



City of North Port

Office of the City Attorney

Memorandum

To: Jill E. Luke, Mayor
Pete Emrich, Vice-Mayor
Barbara Langdon, Commissioner
Debbie McDowell, Commissioner

Copy: Jason Yarborough, Interim City Manager
Cari Branco, Assistant City Manager
Juliana Bellia, Acting Assistant City Manager
Kimberly Ferrell, Finance Director

From: Amber L. Slayton, City Attorney *ALS*

Date: December 21, 2020

Subject: Credit card surcharges

At its November 10, 2020 regular meeting, the City Commission directed the City Attorney to analyze the legalities of charging customers a convenience or credit card fee for the fees (excluding utilities) in Appendix A – City Fee Structure to the Code of the City of North Port, Florida (“City Fee Structure”).

This memo addresses the legal aspects of the Commission’s inquiry.

I. SUMMARY

1. Authority to levy credit card surcharge: Florida Statutes Section 215.322(5) grants the City authority to charge credit card surcharges only in relation to taxes, license fees, tuition, fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues.
2. Analysis of fees in City Fee Structure: The City Fee Structure contains some local fees that are not derived from the Florida Statutes and are not eligible for a surcharge. Thus, the statute does not permit a blanket application of credit card surcharges to the entirety of the City Fee Structure. Levying a credit card surcharge would require individual analysis of the fees to determine which constitute “statutorily prescribed revenues.”
3. Process to levy credit card surcharge: This would require the adoption of an ordinance and the development of internal processes to meet statutory requirements.

II. AUTHORITY TO LEVY CREDIT CARD SURCHARGE

Florida Statutes Section 215.322(5) makes specific provision for the acceptance of credit card payments by a unit of local government, including a municipality, and the assessment of a surcharge in an amount sufficient to pay the credit card service fees.¹ However, this authority only extends to payments of taxes, license fees, tuition, fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues.²

Generally, the fees in the City Fee Structure do not constitute taxes, license fees³, tuition, fines, civil penalties, court-ordered payments, or court costs. That leaves the question as to whether these fees are “statutorily prescribed revenues.” Although the phrase “other statutorily prescribed revenues” has been in effect in the statute for more than 30 years, there is no case law construing its meaning.⁴

With no help from a Florida court, the Florida Legislature, or the Florida Attorney General, a court would rely on the plain language and the dictionary definitions to determine the meaning of the phrase.⁵ Based on these, the City can pass on service fee charges to credit card users who are paying for anything that is directed or established by Florida Statutes.

III. ANALYSIS OF FEES IN CITY FEE STRUCTURE

Some fees in the City Fee Structure are purely local in nature. Examples of local fees include entry fees for Warm Mineral Springs and the Aquatic Center, as well as set up charges for City facilities. These fees are not prescribed by the Florida Statutes and do not fall within any other statutory category allowing for credit card surcharges. Thus, the City cannot apply convenience fees to the entirety of the City Fee Structure.

If the City Commission were inclined to charge credit card surcharges to the statutorily prescribed fees, it would require an analysis of each individual fee in the City Fee Structure and a written confirmation of the corresponding Florida Statute. Due to the extent of the City Fee Structure, such an analysis would be time intensive.⁶

IV. PROCESS TO LEVY CREDIT CARD SURCHARGE

Adding credit card surcharges for the permitted payments would require the adoption of an ordinance establishing the City Commission’s intent to accept payment of the above-described statutory fees by credit card, charge card, and bank cards, along with the establishment of the associated convenience fee. The ordinance should provide that the surcharge is separate and in addition to the statutory fee,

¹ The statute provides the state much greater liberty in charging credit card fees. See § 215.322(2)-(4), Fla. Stat.

² See § 215.322(5), Fla. Stat.

³ Further research would be required to determine whether select fees constitute “license fees.”

⁴ The Florida Attorney General has authored two opinions interpreting the law, but none discussing what is encompassed in “statutorily prescribed revenues.” Fla. Att’y Gen. Op. 89-65 (1989); Fla. Att’y Gen. Op. 98-09 (1998).

⁵ Here, *statutorily* means “of, relating to, or involving legislation,” *prescribed* means “to dictate, ordain, or direct; to establish authoritatively,” and *revenues* means “income from any and all sources; gross income or gross receipts.” STATUTORY, Black’s Law Dictionary (11th ed. 2019); PRESCRIBE, Black’s Law Dictionary (11th ed. 2019); REVENUE, Black’s Law Dictionary (11th ed. 2019).

⁶ When downloaded to Word, the City Fee Structure fills 56 pages. A keyword search for the dollar sign (\$) yields 925 results.

state that the surcharge is non-refundable⁷, and potentially require notice of the convenience fee posted in a conspicuous location within the charging office(s) and on the City's website.

Further, internal processes should be established to fulfill statutory requirements that the City verify both the validity of the credit card, charge card, bank debit card, or electronic funds transfer and the existence of appropriate credit with respect to the person using the card or transfer.⁸ Therefore, it would be advisable to include a statement prior to payment that the individual is attesting that they are the lawful user of such card.

⁷ See § 215.322(2)(b), Fla. Stat.

⁸ *Id.*