

ORDINANCE NO. 19-12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, PROVIDING FOR AUTOMATED TELLER MACHINES AND RETAIL FUEL PUMP SECURITY MEASURES; ESTABLISHING SECURITY MEASURE REQUIREMENTS FOR OWNERS AND OPERATORS OF NON-MONITORED AUTOMATIC TELLER MACHINES AND RETAIL FUEL PUMPS; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS, CONFLICTS, AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the use of credit card skimmers at automated teller machines and fuel station pumps throughout the Town of Fort Myers Beach ("Town") is a growing concern; and

WHEREAS, credit card skimmers are devices that thieves install on automated teller machines and fuel station pumps, which allow for the withdrawal or deposit of monetary funds or accept payment via a credit or debit card, to illegally capture and steal the customer's credit or debit card information; and

WHEREAS, the Town Council finds that the security measures required by this ordinance will help protect consumers from credit card skimmers and identity theft at automated teller machines and fuel station pumps; and

WHEREAS, the Town Council hereby finds that adoption of this ordinance is in the best interest of the health, safety and welfare of the Town's residents and visitors.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS: ¹

Section 1. The above recitals are true and correct and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. That the Code of Ordinances, Town of Fort Myers Beach, Florida, is hereby amended by adding new Article __ of Chapter __, which said Article shall read as follows:

**ARTICLE – AUTOMATIC TELLER MACHINES AND RETAIL
FUEL PUMP SECURITY MEASURES**

Sec. _____ . Definitions. The following words, when used in this Article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Automatic Teller Machine (ATM) shall have the same meaning as defined in Section 655.960, Fla. Stat., as may hereafter be amended.

Fuel 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. Stat., as may hereafter be amended.

Owner shall mean the record title owner of the property on which an ATM or fuel pump is located.

Operator shall mean the person or legal entity which leases, manages, or operates an ATM or fuel pump.

Scanning Device shall have the same meaning as defined in Section 817.625, Fla. Stat., as may hereafter be amended.

Sec. _____ . Automated Teller Machine and Fuel Pump Security Requirements

(a) Every owner or operator of an ATM or fuel pump in the Town of Fort Myers Beach (Town) shall have affixed to or installed onto the exterior of any ATM or fuel pump, which contains a scanning device, a visible ATM or fuel pump panel locking device that requires an access key unique to each ATM or fuel station location to restrict the unauthorized access to customer payment card information. The access key shall be maintained by the Owner or Operator at the ATM or fuel pump location at all times.

(b) As an alternative to the foregoing security measure, an owner or operator of an ATM or fuel pump in the Town may affix or install onto any ATM or fuel pump that contains a scanning device one (1) or more of the following security measures:

- (1) A device or system that will render the ATM or fuel pump, or the scanning device in the ATM or fuel pump, inoperable if there is an unauthorized opening of the ATM or fuel pump panel; or
- (2) A device or system that encrypts the customer payment card information in the scanning device.
- (3) A device or system that records and maintains for a period of no less than one hundred and twenty days (120) a digital copy of all ATM or fuel pump transactions.

Owners and operators of ATMs or fuel pumps that install an alternative security measure pursuant to this section shall demonstrate compliance with this section to a Town official upon request.

- (c) ATMs or fuel pumps that have been found in compliance with this Section by the Town may be appropriately marked by the Town for identification purposes.
- (d) A security measure affixed or installed onto a fuel pump pursuant to Subsections (1), (2), or (3) shall be maintained by the owner or operator in good working condition at all times.
- (e) The requirements provided by this Ordinance shall apply in the Town and are to be enforced by the Town's code enforcement staff and/or the Lee County Sheriff's Department.

Sec. _____ . Violations and Penalties.

- (a) Failure to comply with this Article shall constitute a violation of the Fort Myers Beach Code and shall subject the owner or operator to the code enforcement provisions and procedures provided in the Fort Myers Beach Code. Violations of this section shall be punishable by a fine of not less than \$250.00 per ATM or fuel pump. Each day that a violation exists shall constitute a separate and distinct violation.

Section 3. The Town Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida; and that 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 Town Manager without the need for a public hearing.

Section 4. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

Section 5. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

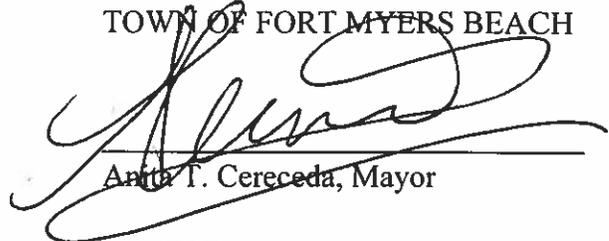
Section 7. This ordinance will take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Murphy and seconded by Councilmember Hosafros and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 7th day of October, 2019 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



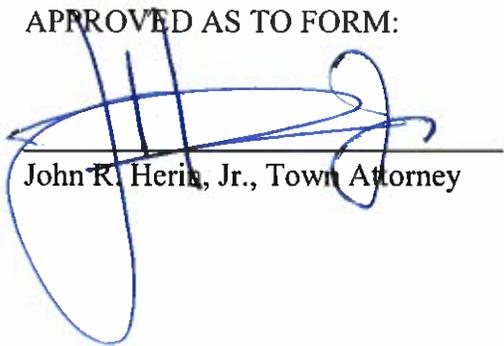
Anita T. Cereceda, Mayor

ATTEST:



Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:



John R. Heris, Jr., Town Attorney