

Cashless Retail Prohibition Ordinance and Regulation Report

This report presents an overview of Bill No. 180943 “**Prohibiting Establishments from Refusing to Accept Cash as a Form of Payment**” (hereinafter called “**Cashless Retail Bill**” or “**Bill**”) from introduction through enactment to promulgating regulations for enforcement. Bill No. 180943 proposed to amend Chapter 9-1100 of The Philadelphia Code, entitled “Fair Practices Ordinance: Protections Against Unlawful Discrimination,” (FPO) by adding a new section, § 9-1132, prohibiting retail establishments from refusing to accept cash as a form of payment, all under certain terms and conditions. The Philadelphia Commission on Human Relations (PCHR) is the City agency that administers and enforces the Fair Practices Ordinance.

I. Background of the Digital E-Commerce Issue

With the expansion of e-commerce platforms and the increase in digital payments, the City of Philadelphia must strike a balance between keeping with the times and ensuring that many of its residents, who are unbanked or under-banked,¹ are not precluded from buying goods and services because an establishment does not accept cash. While there are many social and economic reasons why someone might be unbanked or underbanked, studies have shown that cashless business models disproportionately impact Black and Hispanic households.² The PCHR recognizes that cashless business models may provide advantages such as increased efficiency, revenue, safety, convenience, and even environmental

¹ FDIC. (2017). *2017 Survey Results for Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Households*. Retrieved from [https://economicinclusion.gov/surveys/place-data.html?where=Philadelphia Camden Wilmington PA NJ DE&when=2017](https://economicinclusion.gov/surveys/place-data.html?where=Philadelphia%20Camden%20Wilmington%20PA%20NJ%20DE&when=2017)

² FDIC. *2017 FDIC National Survey of Unbanked and Underbanked Households*. Retrieved from https://www.economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_Nation.pdf

sustainability; however, we must also ensure that residents and visitors in Philadelphia are not precluded from purchasing goods and services due to an inability to engage in cashless or digital transactions. While the growth of cashless and digital payments is undeniable, so are the needs of the unbanked and underbanked in Philadelphia. The Cashless Retail Bill recognizes the reality of new digital and cashless payment systems yet ensures equal consumer access for retail and service business transactions with limited exclusions.

II. Introduction of Bill 180943

Councilmembers William Greenlee and Maria Quiñones Sánchez sponsored the **Cashless Retail** legislation before City Council on October 25, 2018. A public hearing was held by the Committee on Law and Government on February 5, 2019. The Bill was passed by City Council on February 14, 2019, supported by a 12 to 4 vote in favor. Mayor James Kenney signed the Bill on February 27, 2019.

As the agency responsible for the enforcement of the FPO, the PCHR is authorized to issue regulations as are necessary and appropriate to implement the provisions of the Bill. After receiving numerous questions from the public, and retailers, as well as from departments within the City of Philadelphia, the PCHR voted on June 21, 2019, to delay implementation of the Cashless Retail Prohibition Ordinance until October 1, 2019. This extension enabled the PCHR to hold a public comment period, including a public hearing, which would allow the PCHR to clarify any ambiguity in the law.

III. PCHR's Role in Enforcement

The PCHR is charged with enforcing the new Cashless Retail Prohibition Ordinance and drafting clarifying regulations, pursuant to its authority under Section 8-407 of the Home Rule Charter. At the public meeting on August 9, 2019, the Commissioners of the PCHR approved **Regulation No. 8, "Cash Payments in Retail Establishments," (hereinafter called Cashless Regulations)** as drafted. On the same day, the Cashless Regulations were forwarded to the Department of Records for public posting, providing an opportunity for the public to submit comments or request a hearing within thirty days.³ If a hearing is requested, the PCHR is required to provide a brief report of the public input that includes a reaffirmation of, or an explanation of any modifications to, the regulations.⁴ The PCHR retains responsibility to determine whether or not to amend the Cashless Regulations after the hearing. The final Cashless Regulations will be presented for a vote by the PCHR during the public session on September 20, 2019. Finalized Regulations are to be memorialized with the Department of Records and go into effect ten (10) days after they are approved.

In accordance with the Department of Records' standard operating procedure, notice of the regulations, including notice of the public's right to request a hearing during the 30-day posting period, was advertised in the Philadelphia Inquirer, Philadelphia Daily News and the Legal Intelligencer. The regulations were also posted on the Department of Records' public website and disseminated by the Department of Commerce to business stakeholders. In addition, the PCHR received requests for information about the Cashless Regulations and staff directed members of the public to the online posting of the Cashless Regulations.

³ Home Rule Charter Section 8-407 (a) and (b).

⁴ Home Rule Charter Section 8-407 (c).

On August 30, 2019, pursuant to the Charter, a formal request for hearing was first received from the Pennsylvania Restaurant & Lodging Association. Subsequently, other businesses and individuals submitted requests to testify at a public hearing that was held on September 13, 2019.

IV. Post Hearing outcomes

Recommendation 1 – PCHR Staff presented two proposed amendments to Regulations 8.3 and 8.4.2, based on input from outside sources and internal discussions:

i. Under Section 9-1132 (2) (c), the law exempts “transactions for the rental of consumer goods, services, or accommodations for which posting of collateral or security is typically required.” Initially, the Commission included residential leased premises as a covered transaction in Regulation 8.3. The recommendation is to exclude these transactions.

ii. Regulation 8.4.2. attempts to further define “at retail”, specifically describing “transactions conducted by telephone, mail, or internet” under Section 9-1132 (2)(a) of the law. The recommendation is to delete the term “or has delivered” and include two subsections: (a) to *include* transactions initiated by telephone, mail or internet, but completed in person at the seller’s location; and (b) to *exclude* transactions initiated by those means, but completed at the consumer or customer’s home or office.

Response to Recommendation 1: The Commissioners have considered the staff’s proposed amendments and accept them.

Recommendation 2: Cardtronics, the largest ATM operator in the world, testified that the exemptions in the regulations weaken the law and recommended that the PCHR should not exempt any vending machines, city governmental offices, or merchants who offer cash conversion machines.

Response to Recommendation 2: The PCHR put forth very few exceptions to the law in its regulations. The Commissioners considered this recommendation and rejected it.

Recommendation 3: Lance Haver, Investigator for Call for Action, Channel 6 News, recommended that the PCHR clarify its regulation to make clear that stores, service providers, and retailers cannot bypass the law in an effort to charge extra for cash payments by offering a discount for people using non-cash forms of payment.

Response to Recommendation 3: The Commissioners considered the recommendation and accept it. The regulations will be amended to reflect this clarification.

Recommendation 4: The City of Philadelphia submitted written testimony stating that it complies with the intent of the Ordinance by having one central location at the Municipal Services Building (MSB) that accepts cash, while it maintains two neighborhood satellite offices that do not accept cash. The City argues that the MSB contains the proper infrastructure to accept large sums of cash, including a vault, armored car services, and security exits.

Response to Recommendation 4: The Commissioners considered the City's position and accept it. Section 9-1132 (1)(a) of the Ordinance covers, "A person selling or offering for sale consumer goods or services at retail..." but is silent on whether "at

retail” includes payments made to the City of Philadelphia. In its regulations, the PCHR further defined types of “at retail” transactions and included payments made to the City of Philadelphia, so long as it maintained one convenient location (Regulation 8.4.3). The PCHR strongly urges the City to reevaluate its policies and to provide as many options as possible for its unbanked and underbanked residents.

Recommendation 5 (a): Holland & Knight, a law firm that represents a licensed finance company that offers loan products to Philadelphia residents, submitted written testimony. Their client does not accept loan repayments in cash at its four branch offices in the City. It has partnered with other businesses through its PayNearMe program to accept cash on its behalf in 144 locations throughout the City. The partners are CVS, Family Dollar, and 7-Eleven.

Response to Recommendation 5(a): The Commissioners considered this testimony and believe that this practice already is excluded from the Ordinance, since the company has 144 payment location options that accept cash at no charge.

Recommendation 5(b): Holland & Knight, a law firm representing a national bank with a substantial number of branches in Philadelphia, submitted written testimony requesting that their client be exempt from accepting mortgage application fees in cash.

Response to Recommendation 5(b): The Commission considered the argument and rejected it. The Commission reasoned that banks are in the business of accepting, handling, and storing cash.

Recommendation 6: The Pennsylvania Restaurant & Lodging Association (PRLA) submitted written testimony requesting clarification of Regulation 8.4.2 to include additional types of transactions conducted by telephone or internet that require pre-payment. Their recommendation is to exempt “prearranged payment for a prearranged purchase.”

Response to Recommendation 6: Prearranged payments for prearranged purchases do not need to be exempted since the customers have an option to go to the store to pay in cash. Nonetheless, the Commissioners determined to clarify this point by the addition of a new Regulation 8.4.2(c).

Recommendation 7: Mark W. Weller, Executive Director of Americans for Common Cents, submitted written testimony on the importance of cash payments and the need to retain the penny. They requested that the PCHR should remove its additional modifications/exemptions from its regulation, particularly cash conversions (regulation 8.5) and the partial exemption for the City of Philadelphia (regulation 8.4.3).

Response to Recommendation 7: The PCHR put forth very few exceptions to the law in its regulations. The Commissioners considered this recommendation and rejected it.

Recommendation 8: The ATM Industry Association submitted a letter supportive of all efforts to promote cash and oppose any measures that would limit choices to pay in cash.

Response to Recommendation 8: The Commission reviewed the letter. It did not contain a specific request.

Recommendation 9: Coinstar provided written testimony requesting that the PCHR remove the additional exemptions in its regulations.

Response to Recommendation 9: The PCHR put forth very few exceptions to the law in its regulations. The Commissioners considered this recommendation and rejected it.

Recommendation 10: General Counsel for Planet Fitness submitted written testimony stating his belief that the company is exempt from the Ordinance based on Sections 8.4(c) and 8.4(d) of the PCHR's Regulations because it has a membership model and sells memberships online. Counsel requested written confirmation of his belief.

Response to Recommendation 10: The Commissioners reviewed the request and wish to clarify that regular membership models, not wholesale membership models, are included in the Ordinance, and therefore, must accept cash. Section 8.4(d) has been revised in order to avoid any ambiguity.

Conclusion

The PCHR appreciates the public participation in the process of providing input and recommendations to its regulations. The goal of the process is to protect the “unbanked” and marginalized residents in our city from discrimination by being excluded from purchasing goods and services at cashless retail establishments, while also balancing the realities of our e-commerce economy. The Commissioners considered all testimony presented and responded. Recommendations were noted, accepted, or rejected as described above in Section III - Post Hearing Outcomes. The amended Cashless Regulations will be presented for a vote by the PCHR during the public session on September 20, 2019. The amended Regulations are attached to this

report as Exhibit “A”. Finalized regulations are to be memorialized with the Department of Records and go into effect ten (10) days after they are approved. The PCHR will begin implementation of the new Cashless Retail Prohibition Ordinance, Section 9-1132, and its accompanying Regulations on October 1, 2019.