions of this section, such report shall state the manner in which such facility fails to meet the requirements of this section and the reasons for such non-compliance. Each such report shall be accompanied by a fee of one hundred dollars for each automated teller machine facility operated by the bank.

i. Compliance with building code and all other applicable provisions of law. Nothing contained in this section shall be construed to exempt or relieve any bank from complying with all relevant provisions of the building code and all other applicable provisions of law.

j. Exemptions. The provisions of this section shall not apply to any unenclosed automated teller machine located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

§ 3. This local law shall take effect 180 days after its enactment into law, except that subdivision c of section 10-160 of the administrative code of the city of New York as added by section two of this local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on July 29, 1992, and approved by the Mayor on August 13, 1992.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 70 of 1992, Council Int. No. 82-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on July 29, 1992: 40 for, 3 against.

Was approved by the Mayor on August 13, 1992.

Was returned to the City Clerk on August 14, 1992.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel