



**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF ADOPTION

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b), 1043 and 1504 of the New York City Charter, I hereby promulgate the within Amendment to the Rules of the Commissioner of Finance Relating to Fees. This amendment was published in proposed form on June 7, 2013. A hearing for public comment was held on July 8, 2013.

____S/S_____
David M. Frankel
Commissioner of Finance

Matter underlined is new.

Statement of Basis and Purpose

On October 2, 2007 Mayor Bloomberg issued Executive Order 106 (EO 106) which calls for the City to implement a unified billing, payment, and collection strategy. EO 106 also requires all City agencies to establish and implement a system for accepting credit and debit card payments for fees, fines, sales of products and any other suitable transactions.

To further implement this policy, the Commissioner of Finance is adopting a rule that establishes a consistent policy for accepting credit card payments and a uniform fee to defray the cost incurred by the City from credit card transactions.

Section 5(c) of the General Municipal Law and section 11-105(3) of the Administrative Code of the City of New York authorize the City to charge and collect a reasonable and uniform fee as a condition of accepting a credit and debit cards as means of payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount owed to the City. These laws require that the fee not exceed the cost incurred by the City in connection with such credit and debit card transactions, including any fee payable by the City to the card issuer.

Section 1504 of the New York City Charter requires the New York City Department of Finance to perform those functions and operations of the City that relate to the administration and collection of taxes, assessments and charges imposed by the City. Pursuant to that authority, the Department of Finance is authorized to promulgate rules concerning a fee as a condition of accepting a credit or debit card for payment of City charges.

The rule applies to “covered” City agencies, defined as mayoral agencies described by section 385 of the New York City Charter, and to other agencies listed in the proposed rule. Other non-covered City agencies could, via rulemaking, opt into the rule.

The amendment requires that covered City agencies charge a nonrefundable fee of 2.49% of the amount paid for credit and debit card transactions. The amendment does not apply to checks, money orders, cash or other forms of electronic payments such as eChecks -- these forms of payment will be accepted without a fee.

The fee will be refunded when the credit card payment was the result of certain technical errors, not caused by the customer, such as a duplication of a charge or an erroneous entry by a covered agency. The fee will also be refunded when the charge resulted from a fraudulent payment not made by the customer where the customer notifies the agency of the fraudulent payment.

The fee will not be imposed for credit or debit card payments:

- for parking time purchased from a “muni-meter,” because the administrative expense of processing the fee from often small purchases of parking time is not cost effective;
- for retail transactions for the sale of merchandise sold by a payee agency, such as the sale of merchandise at the CityStore;
- for payments made as donations, except when the donation is paid as part of an existing transaction for which a fee is charged;
- for re-payments of Medicaid, Cash Assistance, or Supplemental Nutrition Assistance Program benefits for over-payments by any of these programs, and for payments made by beneficiaries to reduce their income in order to qualify for eligibility for Medicaid, because the administrative costs associated with these payments can be absorbed by state and federal agencies;
- for fees paid for emergency medical ambulance services as these credit card transaction costs have already been incorporated into the cost of operating the City's emergency services;
- for birth and death certificates issued by the Department of Health and Mental Hygiene's Vital Records Bureau because these records are processed through a third party service, and the City does not incur any additional credit card related expenses, and
- where credit card is the only means of payment permitted for such charge.

A particular credit or debit card will not be accepted for payment if that particular credit or debit card does not allow for charging convenience fees.

The rule phases in the fee for two groups of agencies listed in the rule. The agencies in the first group will start complying with the rule 13 months after its final publication in the City Record. The agencies in the second group will start complying with the rule 19 months after its final publication in the City Record. These timeframes will allow the Department of Finance to work with all of the agencies to ensure that the new fee is implemented without interrupting their day-to-day operations or causing reporting, reconciliation, or fiscal issues. An agency may start complying with the rule earlier if it notifies the Department of Finance that implementation would not materially impede the agency's operations or services to the public. If needed, agencies in both groups that are being phased in could obtain a delay in charging and collecting the fee of up to six months of additional time beyond the 13-month and 19-month timeframes that would otherwise apply.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Amendment to Rules Relating to Fees

Section 1. The Rules of the Commissioner of Finance Relating to Fees (19 RCNY Chapter 9) are amended to add a new section 9-02 to read as follows:

§9-02. Fee for credit card transactions.

(a) Definitions. As used in this section:

- (1) "Card issuer" means an issuer of a credit card, charge card or other value transfer device.
- (2) "Covered agency" means an agency described in subdivision (a) of section 385 of the New York City Charter, including all units within the Executive Office of the Mayor, and the following:
 - (i) Board of Standards and Appeals;
 - (ii) Business Integrity Commission;
 - (iii) Commission on Human Rights;
 - (iv) Conflict of Interest Board;
 - (v) Franchise and Concession Review Committee;
 - (vi) Landmarks Preservation Commission;
 - (vii) Public Design Commission (Art Commission);
 - (viii) Office of Administrative Trials and Hearings, including the Environmental Control Board;
 - (ix) Office of Chief Medical Examiner; and
 - (x) Taxi and Limousine Commission.
- (3) "Credit card" means any credit card, credit plate, charge card, charge plate, courtesy card, debit card or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit, or to purchase or lease property or services on the credit of the person issuing the credit card or a person who has agreed with the issuer to pay obligations arising from the use of a credit card issued to another person.
- (4) "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers. The term includes but is not limited to a bank, trust company, private banker, industrial bank or investment company, if so engaged. "Financing agency" shall not include a retail seller.
- (5) "Muni-meter" means an electronic parking meter that dispenses timed receipts that must be displayed in a conspicuous place on a vehicle's dashboard.
- (6) "Non-covered agency" means an agency of the City of New York that is not a covered agency.
- (7) "Person" means an individual, partnership, corporation or any other legal or commercial entity.

(b) Credit card fee imposed by covered agencies. (1) Except as provided in paragraphs two, three and four of this subdivision and in subdivision (d) of this section, as a condition of accepting a credit card as payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount, a covered agency must charge and collect from the person offering a credit card as a means of payment a nonrefundable fee in the amount of 2.49% of the amount of the fine, civil penalty, tax, fee, rent, rate, charge or other amount to be paid with the credit card. A covered agency must not charge any other fee for accepting a credit card as payment of any such charges in lieu of, or in addition to, the fee authorized by this section.

(2) Prior to thirteen months from final publication of this rule in the City Record, the fee provided in paragraph one of this subdivision shall not be charged or collected by any of the following covered agencies unless the agency first notifies the Commissioner of Finance in writing that charging and collecting the fee would not materially impede such agency's operations or services to the public:

- (i) Business Integrity Commission;
- (ii) Department of Citywide Administrative Services;
- (iii) Department of Environmental Protection;
- (iv) Department of Finance;
- (v) Department of Health and Mental Hygiene;
- (vi) Department of Investigation;
- (vii) Department of Sanitation;
- (viii) Department of Transportation;
- (ix) Fire Department;
- (x) Human Resources Administration;
- (xi) Office of Administrative Trials and Hearings;
- (xii) Office of the Mayor; and
- (xiii) Taxi and Limousine Commission.

(3) Prior to nineteen months from final publication of this rule in the City Record, the fee provided in paragraph one of this subdivision shall not be charged or collected by any of the following covered agencies unless the agency first notifies the Commissioner of Finance in writing that charging and collecting the fee would not materially impede such agency's operations or services to the public:

- (i) Department of Buildings;
- (ii) Department of Consumer Affairs;
- (iii) Department of Housing Preservation and Development;
- (iv) Department of Parks and Recreation; and
- (v) Police Department.

(4) The Commissioner of Finance may grant a waiver from charging and collecting the fee provided in paragraph one of this subdivision for up to six months beyond the thirteen and nineteen months in paragraphs (2) and (3) respectively, for agencies specified in such paragraphs, upon a determination that charging and collecting the fee earlier creates a risk of materially impeding an agency's operations or services to the public.

(c) Credit card fee imposed by non-covered agencies. Any non-covered agency may by rule opt to be treated as a covered agency pursuant to this section, in which case the provisions of this section shall apply to such agency in their entirety. Any non-covered agency that does not opt to be treated as a covered agency will not be subject to this section and may charge a fee in accordance with section 11-105 of the Administrative Code of the City of New York.

(d) When fee must not be imposed. The fee provided by this section must not be imposed:

- (1) for parking time purchased from a muni-meter or parking cards purchased to use at a muni-meter;
- (2) for retail transactions for the sale of merchandise or the purchase of parking time at municipal garages;
- (3) for payments made as donations, except when the donation is paid as part of an existing transaction for which a fee is charged;
- (4) for re-payments of Medicaid, Cash Assistance, or Supplemental Nutrition Assistance Program benefits for overpayments by any of these programs, and for payments made by beneficiaries to reduce their income in order to qualify for eligibility for Medicaid;
- (5) for fees paid for emergency medical ambulance services;
- (6) for birth and death certificates issued by the Department of Health and Mental Hygiene's Vital Records Bureau; and
- (7) where payment by credit card is the only means of payment accepted.

(e) Refund of fee. Notwithstanding the provisions of subdivision (b) of this section, a credit card fee will be refunded when the credit card payment was:

(1) the result of certain technical errors, not caused by the customer, such as a duplication of a charge or an erroneous entry by a covered agency; or

(2) was a fraudulent payment not made by the customer where the customer notifies the agency of the fraudulent payment.

(f) A covered agency must not accept a particular credit card for payment if imposition of the fee pursuant to subdivision (b) of this section would not be consistent with the terms of any agreements of such covered agency or the City of New York with any financing agency, card issuer or other commercial entity governing the acceptance of such credit card.