

239-598-3601

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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.

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**ORDINANCE
NUMBER 2018 - ____**

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

RECITALS

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

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

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

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

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

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

30 **Section 1.** The Village of Estero Code of Ordinances, Chapter _____, is hereby
31 created to read as follows:

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

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

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

39 ***SCANNING DEVICE*** shall have the same meaning as defined in Section
40 817.625, Fla. Stats., as may hereafter be amended.

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

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

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

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

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

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

68 **Section 2. Severability.** In the event that any portion of this ordinance is for any
69 reason held invalid or unconstitutional by any court of competent jurisdiction,
70 such portion shall be deemed a separate, distinct and independent provision, and
71 such holding shall not affect the validity of the remaining portions of this
72 ordinance.

73 **Section 3. Effective Date.** This Ordinance shall take effect immediately upon its
74 adoption by the Village Council.

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76 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida
77 this _____ day of October, 2018.

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79 Attest: **VILLAGE OF ESTERO, FLORIDA**

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81 By: _____ By: _____
82 Kathy Hall, MMC Jim Boesch
83 Village Clerk Mayor
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86 Reviewed for legal sufficiency:

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88 By: _____
89 Burt Saunders, Esq.
90 Village Attorney
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97 Vote: AYE NAY
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99 Mayor Boesch _____
100 Vice Mayor Ribble _____
101 Councilor Levitan _____
102 Councilor McLain _____
103 Councilor Errington _____
104 Councilor Batos _____
105 Councilor Wilson _____

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| Item Number: | A.(4) |
| Meeting Date: | 3/5/2018 |
| Item Type: | ORDINANCES/RESOLUTIONS - Public Hearings |

AGENDA REQUEST FORM
CITY OF CAPE CORAL

**TITLE:**

Ordinance 17-18 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- | | |
|---|-----|
| 1. Will this action result in a Budget Amendment? | No |
| 2. Is this a Strategic Decision? | Yes |

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**SUMMARY EXPLANATION AND BACKGROUND:**

The City of Cape Coral has had a steady increase to numerous instances of credit card skimmers being placed in gas pumps located within the City. 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 and bank account information and funds.

Physical access to the interior of these pump's electronics comes as a result of an industry wide failing 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 skimming devices. Passed in 2017, Florida Statute 525.17(10), 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 continual investment in time on the station's part to physically and regularly check the pumps for tampering, as exposed by a security tape.

It is recommended by the police department that it is in the best interest of the public health, safety, and welfare to require additional protections that will enable the police to know if a gas pump is secure. Additional, security measures will be required for owners and measures that choose not to or can't comply with options (1) and (2) of the proposed ordinance.

LEGAL REVIEW:**EXHIBITS:**

Ordinance 17-18
Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Police Chief David Newlan

ATTACHMENTS:

| | Description | Type |
|--------------------------|---------------------------|-----------------|
| <input type="checkbox"/> | <u>Ordinance 17-18</u> | Ordinance |
| <input type="checkbox"/> | <u>Staff Presentation</u> | Backup Material |

ORDINANCE 17 - 18

AN ORDINANCE AMENDING CHAPTER 12, OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE I, GENERAL PROVISIONS, CITY OF CAPE CORAL CODE OF ORDINANCES TO CREATE SECTION 12-8, RETAIL GAS PUMP SECURITY MEASURES; ESTABLISHING SECURITY MEASURE REQUIREMENTS FOR OWNERS AND OPERATORS OF RETAIL GAS PUMPS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, 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 City of Cape Coral is a growing concern; and

WHEREAS, credit card skimmers are devices that thieves install on gas station 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 City 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 City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article I, Section 12-8, is hereby created to read as follows:

§ 12-8 Retail gas pump security measures.

(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:

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 § 817.625, Florida Statutes, as may hereafter be amended.

SCANNING DEVICE shall have the same meaning as defined in § 817.625, Florida Statutes, as may hereafter be amended.

(b) Every owner or operator of a gas pump in the City of Cape Coral 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 of customer payment card information. The access key shall be maintained at the gas station at all times. As an alternative to the foregoing security measure, an owner or operator of a gas pump in the City 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 choose to install an alternative security measure pursuant to this section shall demonstrate compliance with this section to a City official

upon request. Gas pumps that have been found in compliance with this Section 12-8 by the City may be appropriately marked by the City for identification purposes.

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

(d) Failure to comply with this Section 12-8 shall constitute a violation of Section 12-8, and shall subject the owner or operator to the code enforcement provisions and procedures provided in Sections 2-81 through 2-96, Cape Coral Code of Ordinances. Violations of this Section 12-8 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 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective on May 1, 2018.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

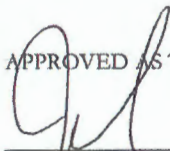
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

| | | | |
|-----------|-------|----------|-------|
| COVIELLO | _____ | NELSON | _____ |
| GUNTER | _____ | STOKES | _____ |
| CARIOSCIA | _____ | WILLIAMS | _____ |
| STOUT | _____ | COSDEN | _____ |

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:


JOHN E. NACLERIO, III
ASSISTANT CITY ATTORNEY

Ord/GasPump Security Measures
1/23/18