

## **M E M O R A N D U M**

DATE: May 6, 2011

TO: SFMTA Board of Directors  
Tom Nolan, Chairman  
Jerry Lee, Vice Chairman  
Leona Bridges, Director  
Cheryl Brinkman, Director  
Malcolm Heinicke, Director  
Bruce Oka, Director

THROUGH: Nathaniel P. Ford Sr.  
Executive Director/CEO

FROM: Sonali Bose  
CFO/Director of Finance and Information Technology

SUBJECT: Credit Card Charges: Follow Up on Taxi Issues Raised at the April 5, 2011 Board Meeting

---

The purpose of this memorandum is to provide the SFMTA Board of Directors with information and recommendations regarding credit card charges, an issue that was raised by taxicab drivers during public comment at the April 5, 2011 and May 3, 2011 Board meetings. The information in this report will be shared at the upcoming townhall meetings and publicly at the May 17, 2011 Board meeting.

## ***Other Jurisdictions***

Other major U.S. cities either don't require credit card acceptance, their vehicles are not equipped to accept credit cards, or they have already been down the same road we are going down now: 1) mandate credit card use, 2) make a decision about allocation of the transaction costs, 3) endure a firestorm of driver protest and threatened and actual strikes, and 4) move on. Boston, New York, Chicago, Philadelphia all have had exactly the same experience that San Francisco is going through now. Miami is trying a user fee model on a limited basis but the legal advice they have received so far is that they won't be able to do so because of Florida's consumer protection laws which, like California's, prevent surcharges on customers paying with credit cards.

San Francisco is the only jurisdiction where drivers are not required to pay credit card processing costs based on research. In jurisdictions that require acceptance of credit cards, drivers, who get 100 percent of the meter receipts, as is the case in San Francisco, drivers are responsible for their own credit card processing costs. A five percent rate charged to drivers is standard among such jurisdictions, such as San Jose, Los Angeles, San Diego, Phoenix, Denver, Dallas/Fort Worth, Philadelphia, San Antonio, Kansas City, Columbus, Indianapolis, Memphis, Alexandria, West Haven, New York City, West Hollywood, Chicago, and Austin. Boston and Cleveland charge drivers six percent and Detroit charges ten percent. Portland and Pittsburg also include a fee in a weekly lease rate to recover credit card processing charges (we are confirming how much of the weekly lease fee covers credit card charges for these two cities). This fee in many cases covers both the credit card charges and the installation of Passenger Information Monitors (PIMs) in vehicles to improve the customer experience.

Drivers do not have to pay credit card payment processing costs in jurisdictions where a third-party voucher system is in place that charges the card user a fee per credit card transaction. This occurs in cities like Las Vegas, where it costs a passenger \$5.00 to pay with a credit card through TaxiPass, the only company that offers this service nationwide at this time based on information available. TaxiPass quoted \$2.40 for this service which was not considered a feasible solution in San Francisco because the high cost to the customer would discourage taxi ridership.

## ***Background***

The history of the credit card charges is detailed chronologically below:

**March 2009 – June 2009**

The SFMTA took over regulation of the taxi industry in March, 2009. As early as the SFMTA Board meeting of May 19, 2009 the issue of credit cards was addressed in regulations. Following nine town hall meetings between March and May of 2009 regarding proposed regulatory amendments, the May 19, 2009 calendar item described the discussions at those meetings about credit card fees:

“Drivers and Color Schemes were cleanly divided in the discussion of who should be responsible for paying merchant fees for credit card transactions. Staff recommends that at least for the present and until there can be further discussion of the issue, Color Schemes bear that cost. This is a relatively new issue, as many Color Schemes only obtained credit card processing capacity with the in-taxi equipment required for the Paratransit Program’s new debit card system.”

At the June 16, 2009 Board meeting, as part of the continuing regulatory reform to bring the motor vehicle for hire regulations into the Transportation Code, the Board adopted regulatory amendments that transferred a provision from the City’s Police Code, dating back to 1997, which prohibits companies from passing on credit card payment processing costs to drivers.

**January 2010 – June 2010**

When the Paratransit Debit Card equipment was being installed and credit card usage started to become more prevalent, SFMTA started receiving an escalating number of complaints about drivers refusing credit cards. This was because many companies were charging five to ten percent to drivers for cashing credit card payments as a normal practice in spite of the regulatory prohibition. However, many drivers were not willing to formally complain as they were concerned about possible retaliation by the companies. Meanwhile, companies who were complying with the rules and bearing the credit card payment processing costs were voicing concerns about their rapidly increasing costs caused by the growing number of credit card transactions.

During February and March of 2010, a \$0.75 credit card user fee was discussed with the industry and found generally acceptable because it was thought that it would substantially cover the merchant fee costs without adversely affecting ridership. Taxi companies also generally agreed that a flat fee would be a much better approach than trying to add a calculated percentage of the meter to the fare at this time, given the difficulties experienced with the Department of Weights and Measures over installation of the paratransit equipment. At the March 30, 2010 SFMTA Board meeting the credit card user fee in the amount of \$0.75 was adopted.

But although the Board approved the flat credit card user fee, the companies could not implement the fee because it violated their merchant account agreements and the credit card providers were not willing to negotiate the issue. Taxi Services looked into implementing the charge through a system such as that used in Las Vegas, whereby a third party provides a voucher to the credit card user for a fee and thus evade the merchant account agreement prohibitions on imposing a “convenience fee” on the credit card user. However, Taxi Services identified that this would result in a \$2.40 fee for the customer using a credit or debit card. Since the \$2.40 fee was much higher than the \$0.75 authorized, the user fee concept was abandoned.

An April 2010, DeSoto management notified drivers (but not the SFMTA) that it would cease accepting credit card payments. SFMTA Taxi Services threatened to sue DeSoto for false advertising if it refused credit card payments, and DeSoto soon withdrew its policy. However, it was increasingly obvious to SFMTA staff that the costs of credit card payment processing needed to be resolved in a coherent fashion as soon as possible.

On April 20, 2010 the Board approved regulations to prohibit color schemes from retaliating against drivers who elect not to open individual merchant accounts for credit card processing. Nevertheless, under pressure from companies as indicated by driver reports many drivers did open merchant accounts on their own behalf. The cost of such accounts is approximately 3 percent, but varies depending on multiple factors.

#### **July 2010 – December 2010**

On July 6, 2010, the Board of Directors passed a resolution amending the Transportation Code to require that all drivers must accept major credit cards as payment of the taxi fare, and approved of a ‘pilot program’ policy<sup>1</sup> for credit card

---

<sup>1</sup> The July 6, 2010 “pilot program” approved by the SFMTA Board provides as follows:

payment processing that authorized shifting up to six percent of the costs of credit card transaction fees to the drivers for any taxi company that elected to participate. The policy rationale was to offer a waiver on a company-by-company basis to those companies that agreed to (i) install Passenger Information Monitor units, (ii) provide electronic waybills and (iii) relinquish control of and responsibility for drivers' credit card payments.

On July 28, 2010, Taxi Services' staff convened a meeting of the industry and several credit card payment processing service providers that made presentations regarding options for San Francisco taxis using PIM units<sup>2</sup>. The purpose of this meeting was to comply with the element of the Board's July 6, 2010 policy that required a credit card payment

- 
1. A taxi company must seek and obtain prior written approval from the SFMTA to pass credit card merchant processing fees to taxi drivers; and
  2. Such waiver is granted as a limited pilot program until such time as it can be reviewed by the Taxi Advisory Council; and
  3. Any cost for credit card transaction cashing services that is passed on to drivers cannot exceed six percent of total credit card fares for that driver, and
  4. The policy must provide convenience and/or other services to both taxi customers and drivers that demonstrably improve the quality of taxi service to the public and driver working conditions, and
  5. Such waiver shall not include any change in fees charged to customers who pay taxi fare with a Paratransit Debit Card, and
  6. The pilot program remains subject to future regulatory actions by the Board of Directors.

The "pilot program" did not include a definitive end date.

<sup>2</sup> Passenger Information Monitors (PIM) offers multiple advantages to the industry and are used by other cities such as New York:

- For the customer, the PIM allows credit card payment directly through a touch screen on the monitor without handing a card to the driver, as well as better access to important passenger information than is provided by the current interior paper cards;
- For drivers, the PIM would provide direct deposit of credit card receipts to a bank account of choice so that drivers would not have to depend on the cashier at the company window for payment, eliminating the current practice of tipping the color scheme cashier and company withholding of various amounts purportedly owed to the company;
- For the taxi companies, the PIM will provide an equipment upgrade for free and, for companies who currently follow the rules against charging drivers credit card payment processing fees, tremendous financial relief from administrative credit card processing costs; and
- For the SFMTA, the PIM would allow for better presentation of important passenger information and display of public service announcements as well as the ability to use RFID-capable cards such as an SFMTA smart card or Clipper card.

solution that would “provide convenience and/or other services to both taxi customers and drivers that demonstrably improve the quality of taxi service to the public”.

On August 18, 2010 the Taxi Advisory Council (TAC) reviewed more detailed Program requirements developed by Taxi Services staff based on the policy guidelines the Board adopted in July 6, 2010, including:

- The capacity to generate electronic waybills (the Board subsequently took separate action on to make electronic waybills mandatory by July, 2011);
- Functionality requirements for rear seat PIMs, including Radio Frequency Identification (RFID) capacity to read smart cards;
- Allocation of advertising revenues from PIM units between the equipment provider and the driver of the vehicle (this concept was rejected following discussion at the TAC in favor of a split of revenue with the Driver Fund);
- The requirement that companies could no longer be merchant account holders in order to increase the financial autonomy of drivers from the companies and reduce tipping opportunities at the companies’ cashier windows;
- Prohibition against any additional charge to a passenger who uses a credit or debit card, or to any Paratransit Debit Card user. Authorization to charge no more than five percent to drivers to cover both credit card payment processing costs and to subsidize the cost of the PIM units.
- The solution provider was required to include a debit card issued to drivers to which meter fares paid by credit or debit card would be transferred within two business days of payment of the fare. Such debit card was required to be capable of use with a personal bank account, and also capable of storing funds directly on the card for withdrawal at ATM machines.

Subsequent to the August 18, 2010 TAC meeting, in October 2010, communication was sent to taxi companies detailing the parameters of the Program, including the elements listed above, with one change: the TAC had identified that it was administratively unworkable to allocate advertising revenue to particular drivers because drivers use different vehicles every day and may drive shorter or longer shifts each time, so the Program was amended to require instead a ten percent contribution of advertising revenues generated by the PIMs to the Driver Fund.

### **January 2011 – April 2011**

During the early part of 2011 five major San Francisco taxi companies (Yellow, Luxor, DeSoto, National/Veterans and Metro) have:

- Selected a PIM vendor and agreed to move forward with the Program including the equipment upgrades;
- Made arrangements with new merchant account holders for a debit card system for drivers; and
- Notified drivers of these changes and their intention to begin charging five percent for credit card transactions beginning April, 2011.

Based on the notification to drivers from companies, some drivers appeared at the SFMTA Board meeting on April 5, 2011 and May 3, 2011.

### ***Current Situation***

This section summarizes the current issues.

The questions raised at the April 5, 2011 and May 3, 2011 Board meetings during public comment related to credit card charges were:

- 1) Why are drivers being asked to pay credit card payment processing charges, also known as “interchange fees”?
- 2) Why is the credit card charge to drivers 5 percent?
- 3) Why has this become an issue now?

The following section responds to these three questions.

1. Why are drivers being now being asked to pay credit card payment processing charges?

A. The San Francisco ordinance requiring taxi companies to pay drivers’ credit card payment processing

costs was enacted 15 years ago, prior to mandatory installation of paratransit debit card equipment with credit card acceptance capacity in all San Francisco taxicabs. Together with the increase generally in the use of non-cash forms of payment, the result has been a significant increase in charges to companies;

- B. Drivers receive 100 percent of the meter revenues—including all proceeds from credit card payments---so company payment of transaction charges is an unreimbursed and rapidly growing overhead expense;
- C. Most other jurisdictions require drivers to pay for credit card charges when they receive 100 percent of the meter fare; and
- D. Drivers at most companies are already paying unauthorized and unregulated credit card processing charges of five to ten percent or more.

2. Why are the credit card payment processing charges set at five percent?

The five percent is an upper limit based on a nationwide survey of rates charged in other cities. It is not a mandated amount, and was intended to cover two cost elements:

- A. Actual credit card “interchange” or merchant account fees (approximately 2.75-3.5 percent). These charges include driver support services such as handling charge-back inquiries (incidents where the payment does not go through), customer service inquiries, issuing 1099k forms required as by the IRS and payment protection for charges that banks may ultimately deny; and
- B. Cover the costs of adding rear-seat touch screen monitors for passengers. These “passenger information monitors” (PIMs) allow customers to make credit card payments themselves without handing their card to the driver and are available in many localities across the nation. The availability of PIMs to passengers allows for:
  - i. Tipping options in a manner designed to increase tips given to drivers;
  - ii. Improved informational signage and local business information for passengers in taxicabs; and
  - iii. Guarantees payment to drivers of charges up to \$50 that are processed through the rear-seat touch screen monitors (PIMs) whether or not they are subsequently denied (Verifone).



- C. It is important to note that companies may not prohibit a driver from setting up his or her own merchant account instead of paying companies to cash credit card payments. Many drivers already have individual merchant accounts, and many drivers who do not have such accounts already go to someone other than the company to cash credit card receipts (often at a ten percent fee).
3. Why has this become an issue now?
- A. As a result of a new program addressing credit card payment processing costs initiated in October 2010, five of the major taxi companies began to charge five percent of credit card receipts to drivers in April;
  - B. Drivers are generally not fond of the rear seat terminals because they encourage credit card instead of cash payments, they have the capacity to make repetitive noise (though the volume can be turned down), they may detract from the customer-driver interaction, and some drivers have expressed a fear of radiation exposure from the units; and
  - C. It has been eight years since there has been a taxi fare increase that would provide a boost in income to drivers to offset their costs.

## ***Options***

This section addresses the options available at this time to address the current issues.

The Program, when initiated in October 2010, was explicit that the SFMTA Board has continuing regulatory jurisdiction over credit card processing requirements. Therefore, the Board has options to change any aspect of the legislation at any time. In doing so, there are two fundamental issues for the Board's consideration:

1. Should PIMs be installed in San Francisco taxis?

PIM units provide customers with the benefits of security of a rear-seat credit card payment system, improved passenger information, promotion of local businesses and potential advertising revenue. Without a PIM unit

there is likely to be a variety of different payment methods depending on which taxi the customer uses. If PIM units are installed, then some source of funding needs to be identified to pay for them. If they are not required or a source of funding other than credit card processing fees is used to pay for them, credit card processing costs through individual driver merchant accounts could be reduced to something around 2.75 percent (this is a blended, flat rate for use of a Square device (see [www.squareup.com](http://www.squareup.com))).

2. Should credit cards be required as a payment mechanism for customers who use taxis and, if so, who should pay credit card transaction costs?

There are at several options available to address credit card transaction costs.

They are listed in the Table 1 along with an assessment of the potential consequences of implementing each option.

### ***Recommendation***

This recommendation is based on feedback heard to date and is subject to change dependent on the information received from the town hall meetings.

1. Drivers should be permitted to designate the account of their choice where they would like to receive deposits if they choose to use the company's cashiering services as drivers have complained about excessive transaction fees on the accounts arranged by the companies and of the lack of customer service support provided by the company-created accounts.
2. Require encryption/security/backup data warranties from the service providers to address concerns about privacy of information on the internet.
3. Require companies to accept gate fee payments (the cost to lease a taxi from the company for a shift) with driver credit cards. Currently drivers must pay gate fees with cash, which is made more difficult when there are fewer cash transactions.
4. Require PIM units in taxis as they provide customers with the benefits of security of a rear-seat credit card payment system, improved passenger information, promotion of local businesses and potential advertising revenue. Without

a PIM unit there is likely to be a variety of different payment methods depending on which taxi the customer uses

Attachment: Table 1

Option	Impact to Companies	Impact to Drivers	Impact to the Public	
Require companies to continue bearing the full credit card payment processing costs (as has been historically the case)	Companies will have less funding available for ensuring the safety and quality of vehicles—they will be incentivized to buy cheaper, older vehicles and to spend less on vehicle maintenance	The existing practice of companies illegally charging five to ten percent or more to drivers for cashing credit card payments will continue	There would be no source of funding available for Passenger Information Monitors	
	Anticipated resistance from companies over having to continue to bear this expense.	Companies that do pay transaction costs will find other ways to cover that cost, and will inevitably increase other fees and charges to drivers	Customers will continue to experience inconsistent responses to credit cards—drivers who have their costs paid will accept them, and some drivers who have to pay for the transaction will reject attempt to credit card payments.	
		Drivers who work for companies that actually pay the transaction costs as required by regulation will be more willing to accept credit cards if they perceive that there is no cost to the driver to process the transaction.		
Require all drivers to identify their own individual credit card processing solutions through which they would be responsible for actual payment processing costs.	Companies would continue to receive customer inquiries about credit card transactions to which they would not be able to respond, with possible harm to their business good will	Drivers will have to manage their own individual merchant accounts, including responding to customer inquiries and handling chargebacks (rejected transactions) in accordance with financial regulations, bearing the risk of loss of chargebacks, and will have to wait for deposit of their money until each transaction settles	There would be no source of funding available for Passenger Information Monitors	Customers would be responsible for their own payment processing costs.
		Drivers would likely get lower rates on transaction fees, but not likely to be lower than about three percent.	Customers might experience confusion about how to handle credit card payments because each vehicle would have a different system; spotty customer service responses to transaction inquiries, no consistency in contact information transaction inquiries, as customers would have to contact each merchant account holder.	
Require the medallion holders to be responsible for credit card payment	Medallion holders, who are jointly responsible with the company for the quality and safety of the taxi vehicle,	The costs to drivers will be increased through unregulated fees and charges imposed by the medallion holder and intended to cover the	If PIMs are required to be funded, the impact to the public would be positive because there would be a uniform payment system with a rear-seat device.	

processing costs	will have less money available for ensuring the safety and comfort of taxi vehicles—medallion holders will be incentivized to buy cheaper, older vehicles and to spend less on vehicle maintenance	expenses of credit card transactions		
	Companies may end up bearing at least part of the costs because paying medallion holders expenses is one of the 'perks' that a companies offer to medallion holders to attract them to the company.		If PIMs are not required to be funded, customers might experience confusion about how to handle credit card payments because each vehicle would have a different system; Spotty customer service responses to transaction inquiries, no consistency in contact information transaction inquiries, as customers would have to contact each merchant account holder.	Customers would have to contact each merchant account holder.
Implement a flat user fee to the customer through a third party voucher system so that the customer bears the credit card processing costs.	Better economic health of the taxi companies to support better vehicles and better vehicle maintenance.	Fewer driver and company complaints about the cost of accepting credit cards	Taxi ridership may be reduced if customers are unwilling to pay extra for the convenience of using a credit card	This a violation of the prohibition on a "credit card incentive" similar to the one in the Las Vegas ordinance.
			Anticipated customer complaints regarding the significant cost of using a convenient form of payment that is not charged by any other service or retail business that accepts credit cards	
			This option would require the use of PIMs in order to issue vouchers. Staff was quoted a minimum user fee of \$2.40 to implement this option. Las Vegas uses this system with a \$5.00 credit card convenience fee per trip, and a pilot program with a limited number of taxis in Miami-Dade County, Florida, is using a \$3.00 user fee.	
Continue to implement the Program as initiated and return to the Board with proposed improvements to	Better economic health of the taxi companies to support better vehicles and better vehicle maintenance.	Continued driver complaints (potentially mitigated with meter rate increase)	Improved customer experience (signage, tourist information, consistent and secure payment system) through PIM unit	Improved customer experience through PIM unit

the Program within 90 days based on best practice research and surveys of drivers, companies and passengers.				
		Drivers would receive administrative support services for financial transactions, including chargeback protections up to \$50, customer service support for transaction inquiries, immediate deposit regardless of when or whether the transaction settles		
Not require acceptance of credit cards in San Francisco taxis	Better economic health of the taxi companies and drivers because they can refuse a form of payment that costs money to accept	Fewer driver and company complaints about the cost of accepting credit cards	PIMs will not be available and taxi customers will not receive benefits such as the security of a rear-seat credit card payment system and improved passenger information	
	The cost of credit card payment processing fees will not interfere with a company or medallion holder's ability to invest in better vehicles and vehicle repair		Uncertainty for passengers as to whether a particular taxi will accept credit cards as form of payment, resulting lack of confidence in taxis as a mode of transportation, increased reliance on personal vehicles for local trips with resulting impacts on congestion, parking competition and vehicle emissions.	
Split the cost of equipment between drivers and companies	Companies are likely to complain about an unfunded mandate	Companies will almost certainly ask for a gate increase in order to pay for equipment required by the City, ultimately resulting in overall loss of income for the driver.	Improved customer experience (signage, tourist information, consistent and secure payment system) through PIM unit	It may rolling a set perce