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**THE COUNCIL OF THE CITY OF NEW YORK**

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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**COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**

Hon. Rafael Espinal, Chair

**January 23, 2020**

**PROPOSED INT. NO. 1281-A:** By Council Members Torres, Espinal, Powers, Deutsch, Cumbo, Lander, Brannan, Dromm, Reynoso, Rivera, Constantinides, Kallos, Levine, Ayala, Rosenthal, Moya, Rose, Cornegy, Koslowitz, Lancman, Levin, Cohen, Chin, and Vallone, and the Public Advocate (Mr. Williams)

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting food stores and retail establishments from refusing to accept payment in cash

1. **INTRODUCTION**

On January 23, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Rafael Espinal, will hold a vote on Proposed Introductory Bill Number 1281-A (Int. 1281-A), in relation to prohibiting retail establishments from refusing to accept payment in cash. The Committee previously heard testimony on this bill from the Department of Consumer Affairs (DCA), business groups, advocates and other interested stakeholders, and their feedback informed various amendments.

1. **BACKGROUND**

For businesses embracing new technologies and faster transactions, cashless purchases are a convenient option. Business owners from establishments that only accept cashless transactions have reported shorter lines and wait times for their customers, and relief that they no longer feel vulnerable to robbery.[[1]](#footnote-1) While this technology clearly makes transactions swift and efficient, the overarching effects are not so benign. Rather, there are a range of negative consequences caused by prohibiting the use of cash for payment and marginalized communities tend to be disproportionally impacted.

Unbanked and Underbanked Populations

By relying exclusively on cashless payments, these establishments largely prevent unbanked customers from purchasing items or services from their stores. In an era of online shopping and payments made through apps on smart phones, one could assume that everyone is connected to a bank account and the technology that makes funds so readily available. In a financial hub like New York City, this ease in accessing cash may be expected. However, according to a report by the Urban Institute, commissioned by the Department of Consumer Affairs, there were 360,000 households in New York City (11.7% of the population) that had no bank accounts in 2013. This was well above the national average of 7.7% and the New York State average of 8.5%.[[2]](#footnote-2) The Urban Institute report measured the frequency of households that were ‘underbanked,’ meaning that, while they may have a bank account, they still rely on other financial services to cash checks, transfer money or access a loan.[[3]](#footnote-3) In 2013, 780,000 households (25.1%) in New York City were underbanked, compared to the national average of 20%.[[4]](#footnote-4) For some underbanked households, the fees or overdraft fines means that a bank account stays active but the account holder cannot afford to make regular use of it.[[5]](#footnote-5)

Across the City, the division of unbanked and underbanked households varies by borough. As illustrated in the graphs below, the Bronx has the highest percent of unbanked and underbanked households, and both the Bronx and Brooklyn have rates well above the national, State and City levels.

 **Unbanked households, 2013[[6]](#footnote-6) Underbanked households, 2013[[7]](#footnote-7)**

In addition to illustrating how different geographies are impacted, the figures on unbanked and underbanked households also highlight a link between poverty and unemployment rates. As seen in the graph below, the boroughs with the highest rates of family poverty also represented the greatest number of unbanked and underbanked households.

 **Characteristics and banking rates New York City and the five boroughs, 2013[[8]](#footnote-8)**

A deeper evaluation of the statistics shows this link at a neighborhood level as well. Those areas with a high share of poverty also have high rates of unbanked households. This is clearly illustrated in the graph below.

**Neighborhoods with the highest shares of households without a bank account and corresponding share in poverty, 2013[[9]](#footnote-9)**



As these statistics show, not all communities would be affected in the same way by businesses that only accept cashless payments and poor communities are most likely impacted. Nationally, the data show a similar pattern. According to federal data from the same year (2013), “half of all Latino and African American households are disconnected from the financial system, compared to only about one in five white households.”[[10]](#footnote-10) This equated to 17.9% of Latino households being unbanked and 28.5% underbanked, and 21.4% of African American unbanked households and 33.1% underbanked.[[11]](#footnote-11) Young people were also frequently unbanked with one in every four Americans under 35 either unbanked or underbanked.[[12]](#footnote-12)

An exclusively cashless policy also potentially harms large numbers of immigrants and victims of domestic violence who face their own barriers to accessing bank accounts. In New York City, domestic violence survivors who live in confidential shelters are prohibited from disclosing their address. However, opening a bank account requires a physical and mailing address. This means that, in New York City, “90 percent of domestic violence shelter residents are unable to open safe and new accounts because they cannot provide a physical address.”[[13]](#footnote-13)

Victims of domestic violence also face challenges when trying to close a joint account to which their abuser has access, and this impacts the victim’s ability to open a new account. Of the approximately 35,000 survivors of domestic violence in New York City who seek legal, financial and other support services, 14,000 (40%) do not have access to safe and reliable bank accounts. Meanwhile, 4,000 (13%) of these survivors have no bank account, and for 9,450 (27%) of the survivors, the bank accounts they may access are considered unsafe because their abusers also have access.[[14]](#footnote-14)

Newly arrived or undocumented immigrants face similar challenges. They either do not have adequate paperwork and identification, face language barriers, or they are fearful of participating with official/quasi-government institutions. Immigrants also tend to be from lower socio-economic households and therefore fall under some of the categories illustrated above as minimum deposit requirements and fees pose financial barriers.[[15]](#footnote-15) According to national data, compared to U.S. citizens, noncitizens are three times as likely to be unbanked.[[16]](#footnote-16)

Other Jurisdictions

Federal law does not mandate that businesses accept cash payments and rather permits states to regulate the issue by jurisdiction.[[17]](#footnote-17) Massachusetts was the first state to prohibit businesses from rejecting cash payments. The 1978 law frames the issue around discrimination and states that “[n]o establishment offering goods and services for sale shall discriminate against a cash buyer by requiring the use of credit by a buyer in order to purchase such goods and services. All such retail establishments must accept legal tender when offered as payment by the buyer.”[[18]](#footnote-18) In New Jersey, the state legislature recently enacted a bill that would make it illegal for point-of-sale retail stores to refuse cash payments and violators could face fines of up to $2,500 for a first offence.[[19]](#footnote-19) Similar bills have passed in Philadelphia[[20]](#footnote-20) and San Francisco.[[21]](#footnote-21) In Chicago, Alderman Ed Burke has introduced an ordinance to prohibit retail and food establishments from refusing to accept cash, stating that “a ‘no cash’ sign is a ‘not welcome’ sign for many without ready access to credit including those who are low or fixed income, homeless, undocumented, young, or victims of identity theft”.[[22]](#footnote-22)

Other Issues and Concerns

By solely permitting cashless transactions, businesses may inadvertently construct a two-tiered purchasing system that stigmatizes cash purchases. Although it is legal tender, cash may become viewed as antiquated or dirty and thus those that rely on it could also be seen as inferior. While these views may be unintentional side-effects of an exclusively cashless policy, a small number of business owners have implemented cashless purchasing for precisely this reason. For example, in a widely reported quote from the co-owner of the now closed Commerce restaurant, Tony Zazula stated that “If you don't have a credit card, you can use a debit card. If you don't have a debit card, you probably don't have a checking account. And if you don't have a checking account, you probably shouldn't be eating at Commerce to begin with.”[[23]](#footnote-23) Although this view does not necessarily represent the business community as a whole, it does highlight the way that an exclusively cashless policy privileges some customers over others.

There are also flow-on effects from cash not being readily on hand by customers. As one writer articulates, “[w]hen cash is renounced you carry less of it, or maybe even none of it. And so you are not as prone to certain spontaneous acts of generosity — to put a few dollars in a tip jar where workers are underpaid or give money to a homeless person on a cold night on your way home from work.”[[24]](#footnote-24) Studies also show that when people pay for items with cash, they feel the reality of the transaction more acutely. This means that more value is assigned to the purchase.[[25]](#footnote-25) Switching to cash-only purchasing is also a common approach advocated by financial advisors when assisting people with budgeting as research consistently shows that people spend more when they pay with credit cards.[[26]](#footnote-26) Paying with cash helps people budget more effectively and track their purchases more accurately,[[27]](#footnote-27) and can therefore be a vital tool when managing one’s finances.

Given that they charge a fee for every electronic purchase, which can equate to between two and five percent of net sales,[[28]](#footnote-28) it is clearly in the interest of credit card companies to encourage cashless transactions. In fact, in 2017, Visa declared a “war on cash” and offered up to 50 small food establishments $10,000 if they moved to a completely cashless system.[[29]](#footnote-29) According to Visa Chief Executive Al Kelly, Visa is “focused on putting cash out of business.”[[30]](#footnote-30) However, cashless transactions also force consumers to forgo their privacy. Like most online activities, cashless purchases allow tracking of consumer behavior. Such material is big business for data brokers. It enables them to collate, analyze and sell this information to companies, giving them an advantage by targeting their goods, services or even political messages to an identified and receptive audience. Cashless transactions also make customers vulnerable to having their account information hacked or their personal information stolen.

The unequal impact of cashless policies is cause for concern. While the technology provides a range of benefits for business owners, relying solely on cashless payments generates a segregated purchasing system. This policy poses great harm for certain parts of the populations, and statistics show that this is disproportionally felt by poor, marginalized and vulnerable communities.

1. **BILL ANALYSIS**

Proposed Int. 1281-A prohibits food and retail establishments from refusing to accept cash as a form of payment. Section 1 of the bill creates a new subchapter 21 in chapter 5 of Title 20 of the Administrative code, titled “CASHLESS ESTABLISHMENTS PROHIBITED.” Subdivision a of new section 20-840 sets out the definitions. The term “food store” is defined broadly to include any store that sells food or beverages to the public, and includes street vendors. Retail establishments are also defined broadly and include any establishments where consumer commodities are displayed or offered for sale, or where services are provided to consumers at retail. Retail establishments do not include banks or trust companies as those terms are defined in section 2 of article 1 of the Banking Law.

Subdivision b prohibits food stores and retail establishments from refusing to accept payment in cash, except that they may refuse cash if bills in denominations over $20 are provided by a consumer. The exception for denominations over $20 was made after feedback regarding the circulation of fraudulent bills and the need for businesses to protect themselves. Online, phone and mail transactions are now also exempted unless the payment for such transaction occurs on the establishment’s premises. To alleviate any potential negative impacts of this bill, subdivision c was added to prohibit food and retail establishments from charging consumers who choose to pay in cash a higher price than cashless consumers. Pursuant to subdivision d, violators would face a fine of up to $1000 for a first offence and up to $1500 for subsequent offences.

Pursuant to subdivision e, a business is in compliance with the requirement to accept cash if a device is installed on the premises that converts cash into prepaid cards that a consumer may use to make purchases. Such businesses may not charge a fee for use of the devices, nor can they require a minimum deposit over 1 dollar. Funds deposited on such cards may not expire and there can be no limit on the number of transactions. A receipt must also be made available upon request. If a device malfunctions, a business is required to accept payment in cash. A sign must be placed on the device or immediately adjacent to it informing consumers that if the device malfunctions, the business is required to accept payment in cash, and that consumers may report any violations to 311. The effective date of the bill was amended from 180 to 270 days after it becomes law to allow businesses more time to comply.

Proposed Int. No. 1281-A

By Council Members Torres, Espinal, Powers, Deutsch, Cumbo, Lander, Brannan, Dromm, Reynoso, Rivera, Constantinides, Kallos, Levine, Ayala, Rosenthal, Moya, Rose, Cornegy, Koslowitz, Lancman, Levin, Cohen, Chin, Vallone, The Public Advocate (Mr. Williams)

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting food stores and retail establishments from refusing to accept payment in cash

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 21 to read as follows:

SUBCHAPTER 21

CASHLESS ESTABLISHMENTS PROHIBITED

§ 20-840 Cashless establishments prohibited. a. Definitions. For purposes of this subchapter, the following terms have the following meanings:

Cash. The term “cash” means United States coins and currency, including federal reserve notes. Cash does not include foreign currency; any paper instrument other than a federal reserve note, including, but not limited to, any check, bond, or promissory note; or any foreign metal coin.

Consumer commodity.  The term “consumer commodity” means any article, good, merchandise, product or commodity of any kind or class produced, distributed or offered for retail sale for consumption by individuals, or for personal, household or family purposes.

Food store. The term “food store” means an establishment which gives or offers for sale food or beverages to the public for consumption or use on or off the premises, or on or off a pushcart, stand or vehicle.

Retail establishment. The term “retail establishment” means an establishment wherein consumer commodities are sold, displayed or offered for sale, or where services are provided to consumers at retail. This definition does not include banks or trust companies as those terms are defined in section 2 of article 1 of the banking law.

b. It shall be unlawful for a food store or a retail establishment to refuse to accept payment in cash from consumers, provided that such food store or retail establishment may refuse to accept payment:

1. In cash bills denominated above $20; or

2. In cash for any telephone, mail, or internet-based transaction, unless the payment for such transaction takes place on the premises of such food store or retail establishment.

c. No food store or retail establishment shall charge a higher price for the same consumer commodity to a consumer who pays in cash than to a consumer who pays for such commodity through a cash-less transaction.

d. A food store or retail establishment that violates this section is liable for a civil penalty of not more than $1000 for the first violation and a civil penalty of not more than $1500 for each subsequent violation.

e. 1. This subchapter shall not apply to a food store or retail establishment that provides a device on premises that converts cash, without charging a fee or requiring a minimum deposit amount greater than one dollar, into a prepaid card that allows a consumer to complete a transaction at such food store or retail establishment.

2. Upon request, such device shall provide each consumer with a receipt indicating the amount of cash such consumer deposited onto the prepaid card.

3. Cash deposits onto such a prepaid card shall not be subject to an expiration date and there shall be no limit on the number of transactions that may be completed on such prepaid card.

4. In the event that such device malfunctions, the food store or retail establishment where such device is located shall accept payment in cash from consumers throughout the time period in which such device does not function in accordance with the standards set forth in this subchapter. Such food store or retail establishment shall place a conspicuous sign on or immediately adjacent to such device indicating that such food store or retail establishment is required by law to accept cash if such device malfunctions, and that consumers may report any violation to 311. The department may establish by rule additional requirements relating to such signs and the display of such signs.

§ 2. This local law takes effect 270 days after it becomes law, except that the department of consumer affairs may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

DFC/BAM

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