



STAFF REPORT

Date: October 30, 2020
RE: Convenience Fees on credit card transactions
From: Brian Hartsell, Marla Howard

Discussion:

In response to direction from the Board of Trustees during the FY2021 budget process, MSD staff have been researching the potential assessment of credit card convenient fees to citizens when they pay license, permit and other fees via credit card. The MSD pays about \$40,000 in fees related to credit card transactions annually. This is in the form of a transactional fee through both Xpressbillpay and the credit card processor. In addition, each card type has an interchange rate that varies depending upon the type of credit card. See **Example** and **Example 2** at the bottom of the page for this schedule.

Xpressbillpay analyzed a few months of transactions to see how the usage falls regarding average transaction amount and type(s) of card being used. See **Merchant Account Review** for the results. About 60% of the transactions are on cards that charge interchange rates of at least 2.5% or greater. September's average transaction was about \$373. The largest transaction under review was \$18,800.

We use Chase Paymentech as the third-party processor and both VISA and MasterCard must approve implementing convenience fees which may take up to 90 days. We are confident that we will get the required approval. We will work directly with American Express to get their approval.

Convenience fees are allowed under state code. Per Mark Anderson:

“Utah Code Ann. Section 17B-1-644, which authorizes charging an “electronic payment fee”, which is defined as “an amount of money to defray the discount fee, processing fee, or other fee charged by a credit card company or processing agent to process an electronic payment.” The statute defines an “electronic payment” as “the payment of money to a local district by electronic means, including by means of a credit card, charge card, debit card, prepaid or stored value card or similar device, or automatic clearinghouse transaction.” Utah Code Ann. Section 17B-1-643 requires a local district to advertise and hold a public hearing “[b]efore imposing a new fee or increasing an existing fee for a service provided by a local district”.

The MSD can accept credit card and other electronic payments, but isn't required to do so. If the MSD elects to accept credit card payments, it may charge an electronic payment fee that offsets the fees charged by the credit card company. Any customer who objects to the electronic payment fee may use a different form of payment, such as cash or a check. I do not consider such a fee to be a "fee for services provided" by the MSD. Rather, it passes on to the customer a fee that is charged by a credit company because the customer chose to use a credit card rather than some other form of payment. I'm not aware of any judicial decisions or other controlling authority on your question, and do not guaranty any particular outcome if the question were to be litigated, but I am comfortable with the logic behind and defensibility of the stated position. Namely, that a credit card convenience fee (an electronic payment fee) that merely recoups transaction fees charged by a credit card company doesn't constitute a fee for a service and doesn't fall under the public hearing requirement of Utah Code Ann. Section 17B-1-643."

Recommendation:

After our analysis, we determined that a transaction charge of \$.50 and an interchange rate fee of 2.75%. The MSD can periodically review whether these charges are sufficient, on average, to cover these costs previously borne by the MSD. Mark Anderson prepared the attached resolution for consideration and approval.