

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON TRANSPORTATION

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October 25, 2010

Start: 1:13 pm

Recess: 2:57 pm

HELD AT: Council Chambers
City Hall

B E F O R E:
JAMES VACCA
Chairperson

COUNCIL MEMBERS:
G. Oliver Koppell
Peter Koo
Diana Reyna
Vincent Ignizio
Daniel R. Garodnick
Jessica S. Lappin
Eric Ulrich
Ydanis Rodriguez
Gale A. Brewer
Darlene Mealy
James G. Van Bramer
Deborah Rose
Letitia James

A P P E A R A N C E S (CONTINUED)

David Woloch
Deputy Commissioner for External Affairs
NYC Department of Transportation

Vincent Maniscalco
Assistant Commissioner of Highway Inspection Unit,
Street Assessment, and Newsracks
NYC Department of Transportation

Christine Berthet
Chair of Transportation Committee
Community Board 4, Manhattan

Maximo Javier
Executive Director
Grand Street Business Improvement District

Marc Brumer
Manhattan Borough President Scott Stringer

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2 CHAIRPERSON VACCA: Okay. Hello,
3 oh, boy. Hello, everybody, I welcome you to the
4 Transportation Committee meeting, October 25th,
5 2010. I hope you enjoy these spacious quarters.
6 So we will do the best we can.

7 And I want to thank you for coming,
8 of course, I'm James Vacca, and I'm Chair of the
9 Transportation Committee, and I am joined by my
10 colleagues, to my right, Council Member Oliver
11 Koppell, and to my left is Council Member Peter
12 Koo. And today we're going to discuss ATM
13 machines and the regulation of ATM machines and
14 where our city is going relative to their
15 placement. And a bill by Council Member Diana
16 Reyna which would amend the Administrative Code of
17 the City of New York in relation to regulating
18 sidewalk ATMs as revocable consents and requiring
19 safety features on all outdoor ATMs. And this
20 amends Section 19-104 by lettering the existing
21 sections as subsection A and adding a new
22 subsection B. And Councilwoman Reyna I think will
23 be here in a while, we have a meeting next door.
24 Is she here? No, okay.

25 FEMALE VOICE: She had to go [off

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2 mic].

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CHAIRPERSON VACCA: Oh, I have to go vote. Okay. Well let me start by having our panel introduce themselves and, Commissioner Woloch--Deputy Commissioner Woloch?

DAVID WOLOCH: Sure, I'm David Woloch and--

[Crosstalk]

MALE VOICE: [Interposing] Hold on one second, your microphone is off.

[Off mic]

DAVID WOLOCH: --just open it, oh, it's right here, okay.

[Off mic]

CHAIRPERSON VACCA: Just introduce yourself.

DAVID WOLOCH: Sure, David Woloch, Deputy Commissioner for External Affairs at the New York City Department of Transportation.

CHAIRPERSON VACCA: Okay. Yes, sir?

VINCENT MANISCALCO: Vincent Maniscalco, Assistant Commissioner of DOT's Highway Inspection Unit, Street Assessment, and

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2 Newsracks.

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CHAIRPERSON VACCA: Okay. This hearing is being held because Councilwoman Reyna and other members of the Council feel that right now regulate--ATM machines are basically not regulated, almost have a wild, wild West of ATM machines appearing out of nowhere, taking up space on city sidewalks, not needing a Department of Transportation permit before they can be erected. Now the state of New York regulates ATMs that are operated by banks, but they're--as a whole, ATMs right now are not regulated by city regulations.

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Okay? Why don't we first proceed with the slides, we have a PowerPoint presentation.

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[Off mic]

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CHAIRPERSON VACCA: I guess Council Member Reyna, we're joined by Council Member Reyna.

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Okay. Let's go to the slides. As you can see, many of our ATMs are potentially hazardous--can be hazardous. In fact, we have our own leaning Tower of Pisa here in the second drawing, only difference is they're ATM machines.

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2 The second ATM machine looks like
3 it's ready to topple over onto the people coming
4 out of the building, number 247.

5 Next slide. These unregulated ATMs
6 do not give users notice how much they have to pay
7 to use them. As this slide shows, most fee
8 notices do not tell people how much the fee is and
9 the top right picture even shows a fee notice that
10 was installed on an ATM machine backwards.

11 Slide, next slide. Many of these
12 ATMs are on sidewalks and obstruct pedestrian
13 paths. You have to be careful when leaving the
14 subway station not to crash into this ATM as you
15 leave. Some owners have abandoned ATMs on the
16 sidewalk. The ATM in this picture on the left has
17 been abandoned and the screen spray painted. The
18 ATM on the right is making itself useful in its
19 second life as a garbage receptacle.

20 In general, many of the ATMs we
21 have found on the street were covered in graffiti
22 and stickers and were eyesores. If you want to
23 complain, many of these ATMs had no contact
24 information and the ones that did were to
25 companies that we've never heard of.

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2 Proposed Intro 257-A would also
3 address outside ATMs, which are those that are
4 facing out to the street but not physically
5 located on a street. Many of these lack basic
6 lights and security, such as a video camera.

7 For those who do not believe these
8 ATMs are taking over public sidewalk space, here
9 are two in front of the same sidewalk. Here are
10 three in a row located within 10 feet of each
11 other. Okay. These rogue MT--I'm thinking of the
12 MTA, they're rogue too half the time--these rogue
13 ATMs can pose public safety, consumer affair
14 issues and aesthetic concerns, and the legislation
15 we have before us wants to make sure that people
16 are safe and people know that they will not be
17 ripped off and to ensure that these ATMs are
18 maintained.

19 Before I turn over the microphone
20 to our sponsor of the bill, Diana Reyna, I just
21 have to go next door to vote, and I'll be right
22 back. So I want to introduce the sponsor of the
23 bill, Diana Reyna, and ask Councilwoman Reyna to
24 commence the testimony from the Administration.

25 [Off mic]

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2 CHAIRPERSON VACCA: Oh, and let me
3 announce the members who are here who have joined
4 us: Council Member Ignizio, oh, Council Member
5 Dan Garodnick. Okay. All right, Council Member
6 Reyna.

7 COUNCIL MEMBER REYNA: Thank you so
8 much, Mr. Chair.

9 COUNCIL MEMBER KOPPELL: I wanted
10 to see the pictures.

11 COUNCIL MEMBER REYNA: I just
12 wanted to take this opportunity to thank the
13 Chairman of the Transportation Committee and all
14 its members for this hearing, Intro 257. This is
15 a safety bill.

16 An ATM on the street with no
17 lighting, no security cameras, or even mirrors so
18 people can see what is happening behind them when
19 they are withdrawing money is an invitation for
20 predators. We must protect New Yorkers and all
21 our visitors who withdraw money 24 hours a day
22 throughout the city of New York.

23 Initially, upon first inspection, I
24 was shocked to learn that there was no regulation
25 of this industry, no security rules, no way to

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2 make sure they are placed appropriately, no
3 registry to see how many there are, and where they
4 are placed. In fact, the only information
5 available was a report in 2009 conducted by the
6 Manhattan Borough President Scott Stringer's
7 office, and I want to thank President Scott
8 Stringer for working with our office on this bill.

9 The ATM Safety Act of 1996 provided
10 these same safety features for bank ATMs, but the
11 necessity for people to have 24 hour access to
12 their accounts has warranted an expansion of
13 sidewalk ATMs, and Intro 257 will close a loophole
14 within the law.

15 Currently there is no way to
16 monitor an ATM's position and owners tend to
17 situate them in highly trafficked areas, which
18 leads to the overcrowding of streets. A
19 functioning city must place ATMs strategically
20 throughout its arteries.

21 As written, the legislation would
22 have a two-part regulatory mechanism. First, a
23 sidewalk ATM that are placed on private property
24 will be overseen by the New York City Department
25 of Consumer Affairs, part two would be the public

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2 sidewalks required to obtain a revocable consent
3 through the City Department of Transportation.

4 I'd like to point out,
5 unfortunately or fortunately, there was a blitz in
6 my district in Williamsburg and violations of \$100
7 tickets were given by the Department of
8 Sanitation, and I quote, I've had these ATMs for
9 six years, said Mike Kurani, manager of Bedford
10 Magazine and Smoke, the city has never bothered me
11 about them before. In response to this article, a
12 Greenpoint resident agreed, if you walk from the L
13 at Bedford to North 5th, there are 12 ATMs--in one
14 block, 12 ATMs, is that really necessary? I only
15 use ATMs at banks now after my card was used
16 fraudulently three separate times from using these
17 sorts of ATMs. I'd recommend everyone else to do
18 the same. They are scams.

19 Today we are exactly reviewing what
20 has been long overdue and an exacerbation of these
21 ATMs with no one to hold accountable is not the
22 answer. And I do hope that the Administration
23 will work closely to understand the importance of
24 this and how we're going to deal with it
25 legislatively and enforcing the law. Thank you.

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2 CHAIRPERSON VACCA: Thank you,
3 Council Member Reyna. And without further ado,
4 Commissioner Woloch--

5 [Off mic]

6 CHAIRPERSON VACCA: Oh yes, Council
7 Member Koppell?

8 COUNCIL MEMBER KOPPELL: Yes, thank
9 you. I don't know, I guess this is working now.
10 Mr. Chairman, I am a co-sponsor of this bill and I
11 think the need for this regulation is clear.
12 However, I also want to call to your attention and
13 ask--and the Council's attention, that I have
14 introduced legislation similar to this, although
15 somewhat different in some detail, and I would, as
16 we consider this bill, appreciate it if counsel
17 would look at that legislation, which had actually
18 been introduced before by one of our members who's
19 no longer here, but I thought it was such a good
20 idea that I put it in 'cause this is a definitive
21 problem in my district, and I think we should--
22 unfortunately, that bill was not referred to this
23 committee, it was referred to, I believe, the
24 Consumer Affairs Committee. But I would like to
25 look at that bill with counsel because it has some

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2 provisions that I think this bill addresses but
3 doesn't address as broadly as it might because, we
4 not only have to deal with ATMs on the sidewalk,
5 but also ATMs that are not on a sidewalk but have
6 the same kind of problems as some of the ones you
7 pointed out where they don't give proper
8 notification, where you don't know who to contact,
9 and so on.

10 So as we consider this, this is a
11 good proposal, and I don't want to interfere with
12 its moving forward, but I think we should look at
13 the other legislation or proposed legislation I
14 put in to see whether maybe we could even enhance
15 this somewhat. It's not intended to delay it,
16 it's intended to move it ahead, but to consider
17 what else we might be doing. Thank you.

18 CHAIRPERSON VACCA: Thank you,
19 Council Member Koppell, for your input. Okay.
20 Mr. Woloch.

21 DAVID WOLOCH: Good afternoon,
22 Chairman Vacca, members of the Transportation
23 Committee, I'm David Woloch, Deputy Commissioner
24 for External Affairs at the New York City
25 Department of Transportation. Joining me today is

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2 Vincent Maniscalco, Assistant Commissioner for
3 DOT's HIQA, Street Assessment and Newsrack unit.

4 Thank you for inviting us here
5 today to discuss Intro 257-A relating to sidewalk
6 ATMs. While we appreciate the Council's effort to
7 address this growing issue, we oppose legalizing
8 the placement of ATMs on public streets, which are
9 intended for more general public use.

10 Intro 257-A proposes to have the
11 city regulate sidewalk ATMs through the issuance
12 of revocable consents. It specifies that DOT will
13 promulgate rules including, but not limited to,
14 requirements related to the ATM size, shape,
15 appearance, materials, placement, construction,
16 and maintenance, insurance, and indemnification,
17 and security. Specifically, that they be
18 adequately lit and equipped with reflective
19 mirrors and surveillance cameras. It imposes both
20 criminal and civil penalties on non-banking
21 institutions that fail to equip their outdoor ATMs
22 with cameras and adequate lighting and gives DCA
23 the authority to issue and adjudicate violations.

24 As we all know, New York is a
25 walking city, encompassing 12,750 miles of

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2 sidewalks, making them a critical part of our
3 infrastructure. With a growing population and
4 limited right of way, it's imperative that they
5 safely and efficiently accommodate all users. In
6 order to best provide for the free flow of
7 pedestrian traffic, we need to limit the physical
8 elements installed on our sidewalks. At the same
9 time we do allow certain street furniture, such as
10 bus shelters, waste receptacles, or benches that
11 provide amenities to communities.

12 The city must ensure an appropriate
13 balance of these elements to yield the greatest
14 public benefit for all users. However, there are
15 conditions under which certain improvements may be
16 permissible on sidewalks provided that they don't
17 interfere with pedestrian mobility. In these
18 cases, the City carefully considers each request
19 through the revocable consent process based on its
20 specific land use implications, impact on
21 pedestrian congestion, and the aesthetic quality
22 of the streetscape.

23 DOT rules enumerate the
24 improvements eligible for revocable consent and
25 they're generally restricted to structures that

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2 generate a private benefit but not monetary
3 profit. An example of this is a revocable consent
4 issued to a building for a ramp that offers access
5 that could not otherwise be provided within the
6 building line.

7 The process of issuing a revocable
8 consent for an aboveground structure usually takes
9 between six and nine months and requires a public
10 hearing and approvals from DOT, the local
11 Community Boards, the borough president, as well
12 as the Public Design Commission and any other city
13 agency or commission affected by the proposal.
14 Petitioners must submit photos and plans approved
15 by a professional engineer or a New York State
16 registered licensed architect detailing location,
17 materials to be used, relevant technical
18 information, estimated cost to remove the proposed
19 structure, and applicable data on pedestrian
20 volumes.

21 With limited space and ample
22 demand, we take very seriously the mandate to
23 create and maintain sustainable streets that
24 encourage walking and make neighborhoods more
25 attractive and inviting. The process to obtain a

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2 revocable consent is rigorous, but necessary to
3 maintain the integrity of our sidewalks and ensure
4 they meet the high standards we've set for our
5 public realm. Absent a strong public benefit, we
6 don't support expanding the legal uses of our
7 streets for commercial purposes. While ATMs are
8 certainly convenient, their presence on the
9 sidewalk is not imperative to their function.
10 They may be just as conveniently accessed if
11 installed in the façade of a building or even
12 placed indoors.

13 In addition, after conferring with
14 our colleagues at the police department, we'd
15 offer that when located inside a store or other
16 business premise, ATMs may pose fewer safety
17 concerns as customers benefit from the presence of
18 employees, sufficient lighting, and possibly
19 surveillance cameras which may capture any illegal
20 activity. It would be counterproductive to
21 encourage the placement of ATMs on sidewalks where
22 these benefits aren't present, and where the
23 sidewalks may be further congested by those using
24 or waiting to use the machine.

25 Although we oppose ATMs as a

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2 permissible use of our sidewalks, we do
3 acknowledge their increasing presence in
4 neighborhoods citywide, which I think the
5 committee has done a good job of showing this
6 afternoon. Like any other unapproved structure
7 placed on our streets, sidewalk ATMs are illegal
8 encroachments and, as such, the department may
9 enforce against them.

10 At present, our HIQA unit inspects
11 complaints and, if ATMs are placed illegally on
12 the sidewalk, the unit will issue an order to
13 correct. If the property owner does not comply,
14 we'll then issue a summons. Recently, we've
15 worked with the city's 311 system to better assign
16 sidewalk ATM complaints to DOT. Previously, these
17 were classified more generally by 311 as blocked
18 sidewalk complaints. The improved system provides
19 a specific classification for ATMs which will
20 allow us to better quantify and address this
21 problem. In addition, by assigning these
22 complaints to our unit that handles newsrack
23 issues, we think we will more effectively conduct
24 this enforcement.

25 Again, while we fully support the

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2 Council's effort to address the proliferation of
3 illegally placed ATMs, this should not be achieved
4 through compromising the public use and aesthetic
5 quality of our sidewalks. We'll continue to seek
6 ways to more effectively protect our sidewalks
7 from misuse and certainly welcome feedback from
8 the committee on how to best target problematic
9 locations.

10 Thank you for inviting us here
11 today and at this time we'd be happy to answer any
12 questions.

13 CHAIRPERSON VACCA: Thank you. I'd
14 like to acknowledge the presence of Council Member
15 Lappin--oh, she left, Council Member Lappin,
16 Council Member Ulrich, Council Member Rodriguez,
17 Council Member Brewer, okay.

18 Let me ask a couple of questions.
19 I'm not clear, Commissioner, when you say that
20 previously they were classified by 311 as a
21 blocked sidewalk, the improved system provides a
22 specific classification for ATMs which will allow
23 us to better quantify and address the problem.
24 What are you going to do?

25 DAVID WOLOCH: Well the first thing

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2 we're going to do, which we've started to do, is
3 if a complaint comes into 311 about an ATM, it's
4 going to get specifically logged in, not as a more
5 generic blocking the sidewalk complaint, but it's
6 going to get logged in as a specific ATM
7 complaint. So we're going to know right off the
8 bat how many complaints we're getting specifically
9 about ATMs and where we're getting them. It's
10 also going to make it easier for us to assign them
11 and essentially to prioritize the ATMs, which I
12 think over the past few years have grown in their
13 proliferation and are something that increasingly
14 we, like you, want to address.

15 CHAIRPERSON VACCA: But you face
16 the prospect of going to the ATM site and not
17 knowing who runs the ATM because they're not even
18 obligated to file a permit with the Department of
19 Transportation.

20 DAVID WOLOCH: The notice would go
21 to the owner of the building. If you're an owner
22 of a building, it's your responsibility to make
23 sure that you don't have any illegal encroachments
24 in front of your building, and that's whom that
25 initial encroachment notice will go to.

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CHAIRPERSON VACCA: How many ATMs
do you estimate are now erected on sidewalks?

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DAVID WOLOCH: It's hard to say, we
don't have a full count. As your colleague noted,
the Manhattan borough president had done what's
probably the most definitive study on the issue in
the city over the past few years and found, I
think it was about 200 or so, illegal sidewalk
ATMs in the borough of Manhattan, and I think fair
to say, as you all know, there are many others in
the other boroughs.

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CHAIRPERSON VACCA: Do you have the
power, if the sidewalk encroachment is not adhered
to by the merchant, do you have the power to
remove that ATM from the street?

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DAVID WOLOCH: This is the way the
process would work on our end: We would first
issue a notice to remove and then the property
owner would have 30 days to get that done and then
at that point we could come and issue a violation,
which would have a fine attached to it. And then
at that point, we could come back and, if it's not
then removed, and issue more violations.

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CHAIRPERSON VACCA: But then the

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answer is you do not have the power to remove them.

DAVID WOLOCH: In theory, we do have the power to remove them, we have not done so.

CHAIRPERSON VACCA: Why?

DAVID WOLOCH: Well I think part of the answer is, and let's take newsracks as an example, which is in some ways a similar issue--

COUNCIL MEMBER BREWER: I hate them.

DAVID WOLOCH: There you go. So we've heard that sentiment over the past few years and worked with the Council to develop legislation to allow us to address newsracks, we then created an enforcement unit to deal with newsracks and we similarly issue notices, issue violations, and as a last resort, remove them. We have removed some newsracks. Newsracks are easy to remove, they're very light, we can pick them up, they're a very limited value in the few cases where newsrack owners have come to us after the fact to retrieve their newsracks, they were actually sorry that they did, it frankly wasn't worth the trip.

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Newsracks also don't have cash in them. So I think dealing with the removal of ATMs is a much trickier issue.

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[Crosstalk]

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DAVID WOLOCH: Doesn't mean it's not worthy of discussion, but a much, much harder to remove an ATM than a newsrack--

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[Crosstalk]

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CHAIRPERSON VACCA: [Interposing]

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'Cause that would be the ultimate enforcement power.

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DAVID WOLOCH: Correct, and I guess

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the question is, is there anything short of that

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that can be done. Our thought is, there is more

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that we've begun to do and more we can continue to

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do to try to address this issue.

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CHAIRPERSON VACCA: Let me take it

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from this point of view, I know ATMs are a

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convenience to many people. Since they are a

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convenience to potential customers, why does DOT

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feel that they should be totally banned from

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sidewalks? Why are you not in favor of some type

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of regulation?

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DAVID WOLOCH: Yeah, I mean, look,

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2 I think that's a fair question, there is some
3 public convenience, but as your colleagues noted
4 earlier, there are also--and in fact, the
5 Manhattan borough president noted, there are many
6 ATMs that are actually in businesses, there are
7 many bank ATMs, so there are ATMs available
8 without taking up public space generally,
9 inherently most of them are in commercial areas
10 that are already very crowded. I think it was the
11 Council a few years ago, that was considering
12 legislation regarding Stoop Line Stands that would
13 have gone in the other direction in order to
14 preserve more sidewalk space for pedestrian and
15 pedestrian access.

16 CHAIRPERSON VACCA: I have to tell
17 you, I view this as serious because of the
18 possibility that many of these ATMs may not be
19 transparent to the public insomuch as how much
20 they charge individuals. The fee is not posted,
21 no information is posted as to who owns these ATMs
22 and where to call. Now I know you're going to
23 issue these violations, but this is a long process
24 you're engaged in before that machine could
25 actually be gone, if it is ever actually gone. So

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2 that's why I raise the point, do you think it may
3 be preferable, and I know that you're concerned
4 about the revocable consent and the time it takes
5 for the revocable consent process because there is
6 a process involved, but I know in the city of New
7 York, if you want to pave a sidewalk, you have to
8 get a New York City DOT permit of some type. So
9 I'm asking you--and I think Council Member Reyna
10 has brought up the prospect of, not regulation so
11 much but a permitting process--are you open to any
12 type of permitting process? Could this be the
13 reality that these machines are going to be where
14 they are anyway as we go forth? Is there a
15 revenue aspect to this that we perhaps are
16 overlooking? Have you considered regulation of
17 any type?

18 DAVID WOLOCH: Right--

19 CHAIRPERSON VACCA: Short of
20 revocable consent, which you seem to oppose.

21 DAVID WOLOCH: --right, I'm not
22 sure if anybody from the city's Office of
23 Management and Budget is in the room, hopefully
24 not, but our priority isn't revenue per se,
25 although revenue, particularly in this day and

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2 age, is certainly nice, our thought right now is
3 that they should not be allowed, they should not
4 be regulated, we're certainly open to further
5 discussion with the Council, but that's our
6 position right now.

7 And just turning to the example
8 that the Council Member Reyna mentioned in
9 Greenpoint, let's take that block with the 12 ATMs
10 on one street. So if you were to allow, let's
11 say, two of those, which two would it be? Which
12 is the business that gets the ATM in front of its
13 store versus the other ones? So it's a very
14 slippery slope when you start parceling out what's
15 very valuable public sidewalk space that, based on
16 the rules and the law, is meant to be available to
17 the public, when you parcel it out to businesses
18 for commercial gain, 'cause ultimately a decision
19 to put an ATM in front of a business is made
20 because somebody thinks there's going to be money
21 to be made off of that.

22 CHAIRPERSON VACCA: Just finally, I
23 mean, I suggest that if we go about regulation
24 and--or permitting that you would develop a
25 criteria and, based on that criteria and policy,

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2 people would know if their application would be
3 accepted or denied. I know we're starting from a
4 point where so many of them are out there, but as
5 we go forth, do we grandfather those that are
6 there in or do we somehow say that this cannot
7 continue and you are now subject to new
8 regulations and permitting processes even if
9 you're already there. I think these things could
10 be worked out, but I think that first DOT has to
11 be open to the possibility--doesn't have to be,
12 but DOT would have to determine if you're open to
13 any permitting process. All right, Council Member
14 Reyna.

15 COUNCIL MEMBER REYNA: Thank you,
16 Mr. Chair. I just wanted to reference something
17 very interesting that was mentioned in your
18 testimony, Commissioner Woloch. The process to
19 obtain a revocable consent is rigorous but
20 necessary to maintain the integrity of our
21 sidewalks and ensure they meet the high standards
22 we have set for our public realm. Wouldn't you
23 agree that this statement has been compromised
24 with the placement of ATMs that are not regulated?

25 DAVID WOLOCH: Yeah, it's not the

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2 revocable consent process that's been compromised,
3 but you're right, I think that our sidewalk space
4 collectively has been compromised by illegal ATMs,
5 there's no question about that.

6 COUNCIL MEMBER REYNA: And the
7 process in place within your agency is the
8 revocable consent for use of sidewalks.

9 DAVID WOLOCH: That's the process
10 that exists to provide for essentially, you know,
11 legal private takings of public sidewalk space.
12 There's another process that we have in place in
13 terms of doing the enforcement of illegally placed
14 ATMs and other encroachments.

15 COUNCIL MEMBER REYNA: And how many
16 encroachment notices have been issued by DOT
17 concerning ATMs?

18 DAVID WOLOCH: I think the number
19 is about--this is over the course of the past
20 year--I think about 200--

21 VINCENT MANISCALCO: Oh, it's over
22 100.

23 DAVID WOLOCH: Oh--

24 VINCENT MANISCALCO: Yeah--

25 [Crosstalk]

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DAVID WOLOCH: --over 100

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violations.

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VINCENT MANISCALCO: A hundred

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encroachment notices, and after 30 days we found

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them corrected, but we've issued--

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[Crosstalk]

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COUNCIL MEMBER REYNA:

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[Interposing] If you can just identify yourself.

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VINCENT MANISCALCO: Oh, Vincent

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Maniscalco, Assistant--

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COUNCIL MEMBER REYNA: Thank you.

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VINCENT MANISCALCO: --Commissioner

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of Highway Inspection. When we first received the

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survey from the borough president from Manhattan,

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we went out, we issued notices to the owners.

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Many of them we actually spoke to the store

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owners, they complied, they brought the ATM

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inside. Those who failed to comply, property

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owners were issued encroachment notices, I believe

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it was a little over 100. Then we went out in 30

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days and there were still 80 that were still in

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violation, I believe, that we issued--

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COUNCIL MEMBER REYNA: Of how many?

25

VINCENT MANISCALCO: --summonses.

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2 Of the 250 that were--or 240 that were originally
3 on the list--

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DAVID WOLOCH: It was 192 of the
233.

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VINCENT MANISCALCO: Oh, the 233,
and then 82 summonses--192 of the 233 that were
originally under survey were issued encroachment
notices and after 30 days, when we went out again
to check, 82 received violations.

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COUNCIL MEMBER REYNA: And when was
that?

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VINCENT MANISCALCO: That was
September of last year when we started to do the
survey, so it took us from September to October to
do the initial inspection, issue the notices, and
then follow up with the re-inspections.

18

19

COUNCIL MEMBER REYNA: So September
'09 to--

20

21

VINCENT MANISCALCO: [Interposing]
Of the, probably the end of October, mid-November.

22

23

DAVID WOLOCH: And just to be--

24

COUNCIL MEMBER REYNA:
[Interposing] What, one second--

25

DAVID WOLOCH: Sure.

1
2 COUNCIL MEMBER REYNA: --I just
3 want to make sure that I understand--

4 DAVID WOLOCH: Mm-hmm.

5 COUNCIL MEMBER REYNA: --
6 completely. And since the 30 day notice, 82
7 violations have been issued--

8 VINCENT MANISCALCO: [Interposing]
9 Summonses to the property owners.

10 COUNCIL MEMBER REYNA: --summonses-
11 -

12 VINCENT MANISCALCO: Yes.

13 COUNCIL MEMBER REYNA: --and how
14 many have been removed--

15 VINCENT MANISCALCO: We had--

16 COUNCIL MEMBER REYNA: --due to
17 non-compliance?

18 VINCENT MANISCALCO: After the
19 summons is issued, the Highway Inspection unit did
20 not go back, that's why we're looking at giving it
21 to my newsrack unit, which is better equipped to
22 handle and go back more often and have frequents
23 violation. The Highway Inspection unit deals with
24 construction.

25 COUNCIL MEMBER REYNA:

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Construction, you say?

VINCENT MANISCALCO: Construction related items, such as, you know, contractors working--

COUNCIL MEMBER REYNA: Sidewalk--
[Crosstalk]

VINCENT MANISCALCO: --on the streets. Moreso with steel plates, contractors working in the streets, contractors closing the streets, that's what their main focus is, so that's why we're looking at for the ATMs just redirected focus to the newsrack unit that could go out and do multiple inspections and multiple violations.

COUNCIL MEMBER REYNA: And so up until now, there really hasn't been a real effort to deal with those that are outstanding concerning summonses, compliance, and so, therefore, we're right back where we started.

[Crosstalk]

VINCENT MANISCALCO: Other than giving it to a different unit, so it's not like we're not looking at it, we are looking at it and, you know, to prioritize it rather than giving it

1
2 to the construction unit is to give it to a unit
3 that deals with items that are on a sidewalk and
4 newsrack is the unit that'd probably be best
5 equipped.

6 COUNCIL MEMBER REYNA: And as far
7 as newsracks are concerned, newsrack is under your
8 revocable consent process--

9 DAVID WOLOCH: No, no--

10 [Crosstalk]

11 COUNCIL MEMBER REYNA: --and so
12 therefore, how many--

13 DAVID WOLOCH: The thing about the
14 newsrack unit is it's essentially a specialty kind
15 of enforcement that has been put in place over the
16 past few years, after collaboration with the City
17 Council--

18 COUNCIL MEMBER REYNA: Right.

19 DAVID WOLOCH: --to change the law
20 and it's similar in the sense that these are
21 structures that block sidewalks. Of all the
22 enforcement that we do, the newsracks which we've
23 set aside, and we have a particular unit that
24 deals with them, it's a somewhat similar universe
25 and kind of inspections.

1
2 COUNCIL MEMBER REYNA: Can you just
3 give us examples of the revocable consent
4 categories? There's, I'm assuming, 34, 35 the
5 last time I saw the list?

6 DAVID WOLOCH: Yeah, I mentioned
7 one in the testimony, ramps, stoops that a
8 building might put in place for similar reasons.
9 There are others that are really more amenities
10 like benches, as an example. And I do have a list
11 here.

12 COUNCIL MEMBER REYNA: And while
13 the Commissioner is getting his list, I just
14 wanted to ask if we can get slide eight on the
15 Grand Street BID up on the projection. Because
16 this is a perfect example of what my concern is,
17 not just as far as public safety is concerned, but
18 the cost of doing business with the city of New
19 York and not having a clear understanding as to
20 where to go if you're a business interested in
21 placing an ATM.

22 DAVID WOLOCH: Right.

23 COUNCIL MEMBER REYNA: Now I'm
24 doing [off mic]. The ATM at this particular
25 location, Williamsburg Café, came into question

1
2 because they were interested in an unenclosed
3 sidewalk café and they had an ATM at the very
4 corner of where they wanted to place a sidewalk
5 café and they invested money, because we raised it
6 as an issue, it being illegal first of all, which
7 then preceded the process of introducing this
8 legislation, because his point was I was never
9 told this was illegal, I was never told where to
10 place it, how to deal with it, I know that my
11 customers if they don't ha--it's a cash only
12 business, it was a brand new business, so they
13 didn't have the capacity for credit card use, and
14 so they asked their customers to go right outside
15 and use the ATM right outside their establishment.
16 This ATM was then reconfigured into the business
17 for access and this is yet not regulated. So if
18 you come back, this is within the property line,
19 correct?

20 DAVID WOLOCH: Yes.

21 COUNCIL MEMBER REYNA: Is that
22 going to be issued a summons?

23 DAVID WOLOCH: Yeah, this is a good
24 example of an ATM that would not have anything to
25 do with DOT's jurisdiction.

1
2 COUNCIL MEMBER REYNA: Mm-hmm, but,
3 again, this was one example of how local elected
4 official worked with local business to avoid
5 summonses.

6 DAVID WOLOCH: Right.

7 COUNCIL MEMBER REYNA: Had I not
8 addressed this, it would have been illegal--

9 DAVID WOLOCH: Right.

10 COUNCIL MEMBER REYNA: --because it
11 was on the sidewalk.

12 DAVID WOLOCH: Right, and I think--
13 look, this gets at a really important issue that
14 you're right to raise, I think there's an
15 education process for everybody that needs to be
16 put in place that isn't necessarily as good as it
17 can be, including making sure that it's clear to
18 businesses that they can't have sidewalk ATMs and
19 also including making sure the public better
20 understands that these are illegal. Over the past
21 month, when we've started to track the ATM
22 complaints through 311, there's been a total of
23 six, which sounds low. I mean, I think it's
24 sounds--

25 COUNCIL MEMBER REYNA:

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2 [Interposing] Six complaints?

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DAVID WOLOCH: Six complaints have come into 311 over the--it's a little less than a month, about 25 days, about sidewalk ATMs. My guess is the amount of grumbling out there is more than six people worth, so I think there's probably work that we can do collaboratively and working with the Community Boards, I know we have one Community Board representative here, to make sure that people understand that those calls can come into 311 and they can get addressed.

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COUNCIL MEMBER REYNA: And on Friday, as I had mentioned to you, the Brooklyn daily paper--the Brooklyn paper, a local paper in Brooklyn, has published this story concerning a blitz on Bedford Avenue on Friday and the blitz was conducted by the sanitation department.

19

DAVID WOLOCH: Mm-hmm.

20

21

COUNCIL MEMBER REYNA: So now we get into who issues the summons--

22

DAVID WOLOCH: Mm-hmm.

23

24

25

COUNCIL MEMBER REYNA: --because, obviously, this wasn't DOT coming in and enforcing--

1

2 DAVID WOLOCH: Right.

2

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COUNCIL MEMBER REYNA: --and so now

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you have multiple agencies that are able to just

5

have a blitz and it's going to cost these

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businesses money and obviously the education

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component will be lost and awareness because now

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the businesses are going to be concerned that

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they're being targeted, but yet there's no real

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rule or process that they can go to or any

11

transparent website information giving them

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direction as to how to deal with this issue.

13

DAVID WOLOCH: Right, right, I

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mean, there are rules and the rules say that you

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can't have obstructions or encroachments except

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for certain kinds right in front of the business,

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where you're selling wares that are sold inside

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the business and certain items that businesses

19

with Stoop Line Stand licenses are allowed to

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sell. So the law is clear about that, but I think

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there's more that can be done to let businesses

22

know what that law actually means when it comes to

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things like ATMs, I think you're right.

24

COUNCIL MEMBER REYNA: And does

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Business Express, being one of the most recent

1
2 examples of how we're working with interagency
3 linkage, does Business Express have a link to
4 DOT's rules and regulations regarding ATMs?

5 DAVID WOLOCH: Right, I'm not sure
6 offhand, we'll look into that.

7 COUNCIL MEMBER REYNA: I know I
8 would like to come back to the second set of
9 questions, I just know that my colleagues have
10 other questions, but I will continue to press upon
11 the issues of enforcement, who has jurisdiction,
12 DOT up until now has done very little, and we're
13 not seeing any removing of these machines and we
14 don't know how many exist in the city of New York,
15 and just to be able to have a metrics concerning
16 all of this is important. And we're only
17 referring to sidewalk visible ATMs, we're not even
18 referring to the ATMs that exist inside an
19 establishment, as Council Member Koppell has just
20 mentioned, which is addressed in his particular
21 introduction of bill. But this will be the first
22 of many discussions I would hope and making sure
23 that we're not just going to see this as an
24 opportunity to kill businesses because that's not
25 the intent either. Thank you.

1
2 CHAIRPERSON VACCA: Thank you, and
3 I do want to mention we're joined by Council
4 Member Darlene Mealy, oh, back there, Darlene
5 Mealy and Jimmy Van Bramer, I think was here.
6 Just one quick question, I wanted to ask about
7 newsracks, what are they classified, a newsrack,
8 what is that classified as and what permit do they
9 need?

10 DAVID WOLOCH: A newsrack is
11 classified as a newsrack, I mean, it's a specific
12 item that, prior to a few years ago, was not
13 defined and that was a real problem and there was
14 no mechanism to enforce. So these are the boxes
15 that appear on street corners with newspapers and
16 magazines and things like that, which as your
17 colleague noted, there's a First Amendment right
18 to have that material out there, we went to great
19 lengths to make sure that there are rules in place
20 to make sure that they are not placed places where
21 they should not be. For instance, actually in a
22 crosswalk.

23 So there are a set of rules that we
24 promulgated a few years ago about the placement,
25 about what information needs to be on a newsrack,

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and when those rules are not adhered to, we can give violations.

CHAIRPERSON VACCA: Well first of all, are those regulations online or is that something you have to forward me?

DAVID WOLOCH: Well I believe they are online.

VINCENT MANISCALCO: Yeah, they're online.

DAVID WOLOCH: Yeah.

CHAIRPERSON VACCA: Okay. Vandalism occurs, these newsrack boxes are chained to poles, is that something that your agency's aware of or--

VINCENT MANISCALCO: Yes.

CHAIRPERSON VACCA: --you allow that?

FEMALE VOICE: Outside of Manhattan.

MALE VOICE 1: Yeah.

MALE VOICE 2: You're on, you're on.

VINCENT MANISCALCO: No, it's not allowed and when we do get a complaint, we first

1
2 notify the owner of the rack, give them, I think
3 it's seven days, if it's not removed, then we
4 issue a summons and we'll go there, we send--two
5 of the inspectors will go and they will remove the
6 rack and store it for a 90-day period. If the
7 owner does not come back, then Sanitation comes in
8 and disposes it.

9 CHAIRPERSON VACCA: Quickly, you
10 store it, what does that mean store it?

11 VINCENT MANISCALCO: Well it's one
12 of the--

13 [Crosstalk]

14 CHAIRPERSON VACCA: You take it,
15 you--

16 VINCENT MANISCALCO: --one of the
17 yards outside, just--

18 [Crosstalk]

19 CHAIRPERSON VACCA: [Interposing]
20 You take it off the street--

21 VINCENT MANISCALCO: Yes, yes.

22 CHAIRPERSON VACCA: --and the owner
23 has 90 days to reclaim.

24 VINCENT MANISCALCO: To reclaim it
25 and then, if they don't, then Sanitation will come

1

2 in and take it away.

3

4

CHAIRPERSON VACCA: And people can report this through 311.

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VINCENT MANISCALCO: Yes.

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CHAIRPERSON VACCA: Okay. Council Member Garodnick.

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COUNCIL MEMBER GARODNICK: Thank you very much, Mr. Chairman. I just have a couple questions for clarification, I know Council Member Koppell will go into much greater detail. Just to summarize just from what we just heard in the exchange between you and Council Member Reyna, so on the overall number of these ATMs, we just don't know how many there are out there, is that correct?

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DAVID WOLOCH: Correct, we know in your borough, based on the study that was done by the--

20

[Crosstalk]

21

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COUNCIL MEMBER GARODNICK: [Interposing] No, he didn't survey the entire borough, did he?

24

FEMALE VOICE: No.

25

COUNCIL MEMBER GARODNICK: My

1
2 understanding is that he surveyed a fraction of
3 the borough and resulted in the number of
4 violations that he saw.

5 DAVID WOLOCH: Right, I guess my--

6 [Crosstalk]

7 COUNCIL MEMBER GARODNICK: So we
8 don't even know in my borough the number of
9 violations that exist or the number of ATMs that
10 exist, right?

11 DAVID WOLOCH: Yeah, I know that
12 they did go to some length to go to, it looks like
13 most of their Community Boards, and we might want
14 to find out a little more from the borough
15 president on how much ground they think they've--

16 [Crosstalk]

17 COUNCIL MEMBER GARODNICK:

18 [Interposing] Okay. I mean, look, I give--

19 DAVID WOLOCH: But I guess the
20 point is the only survey of any sort to-date has
21 been done by the borough president--

22 [Crosstalk]

23 COUNCIL MEMBER GARODNICK:

24 [Interposing] Okay. And we give them a lot of
25 credit for actually highlighting this issue, but I

1
2 just wanted to point out that it's not necessarily
3 the ultimate conclusion on how many there are in
4 Manhattan or elsewhere because we as a City just
5 don't know.

6 DAVID WOLOCH: Mm-hmm.

7 COUNCIL MEMBER GARODNICK: And we
8 don't know because there's no rulemaking process
9 by which somebody would come to ask permission, is
10 that correct? Somebody could just go ahead and
11 put them--they put them out there and they--

12 DAVID WOLOCH: Right, but--

13 COUNCIL MEMBER GARODNICK: --don't
14 need to have permission from anybody, right?

15 DAVID WOLOCH: --I mean, even if
16 there was a process in place to allow for some
17 legal sidewalk ATMs, we still wouldn't necessarily
18 know the total units.

19 COUNCIL MEMBER GARODNICK: Correct,
20 very much like the newsracks or, in some cases,
21 street vendors, the city--even if you have some
22 rules, that does not mean that--

23 DAVID WOLOCH: Right.

24 COUNCIL MEMBER GARODNICK: --
25 they're necessarily all being followed.

1

2 DAVID WOLOCH: Right, yeah.

2

3 COUNCIL MEMBER GARODNICK: Okay.

3

4 But in terms of the number of--I just want to make
5 sure I have the terminology right, I noted in your
6 testimony you called them, I think, orders to
7 correct, but you also refer to them as a notice to
8 remove--are those the same thing?

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DAVID WOLOCH: Yeah.

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COUNCIL MEMBER GARODNICK: They

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are, okay. And the number 82, 82 summonses, is
12 that for either a notice to remove slash--

12

13

DAVID WOLOCH: [Interposing] Yeah,

14

those are actual violations.

15

COUNCIL MEMBER GARODNICK: Sorry,

16

so it's the notice comes first, then the 30 days,
17 then the violation.

17

18

DAVID WOLOCH: Got it.

19

COUNCIL MEMBER GARODNICK: Okay.

20

So you issued 192 notices and ended up with 82
21 violations--

21

22

DAVID WOLOCH: [Interposing] And

23

just to be clear--

24

COUNCIL MEMBER GARODNICK: --is

25

that correct?

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VINCENT MANISCALCO: Yes.

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DAVID WOLOCH: --that was in response to the problem in your borough.

5

6

COUNCIL MEMBER GARODNICK: Right, so that was only in Manhattan.

7

DAVID WOLOCH: Correct.

8

COUNCIL MEMBER GARODNICK: Okay.

9

So--

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DAVID WOLOCH: And there's just a

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much smaller number outside--

12

[Crosstalk]

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COUNCIL MEMBER GARODNICK: --so, I

14

mean, what's the total, if we were just to take

15

whatever calendar year is the last one you would

16

have a complete tally of, maybe that would be

17

2009, what's the total number of notices--

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DAVID WOLOCH: It's--

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COUNCIL MEMBER GARODNICK: --that

20

were issued in the city of New York?

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DAVID WOLOCH: --it's going to be

22

slightly over 200, somewhere between 200 and 250,

23

we'll get you the--

24

[Crosstalk]

25

COUNCIL MEMBER GARODNICK:

1

2 [Interposing] And that includes the 192--

3 DAVID WOLOCH: Yep.

4 COUNCIL MEMBER GARODNICK: --that
5 were resulting from the--

6 DAVID WOLOCH: Yep.

7 COUNCIL MEMBER GARODNICK: --
8 Manhattan borough president?

9 DAVID WOLOCH: Correct.

10 COUNCIL MEMBER GARODNICK: Okay.

11 So there was somewhere between 8 and 58 issued in
12 the other four boroughs.

13 DAVID WOLOCH: Correct.

14 COUNCIL MEMBER GARODNICK: Okay.

15 And the ticket, when issued, it goes to the
16 business or residence in front of whose--

17 DAVID WOLOCH: [Interposing] It
18 goes to the property owner.

19 COUNCIL MEMBER GARODNICK: The
20 property owner, right. So whoever is the property
21 owner of record, they get the ticket.

22 DAVID WOLOCH: Right.

23 COUNCIL MEMBER GARODNICK:

24 Regardless of whether they put it there or not--

25 DAVID WOLOCH: Correct.

1
2 COUNCIL MEMBER GARODNICK: --is
3 that right? Okay.

4 DAVID WOLOCH: And just to take a
5 step back for a second, this is part of a larger
6 universe of encroachments, I mean, that's what the
7 sidewalk ATM is, it's an encroachment on public
8 space. There are other kinds of encroachments
9 where property owners get similar violations, I
10 think there's less concern about these and we also
11 with those don't know what that number is
12 citywide, but the ATMs is right now considered to
13 be part of that larger universe of encroachments.

14 COUNCIL MEMBER GARODNICK: So if
15 I'm a property owner and somebody decides to put
16 an ATM in front of my property and they chain it
17 to the, you know, a pipe or something like that,
18 am I empowered to just cut that chain off and take
19 it as my property and all the cash that's within
20 it? I'm getting creative now, but I just want to
21 know what my--

22 [Crosstalk]

23 DAVID WOLOCH: [Interposing] --any
24 idea.

25 COUNCIL MEMBER GARODNICK: No, I

1
2 don't, I just want to know what my rights are as a
3 property owner in that situation.

4 DAVID WOLOCH: I would defer to
5 other people who have greater expertise in this,
6 but I would think so, that would be my guess, it's
7 your property and somebody has placed something on
8 it, if you want to remove it, you should be able
9 to. But I would defer to--

10 [Crosstalk]

11 VINCENT MANISCALCO: --the ATM
12 owners. Usually the ATM owners before, whoever
13 owns these things, before they actually put it in
14 front of a store, they will actually speak to the
15 store owners and say I'm going to be putting this
16 out there and just to let them know, so someone in
17 the store does know that that item will be placed
18 out there and if the property owner gets the
19 notice, then they should be dealing with the store
20 owner to have it removed.

21 COUNCIL MEMBER GARODNICK: So let's
22 just say the--I mean, this is all conjecture now
23 that we're talking about, but let's go with a
24 hypothetical situation where a property owner who
25 rents to a small business who has given some sort

1
2 of a handshake, this is not a problem with me,
3 okay, to having an ATM outside in front. The
4 city, although very unlikely the city will do it
5 under the numbers that we see here, the city does
6 issue a notice, 30 days pass, a violation is
7 issued with a fine to the property owner. The
8 property owners says, well somebody's got to take
9 this away. We're not sure whether they have the
10 right, although we speculate that they may have
11 the right to just unhook it or take it as their
12 own property, although I'm not 100% certain that
13 that is the case. There is no process for a
14 property owner to have the city assist them in
15 that, is there? No.

16 VINCENT MANISCALCO: [Off mic] that
17 I know of.

18 COUNCIL MEMBER GARODNICK: So if
19 you're a property owner who just, you know, does
20 not want an ATM in front of their property, may or
21 may not have the right to unhook it themselves,
22 does not have the ability to call the city to ask
23 for help, or has the ability to call but will not
24 get any help from the city, it seems like they're
25 in a pretty tough spot. So I'm curious to hear--

1
2 DAVID WOLOCH: [Interposing] It
3 sounds like they may have a tenant they may want
4 to get rid of at that point.

5 COUNCIL MEMBER GARODNICK: Yeah,
6 okay, tenant, may they may, maybe they want to get
7 rid of the tenant, maybe the tenant's lease is a
8 10-year term, I mean, you know. So there's an
9 issue here--so I want to hear Council Member
10 Koppell and his questions, but I think that my
11 colleagues have spotted an issue, and the borough
12 president spotted an issue, you know, your point
13 though about legalizing them and giving them some
14 sort of an actual, you know, right to exercise is
15 a fair one, but there isn't a reason why we
16 shouldn't be able to at least start from scratch
17 with these things and say, okay, well we're going
18 to designate certain areas of the city, we're
19 going to say this is an okay area, this is not an
20 okay area, and it does not have to be the many
21 thousands or tens of thousands or God knows how
22 many ATMs we have illegally on the streets, they
23 could be a much smaller number. But anyway I'm
24 going to defer at this point. I thank the
25 Chairman for the time.

1
2 CHAIRPERSON VACCA: Thank you,
3 Council Member Garodnick. Council Member Koppell.

4 COUNCIL MEMBER KOPPELL: Thank you,
5 Mr. Chairman. The colloquy between you and my
6 colleague, Council Member Reyna, was peculiar, I
7 think it was sort of a Rashomon-like conversation
8 'cause she's saying how can we help the business
9 owner to know what to do and you were sort of
10 dancing around the fact that what you're telling
11 the business owner is you can't do it. Right now,
12 you cannot put an ATM in front of a store, right?

13 DAVID WOLOCH: Correct.

14 COUNCIL MEMBER KOPPELL: Right, so
15 when she says tell the business owner what to do,
16 she doesn't need any regulation to be on the
17 website, the answer is no, you can't do it--

18 DAVID WOLOCH: Right.

19 COUNCIL MEMBER KOPPELL: --maybe
20 you could put that on the website--

21 [Crosstalk]

22 DAVID WOLOCH: [Interposing] But I
23 think her point is--

24 COUNCIL MEMBER KOPPELL: --but
25 that's not what she's asking.

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DAVID WOLOCH: --I think her point-

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-

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COUNCIL MEMBER KOPPELL: No, her

5

point is--

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DAVID WOLOCH: --is that it's not

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clear to businesses what they can and can't do.

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COUNCIL MEMBER KOPPELL: Well maybe

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so, but I think what she's looking at and I think

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what is fair is, shouldn't we regulate these

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because in some cases, aren't they a matter of

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convenience? And I take strenuous issue, sir,

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with your comment here, that generally sidewalk

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structures are restricted to structures that

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generate a private benefit but not monetary

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profit. An example of this is a revocable consent

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issued to a building for a ramp that offers access

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and you mentioned a bench. Those are good

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examples where there is no private profit,

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however, I would mention one glaring example,

21

which is no longer quite as common as it was

22

because of the advent of cell phones, but we talk

23

about public telephones which have long been there

24

and, as far as I know, last I heard, the New York

25

Telephone Company was not a nonprofit institution.

1
2 So I assume that the pay telephones that were
3 there not only for New York Telephone, but for a
4 bunch of other telephone companies, were profit-
5 making and at least some of them were permitted by
6 the city. So I take issue with your statement
7 there.

8 And looking at the newsrack issue,
9 we all remember, at least those of us who were
10 there, that the Council--that was an instance
11 where it was unclear what people's rights were and
12 we wanted to make clear what people's rights were,
13 there was an additional issue of freedom of the
14 press and such, which made the rights more clear.
15 But we then regulated them, as you know, and you
16 now regulate them and you inspect them and you
17 have a process for taking away the ones that
18 violate--which is fine. But I think what this
19 bill is trying to do is to say maybe there is a
20 role for these devices and we should allow for
21 consents to be issued so that Council Member
22 Reyna's question of what can the business owner do
23 is clear, but you've made the presumption that
24 these should be eliminated totally. Have you
25 discussed that with the Department of Consumer

1
2 Affairs? Do they agree that these have no
3 purpose?

4 DAVID WOLOCH: We have discussed
5 this with the Department of Consumer Affairs. I
6 think the issue is that, sure, there is a
7 convenience that these machines provide, but they
8 also exist elsewhere, they are more frequently,
9 based on the borough president's survey, they're
10 in stores as well and I think that's the
11 difference with the phones. So going back, you
12 know, 20, 30 years before there were cell phones,
13 you didn't find payphones as frequently off-street
14 that were available to the public. So I think
15 there was a real public good that existed when
16 there was space on the sidewalks allocated for
17 payphones.

18 COUNCIL MEMBER KOPPELL: Well first
19 of all, years ago, there were a lot of payphones
20 that were on private premises inside and you still
21 had street phones. And I would suggest that there
22 may well be stores, as Council Member Reyna
23 mentioned, where they are cash business and it is
24 convenient to have a machine immediately
25 available, and I don't think that every machine

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2 would be deemed to block the sidewalk. I think
3 that the idea of having a consent process, which
4 should in fact protect the sidewalks that need to
5 be clear, but would also permit these as long as
6 they're properly regulated, and the bill, I might
7 point out, does properly regulate them. They also
8 may also be an opportunity for people to make
9 money, and we don't mind that in the city, right?
10 We want to encourage businesses? They may be a
11 way also for a store owner to get a little extra
12 revenue, 'cause I suspect, I suspect that when
13 someone puts one of these things up in front of a
14 store, as Council Member Garodnick asked, they
15 don't just say, oh, yeah, we'll let you do it
16 there on our property and, you know, just leave it
17 at that. I assume that if somebody puts an ATM in
18 front of a store, the store owner will get some
19 revenue out of it, will get some rent or other
20 consideration, and that's not a bad thing, I think
21 that's a good thing, we want to help our small
22 business people.

23 So unless there's some kind of
24 study done that says these things shouldn't be
25 there at all, I think this Council--my own view

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2 is, and I'm a cosponsor of the bill, my own view
3 is these should be permitted under proper
4 regulation. Just like in the case of the
5 newsracks, we maybe had to permit them, we didn't
6 have a choice because of the First Amendment. But
7 even here where maybe we don't have to permit
8 them, I would say that there's a point to
9 permitting them, but they should be regulated,
10 which is what this bill does, for the reasons that
11 the chairman mentioned at the beginning. Not only
12 that they shouldn't obstruct the sidewalk where
13 that's a problem, but also that they should be
14 identified, that they should be lighted, all of
15 that part.

16 So I think your assumption that the
17 answer should be eliminate them all, which may be
18 difficult to do to begin with because of the
19 problems we've been discussing, is not the answer
20 this Council's looking for, we're looking for a
21 way to allow for them to be regulated
22 appropriately.

23 DAVID WOLOCH: Right, but just one
24 point, we're not talking about eliminating all
25 ATMs. So just going back to the--

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[Crosstalk]

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COUNCIL MEMBER KOPPELL:

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[Interposing] No, sidewalk ATMs.

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DAVID WOLOCH: No, no, I

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understand, but going back to the borough
president's survey, about 20% of the ATMs in this
city are within banks, 25% are on the sidewalk,
and 55% are actually in stores, so most of the
non-bank ATMs that are out there in the city are
actually in stores, and there's another set of
issues that has to do with them and I think you
raised that earlier. But as a matter of
convenience for New Yorkers, the sidewalk ATMs
represent a, you know, relatively small, you know,
about a quarter of the ATMs that are out there,
but they certainly have caused a lot of angst, I
mean, and that's most of why I think we're here
today.

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[Crosstalk]

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COUNCIL MEMBER KOPPELL: They've

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caused a lot of what?

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DAVID WOLOCH: Angst, angst. And

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it sounds like some of this is translating that

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into--there's probably, again, going back to what

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2 we were talking about earlier, translating that
3 into complaints, but to allow these in some places
4 and not others, to allow businesses to make money
5 off of them, because it seems like that's the
6 bigger issue at stake here--and, look, we don't
7 want to deprive small businesses, but it's a very
8 slippery slope. There are lots of other things we
9 could start to allocate sidewalk space to for
10 businesses to make money, but there is a very
11 defined set of criteria in law that allows for a
12 certain amount of obstruction to sell goods that
13 are inside a store, there are some stores that
14 have a limited amount of space they can use for
15 articles they can sell with a Stoop Line Stand
16 license. And if those aren't there, I think many
17 businesses would take more and more sidewalk space
18 to put, if not an--there's probably other things
19 that businesses would want to put, such as a
20 vending machine to make money. But we don't want
21 to give up that space, our city is getting more
22 and more crowded and particularly on commercial
23 streets where, by their essence, there are many
24 people walking around, we don't want to compromise
25 that space.

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2 COUNCIL MEMBER KOPPELL: Well I
3 don't want to get into a lengthy debate, I think
4 ultimately the policy decision is going to have to
5 be made by the Council, obviously the Mayor and
6 the Administration have a view. I mean, if you
7 looked at the number of telephones, I would
8 suspect that sidewalk telephones represent far
9 less than 25% of the phones in use, even years ago
10 before cell phones, and yet we still permitted
11 sidewalk telephones 'cause it was a convenience,
12 and I suspect that an ATM is a convenience. There
13 are some places where there are a lot of banks
14 where they're easily located, there are other
15 places that there aren't, and I personally think
16 that's a policy decision, I happen to believe they
17 should be permitted in some case. I certainly
18 think the kind here, and I'm not sure what you're
19 saying about that, I think you said that would be
20 okay, but--

21 [Off mic]

22 COUNCIL MEMBER KOPPELL: --that may
23 be legal, but the point is that an ATM machine is
24 a convenience and I don't think that every
25 sidewalk ATM should be eliminated, and I think

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2 before you--maybe Consumer Affairs should do a
3 little survey and find out. I mean, the fact that
4 there were six complaints doesn't impress me all
5 that much because clearly there are instances
6 where the ATM shouldn't be there, that's why we
7 have a consent process in the bill.

8 CHAIRPERSON VACCA: Did he convince
9 you?

10 [laughter]

11 DAVID WOLOCH: Not quite yet.

12 CHAIRPERSON VACCA: Okay. Council
13 Member Brewer.

14 COUNCIL MEMBER BREWER: Okay.
15 Thank you. I just want to reiterate the First
16 Amendment, having been through that with the
17 newsracks, so let's be clear that it's different.
18 Those horses that we jump out--that kids jump on,
19 what are they?

20 MALE VOICE: Horses.

21 [Off mic]

22 DAVID WOLOCH: I believe those are
23 regulated through the Department of Consumer
24 Affairs.

25 COUNCIL MEMBER BREWER: Okay.

1
2 They're regulated through the Department of
3 Consumer Affairs and they're outside and kids love
4 them.

5 DAVID WOLOCH: Mm-hmm.

6 COUNCIL MEMBER BREWER: I guess
7 what I'm trying to say is, if I'm correct, they're
8 on the sidewalk.

9 DAVID WOLOCH: Mm-hmm.

10 COUNCIL MEMBER BREWER: But that's
11 Consumer Affairs and not DOT?

12 DAVID WOLOCH: Correct.

13 COUNCIL MEMBER BREWER: Okay. It's
14 confusing for us and I imagine it's confusing for
15 the stores, so I think at the very least some
16 website should be clearer for the stores because
17 if--Sanitation apparently has a role, Department
18 of Business Services to tell everybody what's
19 going on, Department of Consumer Affairs, inside,
20 outside, I thought it was just inside, but the
21 horses are outside.

22 MALE VOICE: I believe [off mic].

23 COUNCIL MEMBER BREWER: And DOT is
24 outside and there are probably other agencies that
25 I'm missing that are regulating objects on the

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2 sidewalk or off the sidewalk. I happen to love
3 the horses. But all I'm saying is that I think,
4 back to Diana Reyna's point, I'm not clear if
5 that's legal or not, it looks fine to me, it's not
6 on the sidewalk, it provides a service--

7 DAVID WOLOCH: Yeah--

8 COUNCIL MEMBER BREWER: --I bet
9 they don't know whether it's legal or not until
10 Diana Reyna got involved.

11 DAVID WOLOCH: No, again, this is
12 not our terrain, but I believe there's a process
13 to go through the Department--

14 [Crosstalk]

15 COUNCIL MEMBER BREWER:
16 [Interposing] But that's the problem, we all have
17 to know, in my opinion, what everybody else's
18 terrain is a little bit 'cause otherwise, if we
19 don't know, my guess is a business doesn't know.

20 So I guess my question is, can you
21 bring back to somebody that somebody should be
22 clearer for everybody as to what is whose terrain.

23 DAVID WOLOCH: Absolutely, and as I
24 said earlier, I think there's a lot on all the
25 different parts of the process for there to be

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2 better--

3 COUNCIL MEMBER BREWER: Okay.

4 DAVID WOLOCH: --better

5 communicating.

6 COUNCIL MEMBER BREWER: 'Cause
7 banks, some banks have outside ATMs that look just
8 like that one.9 DAVID WOLOCH: They do, they are
10 few and far between, but--11 COUNCIL MEMBER BREWER:
12 [Interposing] In my neighborhood, they're every
13 two minutes.

14 DAVID WOLOCH: --there are some.

15 COUNCIL MEMBER BREWER: No, in my
16 neighborhood I got 62 of those banks and, believe
17 me, I don't like all those banks, but they got
18 those every other block. So I think that what I'm
19 saying is, if the bank can have this, why can't
20 Diana's store have that? Nobody knows the answer,
21 okay.22 DAVID WOLOCH: I think it's a fair
23 question and I believe there is, there is a
24 process in place through the Department of
25 Buildings--

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COUNCIL MEMBER BREWER:

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[Interposing] Oh, another agency.

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DAVID WOLOCH: Well I said that one already, you--

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COUNCIL MEMBER BREWER: DOB.

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DAVID WOLOCH: --can't count them twice.

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COUNCIL MEMBER BREWER: Okay. DOB, I forgot that one. All right, then my final question is how do you suggest, if in fact the ATM is a convenience, are you going to suggest that it would be inside? In other words, if a store has an outside one, they're making money, it's a convenience to the neighborhood, would you work with other agencies if in fact it's not permissible outside to find a place and help them get licensed inside? Because what happens is you say no, they get a summons, they're stuck with the pro--we need [off mic] the building--those small businesses do need that kind of support.

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DAVID WOLOCH: Right, I mean, I think they're more typical, and, again, based on the borough president's survey--

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COUNCIL MEMBER BREWER: He does

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2 those things very quickly. Go ahead--

3 DAVID WOLOCH: Sounded very--

4 [Crosstalk]

5 COUNCIL MEMBER BREWER: I love
6 Scott, but he does these things very quickly.

7 DAVID WOLOCH: --very

8 comprehensive, at any--

9 [Crosstalk]

10 COUNCIL MEMBER BREWER: Oh, please.

11 Go ahead.

12 DAVID WOLOCH: He did say that
13 there was many more inside non-bank ATMs than
14 outside and, I mean, it would seem to me that it's
15 a question--I mean, the business has to give up
16 something, right? They bring the ATM inside and
17 that's less space to put their goods, so there's a
18 cost to them and I think that's why sometimes they
19 appear outside. But as I said, the police--you
20 know, if you turn to people who do security and
21 safety for a living, I think from their point of
22 view, the ATMs that are inside are safer, it's an
23 enclosed environment, there are employees, they're
24 better lit, there's often cameras.

25 COUNCIL MEMBER BREWER: Are they

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2 also, but you may not know, indicating how much
3 the fee is, etc., and who runs them and so on?

4

5 DAVID WOLOCH: Yeah, I mean, my
6 sense is you could have that problem with any non-
7 bank ATM and I think it's a legitimate issue,
8 again, outside of--

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[Crosstalk]

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COUNCIL MEMBER BREWER:

10 [Interposing] Okay. So I guess what I'm saying is
11 in general, the Administration should see inside
12 or outside what kind of regulations to inform the
13 public more, what the fees are, etc., and then of
14 course there'll be ongoing discussion here about
15 whether they should be regulated outside or not
16 outside, right. Thank you very much.

17

18 CHAIRPERSON VACCA: Now you see the
19 best argument you made was the last argument, that
20 is, that ATM machines inside are probably much
21 safer from a public point of view, there are
22 cameras, there is lighting, there is a security, I
23 think that is the best point. 'Cause when you
24 mention 55% of the ATMs are now inside a building,
25 the question comes up what access do people have
to ATMs at night, but then your other point, I do

1
2 think is the best point you've made about safety,
3 and I would be concerned about that too, so...

4 DAVID WOLOCH: I like ending on a
5 good note.

6 CHAIRPERSON VACCA: You did--
7 [Crosstalk]

8 COUNCIL MEMBER REYNA: --end.

9 CHAIRPERSON VACCA: We're not
10 finished with you yet, I just meant to say you're
11 doing okay on that one point. All right, all
12 right. Oh wait, let me introduce Council Member
13 Debbie Rose who has joined us, Debbie Rose, and
14 Council Member Tish James, and Tish James has the
15 next question.

16 COUNCIL MEMBER JAMES: Thank you.
17 So I love this commissioner 'cause he lives in my
18 district, he's my neighbor--

19 [Crosstalk]

20 MALE VOICE 2: Now you're out.

21 COUNCIL MEMBER JAMES: Yeah, so
22 he's nice, so I'm very nice to him, but he
23 understands the issue because he lives in the
24 neighborhood and we know that we have a problem
25 with these ATMs. One, my question is what is the

1
2 Administration's position on perhaps regulating
3 these ATMs in landmark districts? Making them
4 subject to the Landmarks Commission? Which is a
5 bill that I have in.

6 DAVID WOLOCH: Yeah, and it's the
7 first I've heard of that today, but I think, as
8 much as I care about the city's landmark
9 districts--

10 COUNCIL MEMBER JAMES: Yes.

11 DAVID WOLOCH: --including one I
12 happen to live in--

13 COUNCIL MEMBER JAMES: Yes.

14 DAVID WOLOCH: --we do care about
15 illegal street ATMs, whether they're in the
16 landmark district or not, I think they can pose
17 similar problems and similar concerns. And I will
18 say, I mean, I do agree that I think the safety
19 issue is a paramount one.

20 COUNCIL MEMBER JAMES: Yes.

21 DAVID WOLOCH: Another one that we
22 haven't really touched on, but I know we certainly
23 see in our district, is from an aesthetic--

24 COUNCIL MEMBER JAMES: Yes.

25 DAVID WOLOCH: --perspective, the

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2 ATMs become another vehicle for stickers and
3 graffiti and they mar the sidewalk aesthetics and
4 otherwise nice streets and I think it's another
5 issue that merits--

6 [Crosstalk]

7 COUNCIL MEMBER JAMES:

8 [Interposing] No, I agree with all of your
9 positions or statements. There was, I don't know
10 where I was, there was some colloquy way back when
11 with respect to whether or not we're preempted by
12 federal legislation, federal law? Have you heard
13 that argument?

14 DAVID WOLOCH: I don't--

15 COUNCIL MEMBER JAMES: No?

16 DAVID WOLOCH: --I don't think so.

17 COUNCIL MEMBER JAMES: Okay, okay.

18 The concern also that I have, obviously the
19 security issue that you raise, they're not
20 aesthetically pleasing. As you know in our
21 district we have a lot of flea markets and the
22 flea markets or someone has set up stand-alone
23 ATMs in front of flea markets.

24 DAVID WOLOCH: Yeah, I mean, it's
25 not surprising, you can see why they'd want to do

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2 that, and, you know, from our vantage point,
3 thinking of one particular large--

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COUNCIL MEMBER JAMES: Yes.

5

6 district--

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COUNCIL MEMBER JAMES: There's an

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ATM--

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10 within the flea market, that's of less concern to
11 us, but when it's blocking a very narrow Lafayette
12 Avenue, which is already very, very crowded,
13 that's a good example of the way an ATM can take
14 away much needed public space for--

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COUNCIL MEMBER JAMES: Right.

16

DAVID WOLOCH: --pedestrian use.

17

18 absolutely right, it is on Lafayette Avenue, you
19 know, it's the flea and it's on Lafayette Avenue
20 and they set it up and they remove it after the
21 market is closed for the day. I don't know if
22 there's any provision that's provided when there
23 is no paper for receipts, similar to a bank, you
24 know, when you go to an ATM at a bank, there's
25 usually a notice that we're out of paper, you

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2 know, if you want to continue press yes or no. Is
3 that feature part of most ATMs? I don't think so.

4

DAVID WOLOCH: I don't believe so.

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6 COUNCIL MEMBER JAMES: Okay. So in
7 addition to not knowing who these companies are,
8 these pop up companies, in addition to not
9 providing security measures, in addition to not
10 notifying individuals with respect to the fee, in
11 addition to not notifying when they're out of
12 paper, in addition to the eyesore and the fact
13 that they're in landmarks districts, for all of
14 those reasons, they should be regulated, assuming
15 that we're not preempted and I join with Council
16 Member Reyna and the Chair in putting forth
17 legislation. And the last question is, does the
18 city benefit from these ATMs? Is there any
19 revenue?

19

DAVID WOLOCH: No.

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COUNCIL MEMBER JAMES: No.

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COUNCIL MEMBER BREWER: They're
illegal [off mic].

23

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COUNCIL MEMBER JAMES: So ones that
are legal?

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DAVID WOLOCH: Only to the extent

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2 that when we give--I should say yes, and to the
3 extent that when we give violations--

4 COUNCIL MEMBER JAMES: Right.

5 DAVID WOLOCH: --and those get
6 paid, as we discussed earlier, there have not been
7 that many violations given out, I think there's
8 the potential for us to do more and so there's
9 some revenue stream there.

10 COUNCIL MEMBER JAMES: So I know
11 residents have not called 311, but they bombarded
12 my office again in landmark districts, eyesores,
13 on sidewalks, Lafayette Avenue, a business just
14 recently--I can't think of the name, not too far
15 from my store--not too far from my office--set up
16 an ATM on the sidewalk, I called Consumer Affairs,
17 he was violated, he has removed it or he told me
18 he was removing it today, I have to check when I
19 get back to the office. But whatever we can do to
20 regulate these ATMs, particularly, again, in
21 landmark districts, I'd appreciate that. And my
22 legislation has been submitted and will be
23 forthcoming. Thank you.

24 CHAIRPERSON VACCA: Thank you.

25 [Off mic]

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2 CHAIRPERSON VACCA: In the
3 meantime, while all these ATMs are on the street
4 and you issue violations and it takes months--

5 [Off mic]

6 CHAIRPERSON VACCA: --to get them
7 off the street due to the process involved, are
8 they paying the city any rent? For use of a
9 public sidewalk?

10 DAVID WOLOCH: No, they're not.
11 But just one point of clarification, they're not--
12 this process isn't necessarily taking months. So,
13 again, going back to the experience in Manhattan,
14 we gave out 192 encroachment notices last year and
15 subsequently only gave out 82 violations, so that
16 means that the rest did what they were supposed to
17 do, they--

18 CHAIRPERSON VACCA: [Interposing]
19 The rest disappeared? That's what they were
20 supposed to do or else they should have gotten a
21 violation, so you're--

22 DAVID WOLOCH: Right, right--

23 [Crosstalk]

24 CHAIRPERSON VACCA: --saying that
25 the rest disappeared.

1
2 VINCENT MANISCALCO: Right, and
3 Councilman, many--what my inspectors are telling
4 me, many of these ATMs ended up inside of the
5 store, they--

6 [Crosstalk]

7 CHAIRPERSON VACCA: Move inside.

8 VINCENT MANISCALCO: They moved
9 them inside.

10 COUNCIL MEMBER JAMES: Yep, and
11 [off mic].

12 CHAIRPERSON VACCA: That's because
13 the rent was too damn high.

14 [laughter]

15 COUNCIL MEMBER JAMES: Couldn't
16 help it.

17 CHAIRPERSON VACCA: I couldn't help
18 that one, you're right.

19 [Off mic]

20 COUNCIL MEMBER JAMES: His name is
21 Jimmy too, you know, his name is Jimmy as well.

22 CHAIRPERSON VACCA: I'm another
23 Jimmy. All right, Council Member Reyna.

24 [Off mic]

25 COUNCIL MEMBER REYNA: I just

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2 wanted to point out to my colleagues, this
3 particular ATM is a legal one, it wasn't before.
4 Because it had an external apparatus in front of
5 its business, it came to me for a sidewalk café,
6 and I then entered into a discussion to remove
7 that ATM and find a different way to have access
8 to an ATM for their customers, but within the
9 legal confines of their building lot.

10 COUNCIL MEMBER JAMES: So when
11 they're stand-alone, they're illegal?

12 COUNCIL MEMBER REYNA: When they're
13 stand-alone outside on the sidewalk--

14 [Crosstalk]

15 CHAIRPERSON VACCA: --on the
16 sidewalk.

17 DAVID WOLOCH: Correct.

18 COUNCIL MEMBER REYNA: --
19 Commissioner Woloch, they're illegal?

20 DAVID WOLOCH: Illegal, not legal.

21 COUNCIL MEMBER REYNA: Illegal.

22 DAVID WOLOCH: Not legal.

23 COUNCIL MEMBER REYNA: They're not
24 legal, and so I want to just ask, Commissioner
25 Woloch, is there a registry within the state of

1
2 New York or the city of New York, state banking
3 department or not of ATMs?

4 DAVID WOLOCH: I'm not sure about
5 the bank ATMs, but I think when state legislation
6 addressed ATMs, whenever it was in the mid-90s,
7 they didn't deal with the non-bank ATMs, so I
8 think that whole universe has been--within the
9 state has been--

10 [Crosstalk]

11 COUNCIL MEMBER REYNA:

12 [Interposing] And so do you agree or disagree that
13 this will only get worse?

14 DAVID WOLOCH: In terms of the
15 problem of on street ATMs, I think it would get
16 worse unless we start to deal with it. I think
17 there are ways for us to deal with it using the
18 enforcement powers that we have, I think there's
19 more for us to do, there's better communication,
20 coordination with the Department of Sanitation,
21 and more in fo--

22 COUNCIL MEMBER REYNA:

23 [Interposing] Not to mention DOB--

24 DAVID WOLOCH: Correct.

25 COUNCIL MEMBER REYNA: --not to

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2 mention--

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DAVID WOLOCH: --and I think there's more enforcement we can do and more effective enforcement we can do, which we're prepared to do. Now whether that's enough, I don't know, and is there the need for stronger enforcement authority? Perhaps. And I think this is something we should talk about.

COUNCIL MEMBER REYNA: And I just want to share with you, you know, in a community like Bushwick where there is only one bank in all of Bushwick and if you count the Cooperative, a Federal Credit Union that was formed a decade ago, then there's two banks for a community that's underserved as far as bank lending institutions, this is your way of accessing your finances. And so the revocable consent issue cannot be off the table entirely because there are areas where this is the only way, 24 hours a day of accessing your finances and, therefore, if everything, as far as ATMs are concerned, are going to be internal, bring from the outside in, then you won't have access to that ATM in a neighborhood like Bushwick because there's no night access. This particular

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2 ATM has complied, has been creative in the way
3 they were going to serve their customers and the
4 outside public with a demand and once the gates
5 are down there's still access to this particular
6 ATM, that's not being given as a choice. And so
7 when you do your enforcement of the 192 and 82
8 were still noncompliant, those that did comply,
9 what was their way of complying? Bringing the
10 machine inside, but we don't know if they're
11 giving access to those machines in other ways at
12 night, correct?

13 DAVID WOLOCH: Yeah, I mean,
14 presumably, I would imagine some of those
15 establishments are, you know, closed in the
16 evening and there are probably others that are
17 open all the time, but I think you're right, there
18 are certainly parts of the city where there are
19 fewer banks and the larger issue of access to ATMs
20 is an important one.

21 COUNCIL MEMBER REYNA: And so if we
22 can just concentrate on the fact that we don't
23 know how many there are, where they exist, how
24 many are functioning, you know, what options are
25 there for business owners--and obviously this is

1
2 an issue that must include property owners, but
3 more than likely it's the business establishment
4 that has the contract with the ATM owner--a
5 registry of who the owner is is important for
6 doing business in the city of New York, it
7 provides the safety measures that we want to see,
8 and at this point, my bill right now is the only
9 item that addresses safety as we are hearing some
10 of the concerns when in reference to sidewalk
11 obstruction with ATMs.

12 You know, Council Member Koppell
13 has mentioned he has a bill and it deals with the
14 internal as well as external ATMs throughout the
15 city of New York, but right now in this hearing
16 we're dealing with the sidewalk ATMs, the lack of
17 enforcement, the lack of registry of these ATMs,
18 how many function, how many don't, and what are we
19 doing to remove them, and removing them isn't the
20 only answer because there is a need for them.

21 DAVID WOLOCH: Right.

22 COUNCIL MEMBER REYNA: Thank you.

23 CHAIRPERSON VACCA: I think also,
24 Commissioner, at this point, the city has to
25 basically--how [off mic] put this--Commissioner,

1
2 at this point, the city either has to--I don't
3 want to use the term I want to use.

4 [Off mic]

5 CHAIRPERSON VACCA: At this point,
6 the city has to cut bait or fish. The city's got
7 to cut bait or fish, for too long these ATMs are
8 on the street without regulation. Either we make
9 them safe for people to use because we like them,
10 because we install cameras, or we then take the
11 position that these machines are obstructions to
12 pedestrians and that we want them inside as
13 opposed to outside. So we have to determine where
14 we're going.

15 DAVID WOLOCH: And I think from our
16 perspective, it's the latter direction that we'd
17 like to go in and I think there's more that needs
18 to be done to make that work, but that's where
19 we'd like to go.

20 CHAIRPERSON VACCA: Okay. Next
21 we'll have a panel. Thank you. Ben Theil, I'm
22 sorry, I can't read this, 348 West 30th Street?

23 MALE VOICE: No, Christine Berthet.

24 CHAIRPERSON VACCA: Oh, I'm sorry,
25 okay.

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CHRISTINE BERTHET: That's okay.

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CHAIRPERSON VACCA: Marc Brumer?

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MALE VOICE: I'll take those

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copies.

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CHAIRPERSON VACCA: Maximo Javier.

6

[Off mic]

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COUNCIL MEMBER KOPPELL: Mr.

8

Chairman, just as a point of curiosity--

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CHAIRPERSON VACCA: Yes, Council

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Member.

11

COUNCIL MEMBER KOPPELL: --I don't

12

know what the people are coming to testify are

13

going to say, but I would like to have some cross-

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discussion if it's available. That is to say, I'm

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sure there are people who don't like the ATMs at

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all and I want to hear from them 'cause maybe I'm

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wrong 'cause I think they may have some use, but I

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would also hope we're going to hear from someone

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who maybe puts these in and thinks they are

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valuable. So I'd like to hear back and forth,

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that's why I'm staying.

22

CHAIRPERSON VACCA: But I think the

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argument regarding these ATM machines is, number

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one, are they safe for the public to use and how

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2 do we balance that with the fact that many people
3 need them and want access to them.

4

COUNCIL MEMBER KOPPELL: No, I
5 agree, that's why I'd like to hear both sides.

6

CHAIRPERSON VACCA: And we're going
7 to hear both sides now.

8

COUNCIL MEMBER KOPPELL: Good.

9

CHAIRPERSON VACCA: I do think the
10 issue--when you don't have lighting, when you
11 don't have someone that you can call to report
12 that the ATM is vandalized, I think that that's a
13 public safety issue, and on the other hand, we
14 want access as well to ATMs in communities that
15 may not have easy access now. So that's where we
16 are right now here. All right, would you please--

17

CHRISTINE BERTHET: [Interposing]

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25

Yes, my name is Christine Berthet, I'm the Chair
of Transportation Committee for Community Board 4,
Manhattan, which is on the West Side Clinton and
Chelsea and I'm going to make a testimony which is
very Manhattan business district-centric. I
understand from the discussion and I acknowledge
that in some location in the city the ATM outside
may be very needed, but I don't know of those

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2 places, so we'll testify for our district.

3

4 We applaud the committee
5 undertaking to improve the security on all ATMs
6 and to regulate ATM on sidewalk. The
7 proliferation of so-called amenities on the
8 sidewalk has made walking very difficult in our
9 neighborhood--just when Mayor Bloomberg is telling
10 us that we should walk more.

11

12 CB4 generally opposes the
13 installation of ATM on the sidewalk, and, again,
14 it's below 60th Street, although it's not
15 mentioned in our--because the sidewalks are so
16 narrow and so crowded with a lot of obstruction
17 now, that it is already very, very difficult. And
18 in our district, bank branches are ubiquitous,
19 there are bank branches at every corner of every
20 street, and we have numerous ATM inside stores.
21 And so one wonders in our district what portion of
22 the public needs to withdraw cash every 25 feet--
23 is it an addiction and, you know, and I don't know
24 that we should support that, so especially when
25 even the cabs are taking your credit card. You
know, we are in a society where there is so much
acceptance of credit card, it becomes a little

1
2 bizarre. And believe me, I'm supporting your
3 comment about the phone booth, I can't wait to see
4 them disappear.

5 So I'm jumping a little bit,
6 however, should the committee feel compelled to
7 permit private ATM on the public right of way, I
8 have the following suggestion and I'd like the
9 committee to take the following ideas: Placement.
10 I don't think a sidewalk ATM should be located
11 less than 300 feet from a bank or from an inside
12 ATM. I mean, you know, one which is open 24 hours
13 a day, your point is well taken. As an example,
14 in Hell's Kitchen, I told you we have 200 feet
15 stretch, we have two bank branches, two sidewalk
16 ATM, and one indoor ATM--that's four in 200 feet.
17 I mean, you have the examples.

18 We think a sidewalk ATM should be
19 located at least 10 feet away from the corners.
20 We see more and more ATM located exactly at the
21 corner where the two pedestrian crossing come and
22 it's not acceptable.

23 And the ATM should allow 9.5 feet
24 of walking clear path, which is the guidance used
25 by DOT for newsstand, because not only you have

1
2 the obstruction, but you have the person in front
3 of the obstruction, so you need a little more
4 space free.

5 We think the ATM should pay a
6 licensing fee. If they are going to prevent a
7 sidewalk café, and you have the perfect example
8 there, they should pay the same amount of money
9 than a sidewalk café. For the square footage, you
10 would be about \$300 a year. You know, and they
11 should pay for that, because they prevent a
12 sidewalk café or another place to be there.

13 And appearance and footprint, each
14 ATM's size should be strictly limited so that we
15 don't repeat the phone booth, which have become
16 enormous just for the sake of putting
17 advertisement, we don't want to have advertisement
18 on those things, so it should be very clearly that
19 it's very small and no advertisements, so we don't
20 have the same risk.

21 And the down lighting should be
22 really focused on the keyboard, not in the face of
23 pedestrian crossing, walking, and there should be
24 obviously a complaint number.

25 And although all these measure will

1
2 limit the negative impact of ATM. We think that
3 allowing ATM, a for-profit enterprise with, we
4 think, no public benefit in Manhattan to use
5 public space is an unfortunate precedent. I mean,
6 what else is going to come down and say I want to
7 be on the sidewalk? Where do we stop? I don't
8 know, it's really an issue.

9 And we should limit the placement
10 of newsstand--it does limit the placement of
11 newsstand and café, which generate jobs and bike
12 racks and bus shelters and tree which provide
13 service to the public because every time you would
14 have an ATM, then the DOT is going to measure from
15 there, so it's going to limit other things.

16 And therefore, CB4 oppose the
17 installation of ATMs on sidewalk below 60th
18 Street.

19 And by the way, I don't understand
20 why all the existing ATM are not being yanked out
21 because they are illegal. Thank you.

22 CHAIRPERSON VACCA: Thank you,
23 thank you very much. Many of your points are well
24 taken. I'm sure you were here, we had a
25 presentation pointing out that we don't know what

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the fees are--

CHRISTINE BERTHET: Exact.

CHAIRPERSON VACCA: --many of them are full of garbage--

CHRISTINE BERTHET: No, absolutely.

CHAIRPERSON VACCA: --and many of them are abandoned on the streets, we don't even know who is running the ATM on the street that's in place.

CHRISTINE BERTHET: I know--

[Crosstalk]

CHAIRPERSON VACCA: Is that true in your neighborhood, are these things true in your neighborhood?

CHRISTINE BERTHET: [Interposing]

Yes, and you know what's happening in our neighborhood is like the indoor ATM which were indoor before, they move them out now.

[Crosstalk]

CHRISTINE BERTHET: So we got to reverse because now they see everybody has one out, why not me, and I'll take more space. So I mean, you know, it's really going the wrong way because it's--and garbage, as soon as you have an

1
2 ATM, you put a garbage on this side, a garbage on
3 this side, so it becomes an anchor for, you know,
4 people putting their stuff there. So it's very--I
5 mean, you know, combined with a bag, and we have
6 an old neighborhood so we have a lot of traps for--
7 --you know, between the traps and everything, it's
8 just not good.

9 CHAIRPERSON VACCA: Well, you know,
10 your testimony I can understand, but then I can
11 also understand Council Member Reyna who is saying
12 that in communities where people don't have a lot
13 of money--

14 CHRISTINE BERTHET: And I'm saying--

15 -

16 CHAIRPERSON VACCA: --this is
17 access for them--

18 CHRISTINE BERTHET: --and I'm
19 saying we need to be sensitive to the area. I
20 mean, you know, below 60th Street, again, you have
21 a bank at every corner. And--

22 CHAIRPERSON VACCA: Well we have a
23 lot of people with money, but--

24 CHRISTINE BERTHET: It's just, I
25 mean, addicted, right?

1
2 CHAIRPERSON VACCA: They're not in
3 the Bronx, I'll tell you. Okay. Thank you. Yes,
4 sir.

5 COUNCIL MEMBER KOPPELL: I just
6 want to thank, I thought that--I understand the
7 point she makes entirely and her suggestions, if
8 we have them, the ways in which they ought to be
9 licensed or regulated, very good suggestions.

10 CHRISTINE BERTHET: Thank you.

11 MAXIMO JAVIER: Good afternoon,
12 Chair Vacca, my name is Maximo Javier, I am the
13 Executive Director of the Grand Street Business
14 Improvement District, which is within Council
15 Member Diana Reyna's district. And we are so
16 grateful to Council Member Diana Reyna for her
17 responsiveness and action in terms of the sidewalk
18 ATMs.

19 We do not want sidewalk ATMs at
20 all. We believe they are a public menace, they
21 will increase, we believe, criminal activity. I
22 have a couple of pictures--a few pictures there
23 and one of them, I believe, actually was the old
24 Wilbur Café outside ATM, which is the first
25 picture that you'll see there in my testimony,

1
2 where it has graffiti, it has whole bunch of
3 advertising, and, you know, pretty much it looks
4 like trash. And we note the fact that recessed
5 ATMs look much better. But although we would say
6 that it's still a public safety issue for us, just
7 because of the fact that, you know, midnight, 1
8 o'clock in the morning, anyone that goes up to an
9 ATM at that time is easy prey for criminals. And
10 we believe if we just flip that ATM around would
11 better serve the cash business and would better
12 serve the public.

13 So, you know, emphatically we
14 oppose sidewalk ATMs. We don't want to see them,
15 but if the City Council does, you know, move
16 forward in terms of regulating them--you know, I
17 just want to support Christine in terms of her
18 testimony and I would also just add--I have
19 another picture of a recessed ATM, Valley National
20 Bank, it's located in Queens and that would take
21 up too much space on Grand Street. Most of our
22 commercial properties are only about 25 foot
23 square frontage, so, you know, in terms of
24 permitting them, the one that Council Member Reyna
25 has demonstrated here in this slide I think would

1
2 best fit our district and, you know, that goes to
3 question as to, you know, you would have to really
4 consider every specific neighborhood and, you
5 know, in terms of that, I would suggest that, you
6 know, BIDs are also involved in the process of
7 this, you know, legislation [off mic] forward.

8 CHAIRPERSON VACCA: One point that
9 was raised was that many of these ATMs obstruct
10 public thoroughfares, has that been your
11 experience in Brooklyn, that they obstruct the
12 public thoroughfares for pedestrians, what type of
13 obstruction did they provide or did they--

14 [Crosstalk]

15 MAXIMO JAVIER: They definitely
16 provided pedestrian obstruction, just because of
17 the simple fact we have other, you know, furniture
18 along the, you know, the sidewalks and also DOT,
19 you know, street lamps, DOT parking meters--

20 CHRISTINE BERTHET: Bike racks.

21 MAXIMO JAVIER: --and bike racks as
22 well around--

23 FEMALE VOICE: Trash--

24 [Crosstalk]

25 MAXIMO JAVIER: --around our

1
2 district--trash receptacles, exactly, so--benches,
3 so there's definitely an added, you know,
4 obstruction.

5 CHAIRPERSON VACCA: Council Member
6 Reyna?

7 COUNCIL MEMBER REYNA: Thank you,
8 Mr. Chair. I just wanted to ask our BID director,
9 Max Javier, the option between the ATM prior to
10 this scenario--

11 MAXIMO JAVIER: Much better, this
12 is much better.

13 COUNCIL MEMBER REYNA: --in
14 comparison, this is much better. This is within
15 the property line, prior to, it was illegal.

16 MAXIMO JAVIER: Right.

17 COUNCIL MEMBER REYNA: This is
18 legal. You would prefer internal access despite
19 the need for accessing finances at night.

20 MAXIMO JAVIER: And, you know, I
21 see your point in terms of, you know, the greater
22 neighborhood, but within the BID, we have two
23 banks--you know, in terms of the BID, we're--

24 COUNCIL MEMBER REYNA: Right.

25 MAXIMO JAVIER: --fine with that.

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COUNCIL MEMBER REYNA: Right.

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MAXIMO JAVIER: Yeah, I definitely see your point and I agree with you in terms of the access.

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COUNCIL MEMBER REYNA: And I just wanted to express, you know, as a BID director, knowing how within your six-block BID, you have two banks, the need for external use of ATM would not be necessary because you have two banks.

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MAXIMO JAVIER: Right.

COUNCIL MEMBER REYNA: But as a business, going into contract with an ATM service provider, that would not be considered because they're not regulated and so you could have 1,000 more of these on a six-block BID.

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19

MAXIMO JAVIER: Right, right, so that's why we would encourage you and the City Council to prohibit them.

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COUNCIL MEMBER REYNA: But--

FEMALE VOICE: Ban them.

MAXIMO JAVIER: And ban them, exactly.

24

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COUNCIL MEMBER REYNA: --to ban--

MAXIMO JAVIER: Sidewalk ATMs.

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2 COUNCIL MEMBER REYNA: --but they
3 are banned, they're not legal.

4 CHRISTINE BERTHET: Well to
5 enforce.

6 MAXIMO JAVIER: They're not being
7 enforced, so that's why, you know--

8 COUNCIL MEMBER REYNA:
9 [Interposing] This is legal.

10 CHRISTINE BERTHET: Yeah.

11 MAXIMO JAVIER: Right.

12 COUNCIL MEMBER REYNA: And so
13 because ATMs are not regulated, whether they're
14 inside or outside, having 1,000 more of these is
15 not what you're seeking.

16 MAXIMO JAVIER: Right.

17 COUNCIL MEMBER REYNA: And whether
18 we regulate making sure we enforce the law so that
19 there are no ATMs on the sidewalk, your point is
20 there's no need to have them even external use
21 facing the public from the property line, which
22 makes it legal. You know, so there's no
23 regulation--they're not breaking the law right
24 now.

25 MAXIMO JAVIER: Right.

1
2 COUNCIL MEMBER REYNA: You don't
3 want to see this, but they're not breaking the
4 law.

5 MAXIMO JAVIER: Right.

6 CHRISTINE BERTHET: No, but I think
7 the point is that within places where we have a
8 lot of banks and a lot of ATMs, that is not
9 necessary, but in places where--

10 COUNCIL MEMBER REYNA: But--

11 CHRISTINE BERTHET: --there is a
12 need for financial--

13 COUNCIL MEMBER REYNA: --Christine-

14 -

15 CHRISTINE BERTHET: Yes.

16 COUNCIL MEMBER REYNA: --that's the
17 problem, it's not regulated, there are no
18 regulations currently--

19 CHRISTINE BERTHET: [Interposing]
20 Well it's illegal.

21 COUNCIL MEMBER REYNA: --within the
22 Administrative Code--

23 CHRISTINE BERTHET: [Interposing]
24 To prevent that, you say.

25 COUNCIL MEMBER REYNA: --to prevent

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2 this.

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CHRISTINE BERTHET: Okay, all

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right.

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[Crosstalk]

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CHAIRPERSON VACCA: I want to add--

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MAXIMO JAVIER: [Interposing] We

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definitely support regulation.

9

CHRISTINE BERTHET: [Interposing] I

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don't care--

11

[Crosstalk]

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CHAIRPERSON VACCA: --the city has

13

got to make a determination--

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CHRISTINE BERTHET: Right.

15

CHAIRPERSON VACCA: --are they

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going to allow ATMs on the sidewalks or not. If

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they're not, okay; but if they are, regulate them

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and have them--

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MAXIMO JAVIER: Right.

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CHAIRPERSON VACCA: --get permits

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and have them be secured. So that's what the City

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has to do.

23

CHRISTINE BERTHET: But I think if

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there are those ATMs, and there are a lot like

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that in Europe, I mean, you know, the lighting,

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2 the number, all the proper security should be in
3 place and, you know, personally I don't care too
4 much if the people decide that this is what they
5 want in their, you know, window, I mean, it
6 doesn't take a lot of space on the sidewalk, so
7 personally--

8 [Crosstalk]

9 COUNCIL MEMBER REYNA: And ca--

10 CHRISTINE BERTHET: --fine.

11 COUNCIL MEMBER REYNA: Christine,
12 what I wanted to just share with you and Max is
13 the fact that right now there are no regulations--

14 CHRISTINE BERTHET: [Interposing]

15 No, no, I understand, right.

16 COUNCIL MEMBER REYNA: --that would
17 allow us to intervene--

18 CHRISTINE BERTHET: Right.

19 COUNCIL MEMBER REYNA: --and right
20 now, this is the best case scenario.

21 MAXIMO JAVIER: And we support--

22 [Crosstalk]

23 COUNCIL MEMBER REYNA: The other
24 option--

25 MAXIMO JAVIER: --regulation.

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COUNCIL MEMBER REYNA: Right.

MAXIMO JAVIER: And in terms of, like, supporting to regulate these, you know, ATM machines, we definitely support that.

[Crosstalk]

COUNCIL MEMBER REYNA: And so these discussions are starting, you know, there's a need for understanding where these non-banking ATMs are, mapping them out, tracking them, identifying them, and once we get at least that registry of ATMs, perhaps we can start the discussion of how we're going to regulate them, and only through a process that gives a certain agency the authority to go in and regulate them, following certain codes, will we be able to do that. Right now, as it stands, as long as you have it inside your property line, you can have an ATM.

CHRISTINE BERTHET: Right.

CHAIRPERSON VACCA: Council Member James.

COUNCIL MEMBER JAMES: Yes, last, has there been a survey as part of your BID as to whether or not ATMs charge more than standard banks?

1
2 MAXIMO JAVIER: Well I actually I,
3 myself, I went out there and I checked these ATMs,
4 they actually are less.

5 COUNCIL MEMBER JAMES: They're
6 less.

7 MAXIMO JAVIER: They're less than
8 the banks, these are \$1.50, banks are--you know--

9 [Crosstalk]

10 MAXIMO JAVIER: --if it's with--
11 right, in our new hood--if it's a bank that's
12 foreign to, you know, to your account?

13 COUNCIL MEMBER JAMES: Yes.

14 MAXIMO JAVIER: Then you're charged
15 like \$2.50 or \$3, so it's more than these sidewalk
16 ATMs. That's how they're, you know, that's how
17 maybe they're luring people in. Which is contrary
18 to, I believe, Scott Stringer's survey, which he
19 found that they were more--they were charging more
20 fees, but in our BID, they're charging less.

21 [Off mic]

22 COUNCIL MEMBER JAMES: So in the
23 quote unquote outer boroughs, you're arguing that
24 they're charging less--well based on your survey--

25 MAXIMO JAVIER: Right.

1
2 COUNCIL MEMBER JAMES: --you're
3 limited survey--

4 MAXIMO JAVIER: Within our BID.

5 COUNCIL MEMBER JAMES: --but in
6 Manhattan and perhaps elsewhere, they might be
7 charging more than--

8 MAXIMO JAVIER: Right.

9 COUNCIL MEMBER JAMES: --standard
10 banks. And my last point, based on your survey,
11 do you know whether or not they were located
12 within close proximity to the two banks that are
13 on your corridor?

14 MAXIMO JAVIER: Sure, definitely,
15 across the street from it, which is less than, you
16 know, 30 feet, and also, there are ATMs inside our
17 stores, our restaurants, so, you know, there's
18 definitely access within the BID in terms of ATM.

19 COUNCIL MEMBER JAMES: Okay.

20 CHRISTINE BERTHET: I have a
21 comment on the fee--

22 COUNCIL MEMBER JAMES: Yes, yes.

23 CHRISTINE BERTHET: --my
24 observation is that the fee is less, but the
25 maximum you can withdraw is more, so as a percent,

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2 I think it's more.

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CHAIRPERSON VACCA: Okay. We have to move on because this room has to be used by a democratic caucus.

6

[Off mic]

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CHAIRPERSON VACCA: Come up Marc Brumer. You know how important--

9

[Crosstalk]

10

11

COUNCIL MEMBER JAMES: --keep us here.

12

13

CHAIRPERSON VACCA: --you know how important that is.

14

[Off mic]

15

FEMALE VOICE: We have good seats.

16

[Off mic]

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MALE VOICE: Yes, sir.

18

MARC BRUMER: Thank you, Mr.

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Chairman. My name is Marc Brumer, I am here on behalf of the Manhattan Borough President Scott Stringer and I will just present his written testimony, which I think you have coming before you. So I just want to say thank you Chairman Vacca and the members of the City Council Committee on Transportation for this opportunity

1
2 to comment on this very important legislation.
3 Thank you, Council Member Reyna, for introducing
4 this legislation, and thank you again for this
5 hearing. We feel that it's a very important
6 issue, the idea of regulating these automated
7 teller machines.

8 The problem of sidewalk ATM
9 machines we think is an epidemic in neighborhoods
10 throughout Manhattan, to our understanding, as
11 well as much of New York City. This is an issue
12 that I've been working on since July of 2009 when
13 my office released a statement called "Sidewalks
14 under--sorry, a survey called "Sidewalks Under
15 Siege" in which I demanded a halt of the growing
16 number of ATMs on city sidewalks and offered
17 recommendations for new legislation. My office
18 surveyed all 12 Manhattan Community Board
19 districts and found hundreds of sidewalk ATMs.
20 Ninety-nine were found in the East Village alone,
21 with 70 of them being between 1st Avenue and
22 Avenue B in just one space. In the West Village,
23 45 outdoor ATM machines were found; at a single
24 corner on 181st Street in Washington Heights,
25 seven ATMs machines were found; and, again, in

1
2 Chelsea at West 23rd Street, four were clustered
3 around a single corner at the intersection of 8th
4 Avenue. These are just a few examples. And of
5 all the machines surveyed, a total of 25.5% of the
6 ATMs were stationed on the sidewalk.

7 Unlike the ATM machines inside bank
8 buildings, sidewalk ATMs are not regulated by
9 state or city statute as of now. Bank ATMs are
10 required to have surveillance cameras, mirrors,
11 and lighting, but there are no such safety
12 regulations for street ATMs. Our study found more
13 than 85% of the street ATMs surveyed lacked
14 visible surveillance cameras and only 3.5% had a
15 reflective mirror on the machine in order to
16 prevent crimes.

17 Street ATMs can also be a blight to
18 the neighborhood. These machines often prove to
19 diminish the visible aesthetic of the community
20 and are more costly to residents--we were just
21 talking about this earlier. Our survey found more
22 than 40% were vandalized with graffiti, and the
23 average charge for withdrawing funds was nearly 8%
24 higher than the indoor ATMs surveyed at the time.

25 While we do want residents and

1
2 tourists to have easy access to ATM machines, we
3 think that we need to ensure ATMs be safe and
4 secure. Intro 257-A, sponsored by Council Member
5 Diana Reyna, addresses the concerns associated
6 with sidewalk ATMs. I commend Council Member
7 Reyna for introducing this legislation, it goes a
8 long way in addressing these serious safety
9 concerns associated with sidewalk ATMs. I urge
10 the entire Council to vote for its passage and I
11 hope that we can work towards making our
12 neighborhoods safer and more secure as a result of
13 regulating these dangerous sidewalk ATMs. Thank
14 you.

15 CHAIRPERSON VACCA: Thank you, and
16 I would be remiss if I did not thank the borough
17 president for putting the spotlight on this and
18 doing something of an investigative nature that
19 highlighted the issue and I'm sure was very
20 helpful.

21 MARC BRUMER: Thank you, Mr.
22 Chairman.

23 CHAIRPERSON VACCA: And thank you,
24 sir, thank you.

25 There being no further business and

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no further speakers, this meeting is adjourned.

[Crosstalk]

CHAIRPERSON VACCA: Okay. I'll be
in the office.

[Crosstalk]

CHAIRPERSON VACCA: You like that?

FEMALE VOICE: Yeah.

[Crosstalk]

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date November 9, 2010