

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
October 17, 2018

Agenda Item:

Ordinance No. 2018-25 An Ordinance of the Village Council of the Village of Estero, Florida, Providing for Retail Gas Pump Security Measures; Establishing Security Measure Requirements for Owners and Operators of Retail Gas Pumps; Providing for Severability, Codification and an Effective Date

Description:

At the October 3, 2018 Council workshop, Village Attorney Burt Saunders provided an explanation of the ordinance establishing security measure requirements for owners and operators of retail gas pumps, helping to protect consumers from credit card skimmers and identify theft at gas station pumps.

Action Requested:

Motion to approve first reading of Ordinance No. 2018-25 and to hold second reading/hearing on November 7, 2018.

Financial Impacts:

Minor cost associated with advertising second reading/hearing.

Attachment:

1. Ordinance No. 2018-25
2. Memorandum dated October 3, 2018 from Village Attorney Burt Saunders

ATTACHMENT 1

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2018 - 25

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, PROVIDING FOR RETAIL GAS PUMP SECURITY MEASURES; ESTABLISHING SECURITY MEASURE REQUIREMENTS FOR OWNERS AND OPERATORS OF RETAIL GAS PUMPS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, pursuant to Section 166.021, Fla. Stats., municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

WHEREAS, the use of credit card skimmers at gas stations throughout the Village of Estero is a growing concern; and

WHEREAS, credit card skimmers are devices that thieves install on gas pumps, which accept payment via a credit or debit card, to illegally capture and steal the customer's credit or debit card information; and

WHEREAS, the Village Council finds that the security measures required by this ordinance will help protect consumers from credit card skimmers and identity theft at gas station pumps; and

WHEREAS, the Village Council hereby finds that this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Estero, Florida, as follows:

Section 1. The forgoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Gas Pump Credit Card Security.

(a) The following words, terms, and phrases, when used in this section, shall have the meanings set forth herein, except where the context clearly indicates a different meaning:

46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90

GAS PUMP shall mean a machine or device used to dispense petroleum fuel for sale to the public at retail.

PAYMENT CARD shall have the same meaning as defined in Section 817.625, Fla. Stats., as may hereafter be amended.

SCANNING DEVICE shall have the same meaning as defined in Section 817.625, Fla. Stats., as may hereafter be amended.

(b) Every owner or operator of a gas pump in the Village of Estero shall have affixed to or installed onto the exterior of any gas pump, which contains a scanning device, a visible gas pump panel locking device that requires an access key unique to each gas station location to restrict the unauthorized access to customer payment card information. The access key shall be maintained at gas stations at all times. As an alternative to the foregoing security measure, an owner or operator of a gas pump in the Village may affix or install onto any gas pump that contains a scanning device one (1) or more of the following security measures:

(1) A device or system that will render the gas pump, or the scanning device in the gas pump, inoperable if there is an unauthorized opening of the gas pump panel; or

(2) A device or system that encrypts the customer payment card information in the scanning device.

Owners and operators of gas pumps that chose to install an alternative security measure pursuant to this section shall demonstrate compliance with this section to a Village official upon request. Gas pumps that have been found in compliance with this Section by the Village may be appropriately marked by the Village for identification purposes.

(c) A security measure affixed or installed onto a gas pump pursuant to Subsection (b) shall be maintained by the owner or operator in good working condition at all times.

(d) Failure to comply with this section shall constitute a violation of this section and shall subject the owner or operator to the code enforcement provisions and procedures provided in the Village of Estero Code of Ordinances. Violations of this section shall be punishable by a fine of not less than \$250.00 per gas pump. Each day that a violation exists shall constitute a separate and distinct violation.

Section 3. Severability.

In the event that any portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130

Section 4. Codification.

The Village Council intends that this Ordinance be made part of the Code of the Laws and Ordinances, of the Village of Estero, Florida; and that the sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Village Manager without the need for a public hearing.

Section 5. Effective Date.

This Ordinance shall take effect 30 days following its adoption by the Village Council.

PASSED on first reading this _____ day of _____, 2018.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this _____ day of _____, 2018.

Attest: **VILLAGE OF ESTERO, FLORIDA**

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
James R. Boesch, Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq., Village Attorney

Vote:	AYE	NAY
Mayor Boesch	_____	_____
Vice Mayor Ribble	_____	_____
Councilmember Batos	_____	_____
Councilmember Errington	_____	_____
Councilmember Levitan	_____	_____
Councilmember McLain	_____	_____
Councilmember Wilson	_____	_____

ATTACHMENT 2

GRAY | ROBINSON
ATTORNEYS AT LAW

239-598-3601
BURT.SAUNDERS@GRAY-ROBINSON.COM

3838 TAMiami TRAIL NORTH
SUITE 410
NAPLES, FL 34108
TEL 239-598-3601
FAX 239-598-3164
www.gray-robinson.com

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

MEMORANDUM

TO: Village of Estero Village Council
FROM: Burt L. Saunders
DATE: October 3, 2018
SUBJECT: Retail Gas Pump Security Measures Ordinance

Many communities in southwest Florida have had a steady increase of instances of credit card skimmers being placed in gas pumps. Credit card skimmers are devices that thieves install on gas station pumps that accept payment via a credit or debit card, to illegally capture and steal the customer's credit card information.

Physical access to the interior of these pump's electronics comes as a result of an industry wide failure to install unique locks on their products. For decades, pump manufacturers have made generic keys that will open the same pump used in California all the way to Florida, which has culminated in a relative ease of access for installing skimmer devices. Passed in 2017, Section 525.17(10), Fla. Stats., does provide some requirements on the use of security measures to protect the consumer from gas pump skimmers. The statutory prescribed methods fall primarily into either an upfront investment of technology by station owners or a contractual investment in time on the station's part to physical and regularly check the pumps for tampering, as exposed by a security tape.

It is recommended by law enforcement that it is in the best interest of the public health, safety, and welfare to require additional protections that will enable law enforcement to know if a gas pump is secure.