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*Priscia Hayes*  
City Attorney's Office

# OAKLAND CITY COUNCIL

Resolution No. 13246 C.M.S.

INTRODUCED BY COUNCILMEMBER LYNETTE GIBSON MCELHANEY

**ADOPT AN ORDINANCE OF THE CITY OF OAKLAND, CALIFORNIA, AMENDING TITLE 8 OF THE OAKLAND MUNICIPAL CODE TO ADD CHAPTER 8.21 PROHIBITING AUTOMATED PURCHASING MACHINES WHICH BUY BACK PERSONAL ELECTRONIC DEVICES OR ELECTRONIC EQUIPMENT**

**WHEREAS**, public safety is the top priority for City leaders, residents, businesses, and families, including their health and welfare; and

**WHEREAS**, there were 3,390 cell phone robberies in which a victim noted that their cell phone was stolen in the City of Oakland in 2013; and

**WHEREAS**, in 2013, eighty-one percent of all robberies reported in the City of Oakland involved the theft of a cell phone, which marked a twenty-two percent increase from 2012; and

**WHEREAS**, nationwide, Consumer Reports estimates that in 2013, 3.1 million cell phones were stolen in the United States, almost double the number stolen the previous year; and

**WHEREAS**, AAA estimates that one in three robberies includes a cell phone; and

**WHEREAS**, it is estimated that Americans have spent \$30 billion per year to replace stolen devices; and

**WHEREAS**, theft of personal electronic devices is an epidemic, only expected to rise when a new cell phone model is released and the market demand for these devices peaks; and

**WHEREAS**, Automated Purchasing Machines are self-operating kiosks which allow users to sell their cell phones, tablets, or MP3 devices to a machine, for which the seller immediately receives cash for this transaction; and

**WHEREAS**, nationwide, there have been reported many cell phone robberies linked to Automated Purchasing Machines, in which criminals intentionally rob individuals of their cell phone devices and sell them soon after at Automated Purchasing Machines; and

**WHEREAS**, in April 2013, Police in El Cajon, California, expressed concerns about Automated Purchasing Machines contributing to the rise of cell phone theft after two teenagers, ages 14 and 15, were arrested for six cell phone thefts in which they sold the phones to Automated Purchasing Machines for quick cash; and

**WHEREAS**, on October 26, 2013, the South Burlington Police Department in Vermont connected a theft of an Apple iPhone to an Automated Purchasing Machine at a nearby mall; and

**WHEREAS**, on October 18, 2013, the Police Department in Manassas City, Virginia, connected a car break-in and theft of an Apple iPad to an Automated Purchasing Machine at a nearby mall in which the perpetrator was arrested and charged with grand larceny and obtaining money by false pretenses; and

**WHEREAS**, a northeastern law enforcement agency documented that a Caucasian male was able to receive money from an Automated Purchasing Machine for an electronic device while using the identification card of an African American Female; and

**WHEREAS**, a southern law enforcement agency, in testing the "security functions" of an Automated Purchasing Machine, observed the Machine accept an altered identification card; and

**WHEREAS**, since 2012, D.C. Metropolitan Police researched 400 suspicious transactions at automated purchasing machines in neighboring counties, in which they determined over 200 phones were stolen and sold through Automated Purchasing Machines; and

**WHEREAS**, at least six individuals have been arrested in Washington, D.C in connection with cell phone thefts found in Automated Purchasing Machines, of which, one such subject sold approximately 22 phones in a 30-day period and yielded \$2,500; and

**WHEREAS**, multiple subjects arrested in connection with these robberies in Washington, D.C. admitted to police that they found it easy to obtain cash through selling stolen cell phones through the Automated Purchasing Machines and that they knew they would not be able to sell multiple phones at pawn shops or other second-hand dealers without significant suspicion; and

**WHEREAS**, in San Francisco, three stolen cell phones have been found in Automated Purchasing Machines after comprehensive searches done by the victim of the robbery to electronically track their device or to request research from police through second-hand dealer records; and

**WHEREAS**, while Automated Purchasing Machine owners and operators claim the machines are equipped with many means by which to support public safety and collect evidence of the sale of stolen goods, these "safety measures" have been proven woefully deficient and wholly unhelpful in aiding law enforcement agencies in dealing with stolen electronics; and

**WHEREAS**, the security features on existing Automated Purchasing Machines cannot successfully deter thieves; the machine does not have the technology to verify the valid government issued ID, fingerprint, and photograph collected by the machine belong to the person completing the transaction and whether the person is the true owner of the device being sold; and

**WHEREAS**, there is no security device that the Automated Purchasing Machines could install to catch thieves who use third parties or "middlemen" to complete transactions; and

**WHEREAS**, while these companies brand themselves as green, environmentally-friendly options for reselling e-waste, most items purchased by Automated Purchasing Machines are shipped across the globe to international markets and thus have a minimal or negative environmental impact; and

**WHEREAS**, many jurisdictions have enacted bans on Automated Purchasing Machines in an effort to deter criminals from having convenient access to profiteer from their thefts; and

**WHEREAS**, in August 2013, the City of Riverside, California, banned Automated Purchasing Machines to respond to the number of increased robberies in their city and on their four college campuses by preventing the availability of quick cash in exchange for electronic devices; and

**WHEREAS**, in September 2013, the City of Baltimore, Maryland, banned Automated Purchasing Machines due to the amount of stolen goods which the City determined were being purchased by the machines in neighboring cities; and

**WHEREAS**, in 2014, the State of Maryland increased regulations for machine-based second-hand dealers which extremely limit Automated Purchasing Machines from operating in their state unless they improve their collection of identification, fully comply with second-hand dealer laws, and cooperate more proactively with law enforcement; and

**WHEREAS**, there are a growing number of Automated Purchasing Machines in the Bay Area, such as San Leandro, San Francisco, Richmond, Hayward, and Daly City, where criminals who steal electronics from Oakland residents, workers, and visitors, can easily access and profiteer from those stolen devices; and

**WHEREAS**, while Automated Purchasing Machines do not currently exist in the City of Oakland, it is critical that the risk they pose to Oakland residents be minimized by the banning of such devices within our City's borders in order to protect the safety, and well-being of our communities; now, therefore, be it

**RESOLVED:** The Oakland Municipal Code will now include Section 8.21; and

**FURTHER RESOLVED:** The City Council ordains as follows:

**Title 8 - HEALTH AND SAFETY**  
**CHAPTER 8.21- AUTOMATED PURCHASING MACHINES**  
**8.21.010 Definitions.**

The following words and phrases, whenever used in the ordinances of the city of Oakland, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases

**A.** "Automated purchasing machine" or "apm" (also known as a "reverse vending machine") means a self-service automated kiosk that, without the physical presence of a human agent, is capable of taking possession of and dispensing payment for any one or more types of consumer electronic device.

**B.** "Consumer Electronic Device" means any cell phone mp3 player, tablet or other similar device or machine.

**C.** "Person" means: (i) an individual; or (ii) a partnership, firm, association, corporation, or other entity of any kind. "person" does not include a governmental entity or an instrumentality or unit of a governmental entity.

**Section 8.21.020 Authority and purpose.**

**A.** This Chapter is adopted pursuant to the authority granted to the City of Oakland in Article XI, Section 5(a) and Section 7 of the California Constitution, and Section 106 of the Oakland City Charter.

**B.** The purpose and intent of this Chapter is to protect public health, safety and general welfare of the residents of the City of Oakland.

**Section 8.21.030 Automated purchasing machines prohibited.**

**A.** Automated purchasing machines are prohibited in the City of Oakland.

**B.** No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of an automated purchasing machine within the City.

C. Except as otherwise expressly provided in this subtitle, no person may purchase or offer to purchase any consumer electronic device by means of an automated purchasing machine.

**Section 8.21.040 Exceptions.**

This chapter does not prohibit individuals from recycling their consumer electronic devices at authorized locations which are in compliance with laws governing all electronic waste.

**Section 8.21.050 Penalties.**

A. Seizure. An automated purchasing machine is subject to seizure and forfeiture if it is used in violation of this Chapter.

B. A person who violates any provision of this Chapter is guilty of a misdemeanor and, on conviction, subject to a fine of not more than \$500 or imprisonment for not more than 6 months or both fine and imprisonment for each offense.

C. Each transaction in violation of this Chapter is a separate offense.

D. Penalties established in this Chapter are in addition to any other administrative or legal remedy which may be pursued by the City to address violation of this Chapter.

**FURTHER RESOLVED:** This law will go into effect immediately upon second reading; and

**FURTHER RESOLVED:** This law will require removal of any existing Automated Purchasing Machines, if any, in the City of Oakland as they provide great risk and harm to Oakland residents.

IN COUNCIL, OAKLAND, CALIFORNIA,           JUL 15 2014          

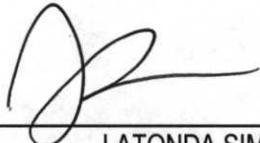
PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN — 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST:    
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Introduction Date  
= JUL 01 2014

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

## Notice and Digest

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### **ORDINANCE AMENDING TITLE 8 OF OAKLAND'S HEALTH AND SAFETY ORDINANCES TO ADD CHAPTER 8.21 PROHIBITING AUTOMATED PURCHASING MACHINES WHICH BUY BACK PERSONAL ELECTRONIC DEVICES OR ELECTRONIC EQUIPMENT**

This ordinance amends Title 8 of the City of Oakland's Health and Safety Ordinances to add Chapter 8.21, prohibiting the presence of Automated Purchasing Machines within the City. Automated Purchasing Machines are automated kiosks, or "reverse vending machines," which buy back personal electronic devices or other electronic equipment. In addition, this ordinance provides penalties for any violations of Chapter 8.21.