

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 13-0237

Introduced by: Councilmembers Henry, Kraft, Mosby, Spector, Holton, Branch, Middleton,
Scott, Welch, Reisinger, President Young, Councilmembers Cole, Clarke

Introduced and read first time: June 3, 2013

Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: September 9, 2013

AN ORDINANCE CONCERNING

Automated Purchasing Machines

FOR the purpose of prohibiting the use of automated purchasing machines for the purchase of personal property; providing for the seizure and forfeiture of devices used in violation of this Ordinance; defining certain terms; establishing certain exceptions; imposing certain penalties; and generally relating to purchasing or offering to purchase personal property by means of an automated purchasing machine.

BY adding

Article 2 - Consumer Protections

Section(s) 12A-1 through ~~12A-5~~ 12A-20, to be under the new subtitle designation,

“Subtitle 12A. Automated Purchasing Machines”

Baltimore City Code

(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 2. Consumer Protections

SUBTITLE 12A. AUTOMATED PURCHASING MACHINES

PART 1. DEFINITIONS

§ 12A-1. DEFINITIONS.

(A) *IN GENERAL.*

IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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1 (B) *AUTOMATED PURCHASING MACHINE; APM.*

2 “AUTOMATED PURCHASING MACHINE” OR “APM” (ALSO KNOWN AS A “REVERSE VENDING
3 MACHINE”) MEANS A SELF-SERVICE AUTOMATED DEVICE THAT, WITHOUT THE PHYSICAL
4 PRESENCE OF A HUMAN AGENT, IS CAPABLE OF TAKING POSSESSION OF AND DISPENSING
5 PAYMENT FOR ANY 1 OR MORE TYPES OF PERSONAL PROPERTY.

6 (C) *PERSON*.

7 (1) “PERSON” MEANS:

8 (I) AN INDIVIDUAL; OR

9 (II) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
10 KIND.

11 (2) “PERSON” DOES NOT INCLUDE A GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR
12 UNIT OF A GOVERNMENTAL ENTITY.

13 **§§ 12A-2 TO 12A-4 {RESERVED}**

14 **PART 2. PROHIBITED USE; EXCEPTIONS**

15 **§ 12A-5 ~~12A-2~~. GENERAL PROHIBITION.**

16 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SUBTITLE, NO PERSON MAY PURCHASE
17 OR OFFER TO PURCHASE ANY PERSONAL PROPERTY BY MEANS OF AN AUTOMATED
18 PURCHASING MACHINE.
19

20 **§ ~~12A-6~~ 12A-3. EXCEPTION FOR RECYCLING MATERIALS.**

21 (A) *IN GENERAL*.

22 THIS SUBTITLE DOES NOT PROHIBIT THE USE OF AN AUTOMATED PURCHASING MACHINE
23 EXCLUSIVELY FOR COLLECTING RECYCLABLE MATERIALS PURSUANT TO A RECYCLING
24 PROGRAM APPROVED JOINTLY BY THE POLICE COMMISSIONER AND THE COMMISSION ON
25 SUSTAINABILITY.

26 (B) *RULES AND REGULATIONS*.

27 (1) THE POLICE COMMISSIONER AND THE COMMISSION ON SUSTAINABILITY MAY JOINTLY
28 ADOPT RULES, REGULATIONS, AND STANDARDS GOVERNING THE RECYCLABLE
29 MATERIALS AND RECYCLING PROGRAMS THAT MAY BE APPROVED FOR PURPOSES OF
30 THIS EXCEPTION.

31 (2) A COPY OF ALL RULES, REGULATIONS, AND STANDARDS ADOPTED UNDER THIS SECTION
32 MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY
33 TAKE EFFECT.

34 **§§ 12A-7 TO 12A-9 § ~~12A-4~~. {RESERVED}**

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PART 3. SEIZURE AND FORFEITURE

§ 12A-10. IN GENERAL.

AN AUTOMATED PURCHASING MACHINE (“APM”) IS SUBJECT TO SEIZURE AND FORFEITURE IF IT IS USED IN VIOLATION OF THIS SUBTITLE.

§ 12A-11. SEIZURE BY POLICE.

(A) WHEN WARRANT NOT NEEDED.

A POLICE OFFICER NEED NOT HAVE A WARRANT TO SEIZE AN APM IF:

(1) THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE APM HAS BEEN USED IN VIOLATION OF THIS SUBTITLE; AND

(2) A WARRANT IS NOT CONSTITUTIONALLY REQUIRED UNDER THE CIRCUMSTANCES.

(B) REMOVAL OF APM.

WHENEVER A POLICE OFFICER SEIZES AN APM UNDER THIS SUBTITLE, THE POLICE OFFICER MAY CAUSE IT TO BE MOVED TO A PLACE DESIGNATED BY THE POLICE COMMISSIONER.

(C) APM NOT REPLEVIABLE.

AN APM SEIZED UNDER THIS SUBTITLE IS NOT REPLEVIABLE AND REMAINS IN THE CUSTODY OF THE POLICE DEPARTMENT, SUBJECT ONLY TO THE ORDERS AND DECREES OF THE COURT OR OFFICIAL WITH JURISDICTION OVER IT.

§ 12A-12. REFERRAL TO SOLICITOR.

(A) POLICE TO REFER CASE.

PROMPTLY AFTER SEIZURE, THE POLICE DEPARTMENT SHALL NOTIFY THE CITY SOLICITOR IN WRITING OF THE FACTS AND CIRCUMSTANCES SUPPORTING THE SEIZURE.

(B) SOLICITOR’S REVIEW.

(1) ON RECEIVING THE REPORT, THE SOLICITOR SHALL CONDUCT AN INDEPENDENT REVIEW OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE.

(2) IF THE SOLICITOR FINDS SUFFICIENT EVIDENCE THAT THE APM WAS USED IN VIOLATION OF THIS SUBTITLE, THE SOLICITOR SHALL NOTIFY THE APM’S OWNER, BY REGISTERED OR CERTIFIED MAIL, OF THE SEIZURE AND OF THE CITY’S INTENT TO INSTITUTE FORFEITURE PROCEEDINGS.

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1 (3) IF, ON THE OTHER HAND, THE SOLICITOR FINDS THAT THERE IS INSUFFICIENT EVIDENCE
2 TO PROVE VIOLATION, THE SOLICITOR SHALL SURRENDER THE APM TO THE OWNER ON
3 THE OWNER’S REQUEST.

4 **§ 12A-13. FORFEITURE PETITION; NOTICE.**

5 (A) FILING; COPIES TO PARTIES IN INTEREST.

6 IF THE SOLICITOR DETERMINES THAT THE APM SHOULD BE FORFEITED, THE SOLICITOR
7 SHALL, WITHIN 90 DAYS AFTER THE SEIZURE OF THE APM:

8 (1) FILE A FORFEITURE PETITION IN A COURT OF COMPETENT JURISDICTION, IN THE
9 NAME OF THE CITY AGAINST THE APM, AS DESIGNATED BY THE APM’S TYPE,
10 MANUFACTURER, MODEL NUMBER OR NAME, COLOR, SIZE, AND SERIAL NUMBER;
11 AND

12 (2) AT THE SAME TIME, SEND COPIES OF THE PETITION BY REGISTERED OR CERTIFIED
13 MAIL TO THE APM’S OWNER AND ANY KNOWN SECURED PARTY.

14 (B) CONTENTS.

15 THE PETITION FOR FORFEITURE SHALL CONTAIN:

16 (1) THE NAME OF THE APM’S OWNER;

17 (2) THE NAME OF ANY SECURED PARTY WHOSE INTEREST APPEARS AMONG THE
18 RECORDS MAINTAINED BY THE CLERK OF THE CIRCUIT COURT FOR BALTIMORE
19 CITY;

20 (3) A STATEMENT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE OF
21 THE APM;

22 (4) A STATEMENT OF THE SPECIFIC GROUNDS FOR FORFEITURE; AND

23 (5) A REQUEST THAT THE APM BE FORFEITED TO THE CITY.

24 (C) PUBLICATION OF NOTICE.

25 (1) WITHIN 7 DAYS OF THE PETITION’S FILING, THE SOLICITOR SHALL PUBLISH NOTICE OF
26 THE SEIZURE AND FORFEITURE PROCEEDING IN 1 OR MORE NEWSPAPERS OF GENERAL
27 CIRCULATION IN THE CITY.

28 (2) THE NOTICE SHALL:

29 (I) STATE THE SUBSTANCE AND OBJECT OF THE FORFEITURE PETITION; AND

30 (II) STATE THAT ANY PERSON CLAIMING AN INTEREST IN THE SEIZED APM MUST
31 FILE A DEFENSE TO THE PETITION WITHIN 15 DAYS OF THE DATE OF THE NOTICE.

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1 **§ 12A-14. ANSWER TO PETITION.**

2 (A) WHEN TO BE MADE.

3 ANY DEFENSE TO THE PETITION MUST BE FILED WITHIN 15 DAYS AFTER PUBLICATION OF
4 THE NOTICE.

5 (B) HOW TO BE MADE.

6 (1) ALL DEFENSES TO A PETITION FOR FORFEITURE MUST BE MADE BY ANSWER.

7 (2) THE ANSWER MUST:

8 (i) COMPLY WITH THE MARYLAND RULES OF PROCEDURE AS TO FORM AND
9 CONTENTS;

10 (ii) BE DIVIDED INTO NUMBERED PARAGRAPHS, EACH CONTAINING A SEPARATE
11 AND DISTINCTIVE AVERMENT; AND

12 (iii) RESPOND TO EACH MATERIAL ALLEGATION CONTAINED IN THE PETITION,
13 SPECIFICALLY ADMITTING, DENYING, OR EXPLAINING THE FACTS ALLEGED,
14 UNLESS THE RESPONDENT IS WITHOUT KNOWLEDGE OR AN ADMISSION OR
15 EXPLANATION WOULD TEND TO INCRIMINATE THE RESPONDENT, IN EITHER OF
16 WHICH EVENTS THE RESPONDENT MUST SO STATE AND THAT STATEMENT WILL
17 OPERATE AS A DENIAL.

18 (C) EFFECT.

19 (1) EVERY ALLEGATION IN THE PETITION THAT IS NOT DENIED IN THE ANSWER IS
20 CONSIDERED ADMITTED, EXCEPT AS TO PERSONS UNKNOWN.

21 (2) NEW OR AFFIRMATIVE MATTER ALLEGED IN THE ANSWER IS CONSIDERED DENIED OR
22 AVOIDED BY THE PETITIONER WITHOUT THE NEED OF ANY REPLICATION, UNLESS THE
23 COURT ORDERS OTHERWISE.

24 **§ 12A-15. ORDER OF FORFEITURE.**

25 (A) IN GENERAL.

26 (1) IF THE COURT DETERMINES THAT THE APM SHOULD BE FORFEITED, THE COURT SHALL
27 ORDER THE APM FORFEITED TO THE CITY.

28 (2) IF, HOWEVER, THE COURT DETERMINES THAT THE APM IS SUBJECT TO A BONA FIDE
29 RECORDED SECURITY INTEREST CREATED WITHOUT THE KNOWLEDGE THAT THE APM
30 WAS BEING OR WAS TO BE USED IN VIOLATION OF THIS SUBTITLE, THE COURT SHALL
31 ORDER THAT THE APM BE RELEASED WITHIN 5 DAYS TO THE SECURED PARTY OF
32 RECORD.

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1 (B) DISPOSITION OF APM SUBJECT TO SECURITY INTEREST.

2 (1) THE SECURED PARTY:

3 (I) SHALL SELL THE APM IN A COMMERCIALY REASONABLE MANNER; AND

4 (II) MAY NOT SELL THE APM TO THE OWNER OR OTHER PERSON FROM WHOM IT
5 WAS SEIZED.

6 (2) THE PROCEEDS OF THE SALE SHALL BE APPLIED AS FOLLOWS:

7 (I) TO THE COURT COSTS OF THE FORFEITURE PROCEEDINGS;

8 (II) TO THE BALANCE DUE TO THE SECURED PARTY, INCLUDING ALL REASONABLE
9 COSTS INCIDENT TO THE SALE;

10 (III) TO PAYMENT OF ALL OTHER EXPENSES OF THE PROCEEDINGS FOR FORFEITURE,
11 INCLUDING EXPENSES OF SEIZURE, MAINTENANCE, OR CUSTODY; AND

12 (IV) TO THE GENERAL FUNDS OF THE CITY.

13 **§ 12A-16. ORDER OF RELEASE.**

14 IF, AFTER A FULL HEARING, THE COURT DETERMINES THAT THE APM SHOULD NOT BE
15 FORFEITED, THE COURT SHALL ORDER THE APM RELEASED.

16 **§§ 12A-17 TO 12A-19 {RESERVED}**

17 **PART 4. PENALTIES**

18 **§ 12A-20 ~~12A-5~~. PENALTIES.**

19 (A) *IN GENERAL.*

20 A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A
21 MISDEMEANOR AND, ON CONVICTION, SUBJECT TO A FINE OF NOT MORE THAN \$500 OR
22 IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR BOTH FINE AND IMPRISONMENT FOR
23 EACH OFFENSE.

24 (B) *EACH TRANSACTION A SEPARATE OFFENSE.*

25 EACH TRANSACTION IN VIOLATION OF THIS SUBTITLE IS A SEPARATE OFFENSE.

26 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
27 are not law and may not be considered to have been enacted as a part of this or any prior
28 Ordinance.

29 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
30 after the date it is enacted.

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Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City