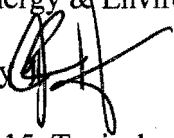


MEMORANDUM

February 2, 2016

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 53-15, Taxicabs – Credit Card Transactions

Expedited Bill 53-15, Taxicabs – Credit Card Transactions, sponsored by Lead Sponsors Councilmembers Elrich, Riemer and Navarro, was introduced on December 8, 2015. A public hearing was held on January 19.

Bill 53-15 would:

- (1) limit the amount a licensee may charge a driver or affiliate for processing a credit card transaction;
- (2) amend the requirements for credit card processing systems in taxicabs; and
- (3) generally amend County law concerning taxicabs.

Expedited Bill 53-15 would refine existing provisions of the law related to processing credit card payments for taxicab service. These provisions were added to the law by Expedited Bill 53-14, which was enacted earlier this year and substantially revised Chapter 53. Specifically, the Bill will prohibit licensees from charging drivers and affiliates more than the actual cost to the licensee for processing a credit card transaction, and will make it easier for drivers to use their own credit card processing systems.

Background

The County's taxicab law was substantially revised in 2015 by Expedited Bill 53-14. That Bill made a number of changes aimed at improving conditions for drivers and allowing the taxicab industry to better compete with transportation network companies such as Uber and Lyft. Expedited Bill 53-14 established a Taxicab Services Commission to evaluate the economic condition of the taxicab industry and the adequacy of service rendered by the industry. The Bill also made a number of changes to the requirements of taxicab leases and operating agreements, including requiring the County Executive to establish standardized lease/affiliation agreements, maximum lease and affiliation rates and permissible ancillary fees that may be charged to drivers. The Bill also provided for the issuance of new passenger vehicle licenses to increase the number of accessible taxicabs on the road.

Among the driver protection provisions included in Bill 53-14 were changes to the law aimed at (1) limiting the premium that fleets could pass along to drivers for processing credit card transactions and; (2) making it easier for drivers to choose their own credit card processing

mechanism. Under the law as amended Bill 53-14, a fleet or association may not charge a driver more than “1% over bank, merchant services and equipment provider fees paid by the licensee on any credit card transaction.” Also, the law now allows drivers to use their own credit card processing systems, provided the systems: (1) are compliant with all applicable tax laws; (2) accept payment through any County user-side subsidy program (“Call-n-Ride”); and (3) are approved by the Director of the Department of Transportation (DOT). It is these provisions that this Bill proposes to modify. This Bill would provide that fleets and associations may only charge drivers the amount paid by the fleets for processing credit card transactions (effectively changing the “1%” to “0%” in the existing law) and would remove the requirement that *all* credit card processing systems accept Call-n-Ride payments.

Public Hearing

A public hearing was held on January 19, at which there were four speakers. Acting DOT Director Al Roshdiah testified on behalf of the County Executive, stating that the Executive “does not object to this bill,” but expressing concerns for possible unintended consequences (see ©8). To address these concerns, he requested two amendments to the Bill, which will be discussed below. Lee Barnes of Barwood Transportation testified in opposition to the Bill, raising questions about the definition of “processing” and pointing out that fleets incur more costs on credit card transactions than just the fee charged by a financial institution. Mr. Barnes also expressed concerns that the amendments proposed in Bill 53-15 would result in taxicabs having no way to process Call-N-Ride¹ transactions, and would call into question the purpose of the Taxicab Commission created by Bill 53-14 (see ©9-10).

Beth Levie of the AFL-CIO spoke in support of the Bill, providing hypothetical examples of the impact of credit card processing charges imposed by fleets on driver income (see ©11-12).² Peter Ibik, President of the Montgomery County Professional Drivers’ Union, also spoke in support of the Bill, echoing Ms. Levie’s statements, and pointing out that, when using fleet credit card processing systems, drivers do not get paid immediately for credit card transactions, as they do for cash payments. Mr. Ibik noted that this delay in payment to drivers presents an impairment to the drivers’ ability to make their daily rent payments, and that allowing drivers to use their own processing systems would remove this impairment.

Issues for Committee Discussion

1. Should the allowed premium on credit card transactions be eliminated?

Expedited Bill 53-14, as referred to the Council by the T&E Committee favorably (2-1), would have capped the amount that a fleet could charge a driver for credit card processing at 5% of the transaction. This cap was requested by a group of drivers as part of a post-mediation position statement, and is similar to the 5% cap imposed by the City of Alexandria (see ©14). Before passage, however, the Bill was amended by the full Council to limit the amount of premium over costs that a fleet could charge a driver, rather than set a hard 5% cap on the charge. In moving the

¹ Call-N-Ride is the County’s “user-side subsidy program, which assists . . . Participation in County user-side subsidy programs is mandated by § 53-222, which provides, in its entirety: “Any fleet or association must participate in the County’s user-side subsidy programs, as required by applicable regulations.”

² Barwood provided a counterpoint to Ms. Levie’s examples, which indicates that fleet-wide, 43% of fares are collected by credit card transaction (see ©13).

amendment, Councilmember Katz expressed a view that 5% might actually be too high, given his understanding of processing charges for credit card transactions. As enacted, Bill 53-14 limited the amount a fleet or association could charge a driver to “1% over bank, merchant services and equipment provider fees paid by the licensee on any credit card transaction.”

In October 2015, after this change went into effect, Barwood sent a message to drivers informing them of the new law and, among other things, describing how Barwood would charge credit card fees to drivers in light of the changes in the law (see ©15-16). Barwood’s message said that credit card fees would be charged as the “Technology Marketing and Service Fee” (TMSF), which includes “all equipment provider costs, such as bank merchant fees, credit card charge-back fees, transaction fees and air time fees, plus all fees for Call-n-Ride processing.” In accordance with the law which allowed them to recover their costs plus 1%, Barwood informed drivers that the TMSF fee would be 7.45%.

In response to Barwood’s message, seven members of the Council sent a letter to Acting DOT Director Al Roshdieh, expressing concern about the amount of the charge and inquiring about the Department’s progress in identifying alternative credit card processing systems that could accept payment through the County’s user-side subsidy program (see ©17-18).³ The Montgomery County Professional Drivers’ Union also weighed in, with a letter to Acting Director Roshdieh questioning the legitimacy of the amount of the TMSF and the restrictions on drivers’ use of their own credit card processing systems (see ©19-24).

As mentioned above, this Bill would effectively reduce the 1% premium over costs currently allowed to 0%, providing that “a licensee must not impose on a driver or affiliate a charge of more than the fees paid by the licensee for processing any credit card transaction . . .” At the public hearing, Acting Director Roshdieh said that DOT currently does not have the ability to verify that companies are in compliance with the law, and requested an amendment to require the fleets to certify to the Director that they are complying with the law.⁴ Staff agrees that such an amendment would strengthen the law, but still questions whether the certification would be effective in ensuring compliance.

In addition to the concerns stated by Acting Director Roshdieh, Lee Barnes expressed concern over the term “processing,” pointing out that “the fee charged by a financial institution is just one of the many costs taxicab companies incur when customers pay by credit card.” Mr. Barnes’s concern about the possible ambiguity in the use of the word processing, although the Bill could be amended to simply remove the “1% over” from the existing law, accommodating the other charges that Mr. Barnes alluded to, but eliminating any premium collected by the fleet.⁵

Council staff believes that the Committee made a well-founded recommendation when it considered Expedited Bill 53-14, and recommends a return to that position. Amending the Bill to prohibit a licensee from imposing on a driver or affiliate charges totaling more than 5% of a credit card transaction would provide drivers with relief that staff believes was intended by the enactment of Bill 53-14, while providing clarity and ease of administration.

³ The memorandum was signed by Councilmembers Katz, Elrich, Leventhal, Berliner, Hucker, Navarro, and Riemer.

⁴ This amendment was also suggested by Associate County Attorney Robert J. Birenbaum in his memorandum to Acting Director Roshdieh, dated January 5, 2016 (see ©25-26).

⁵ It is worth noting that, if the Bill is enacted to simply remove this premium, Barwood drivers will still be paying 6.45%, significantly more than the 5% cap recommended by the Committee in its consideration of Bill 53-14.

Staff recommendation: *Amend lines 4-8 of the Bill as follows:*

(f) A licensee must not impose on a driver or affiliate:

(1) ~~[[a charge of]]~~ charges totaling more than [1% over bank, merchant services and equipment provider] [[the fees paid by the licensee [on] for processing any credit card transaction]] 5% of any credit card transaction; or

2. Should the requirement that all credit card processing systems accept payment through County user-side subsidy programs be removed?

Expedited Bill 53-14 added the existing language, which allows drivers to use their own credit card processing systems,⁶ provided the systems: (1) are compliant with all applicable tax laws; (2) accept payment through Call-n-Ride; and (3) are approved by the Director of DOT. During Committee worksessions, DOT requested language requiring that any system accept Call-n-Ride payments. This requirement has had the unintended effect of prohibiting drivers from using their own processing systems, as commonly used personal systems such as Square⁷ are not currently capable of accepting these payments. Drivers say the ability to use such systems is important for two reasons: (1) to reduce their cost of processing the transactions⁸; and (2) to eliminate the lag time between the transaction and the time the driver receives payment.⁹ The Bill, as introduced, simply removes the requirement that credit card processing systems accept Call-n-Ride, but does not change the requirements of § 53-222 that “[a]ny fleet or association must participate in the County’s user-side subsidy programs, *as required by applicable regulations.*” (emphasis supplied)

Both DOT and Lee Barnes of Barwood expressed concern at the public hearing that the Bill as introduced could have the unintended effect of reducing the number of taxicabs capable of accepting Call-n-Ride payments.¹⁰ DOT has requested that language be added to the Bill to expressly require that all taxicabs licensed to or affiliated with fleets and associations subject to the participation requirements of § 53-222 be able to accept Call-n-Ride payments. Council staff believes that, given the language in § 53-222, the Executive could impose the requirement that

⁶ For a brief discussion of why drivers may wish to use their own processing system, such as Square, and the legal status of its use in some jurisdictions, see <http://www.geekwire.com/2014/taxi-drivers-seattle-allowing-customers-pay-square/>

⁷ Square is marketing its service specifically to Taxicab drivers: see <https://squareup.com/taxi-credit-card-processing>

⁸ Square currently charges 2.75% per transaction.

⁹ Square provides an “instant deposit” that virtually eliminates any lag: <https://squareup.com/pos/payments/instant-deposit>

¹⁰ According to DOT, Call-n-Ride has 5,400 participants, of whom approximately 75% are age 67 and over. The remaining participants are persons with disabilities between the ages of 18 and 66. The Call-n-Ride program provides roughly 10,500 trips per month, for which participating fleets are reimbursed, in aggregate, about \$200,000 per month. Fleets required to participate in the program are Barwood, Regency, Action, and Sun.

taxicabs be equipped to accept Call-n-Ride payments by regulation.¹¹ However, given the importance of protecting Call-n-Ride participants' access to transportation, staff agrees that it is appropriate to include the requirement in the law.

Adding this requirement (which, as a practical matter, already exists through § 53-222 and the regulations, while facilitating drivers' ability to process their own credit card transactions may disrupt the business arrangements currently in place between some fleets and their processing services. Mr. Barnes indicated that Barwood's provider, Verifone, would remove their equipment if it was only used to process Call-n-Ride transactions. Verifone would do this, according to Mr. Barnes, because the provider has an expectation that the equipment will generate significant revenue from credit card transactions, and makes it profit from those transactions.

If drivers begin using their own processing systems to process credit card transactions, this sort of relationship would likely have to evolve to a subscription system where the provider is compensated directly by the fleet or association. The fleet or association would then pass that cost on to the driver in the lease, or as an additional charge approved by the Director. Mr. Ibik, in his letter to Acting Director Roshdieh, proposed that drivers would pay the cost of the equipment through a payment of 1% per transaction paid to the fleet. This proposal is problematic in that it would still require the fleet to assume the risk that such payments may not cover the cost of the equipment, leaving the fleet to cover any shortfall. Another alternative may be for the County to identify and contract with a provider, and include the cost of the equipment in the annual fee required for the PVL or, possibly, the Driver Identification Card. In any event, this shift will almost certainly result in an increase in upfront expenses for drivers to cover the costs where such a new arrangement is required.

One additional concern expressed by Mr. Barnes should also be considered. When a driver uses his or her own credit card processing system, and a customer has a problem with the transaction, that customer will likely contact the fleet. The fleet, which in these circumstances would have no control over the payment, would not be able to directly assist the customer in resolving the conflict, beyond referring the customer to the driver or attempting to mediate the dispute. A fleet could also direct the customer to initiate a payment dispute with the customer's credit card, which would then trigger (at least in Square's case) an existing dispute resolution procedure.¹² However, a shift to drivers using their own credit card processing systems could increase customer service costs for the fleet, and it would likely be the fleet that a customer would hold at least partially responsible for the wholly independent actions of its drivers.

As mentioned above, DOT has requested that the requirement that each taxicab be equipped to accept Call-n-Ride payments be clearly addressed in the law. Council staff believes that such an amendment would preserve the ability of Call-n-Ride participants to obtain necessary transportation. While it is still unclear what the cost of requiring compliance while decoupling credit card transactions from Call-n-Ride would be, such cost should be borne by each driver as an independent contractor. With this consideration in mind, staff recommends Committee approval of the Bill with the following amendment.

Staff recommendation: *Add the following language immediately after line 10:*

¹¹ Existing regulations for participation in County user-side subsidy programs are at COMCOR 53.223.01 through 03 (see ©27).

¹² <https://squareup.com/help/us/en/article/3882-resolving-payment-disputes>

53-222. User-side subsidy programs - participation.

- (a) Any fleet or association must participate in the County's user-side subsidy programs, as required by applicable regulations; and
- (b) each taxicab affiliated with, or operating under a license issued to, a fleet or association that is required to participate in a County's user-side subsidy program must be equipped to accept payment through the program.

* * *

| This packet contains: | <u>Circle #</u> |
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| Expedited Bill 53-15 | 1 |
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Expedited Bill No. 53-15
Concerning: Taxicabs – Credit Card
Transactions
Revised: 12/03/2015 Draft No. 1
Introduced: December 8, 2015
Expires: June 8, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Elrich and Riemer

AN EXPEDITED ACT to:

- (1) limit the amount a licensee may charge a driver or affiliate for processing a credit card transaction;
- (2) amend the requirements for credit card processing systems in taxicabs; and
- (3) generally amend County law concerning taxicabs.

By amending

Montgomery County Code
Chapter 53, Taxicabs
Sections 53-218 and 53-313

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Sections 53-218 and 53-313 are amended as follows:

53-218. Responsibility of licensees, affiliates, and drivers.

* * *

(f) A licensee must not impose on a driver or affiliate:

- (1) a charge of more than [1% over bank, merchant services and equipment provider] the fees paid by the licensee [on] for processing any credit card transaction; or
- (2) any other charge of a type or amount other than those on the list adopted by regulation under Section 53-111.

* * *

53-313. Passenger receipts; credit card transactions.

* * *

(b) Any system or service used to process credit card transactions must:

- (1) be compliant with all applicable tax laws; and
- (2) [accept payment through any County user-side subsidy program; and
- (3)] be approved by the Director.

* * *

Sec. 2. Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Nancy Floreen, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 53-15 *Taxicabs – Credit Card Transactions*

| | |
|---|---|
| DESCRIPTION: | Expedited Bill 53-15 would refine existing provisions of the law related to processing credit card payments for taxicab service. These provisions were added to the law by Expedited Bill 53-14, which was enacted earlier this year and substantially revised Chapter 53. Specifically, the Bill will prohibit licensees from charging drivers and affiliates more than the actual cost to the licensee for processing a credit card transaction, and will make it easier for drivers to use their own credit card processing systems. |
| PROBLEM: | Some PVL licensees continue to charge drivers and affiliates substantial fees for processing credit card transactions. |
| GOALS AND OBJECTIVES: | Ensure that taxicab drivers and affiliates are able to reliably process credit card transactions at the lowest cost. |
| COORDINATION: | MCDOT |
| FISCAL IMPACT: | To be requested. |
| ECONOMIC IMPACT: | To be requested. |
| EVALUATION: | To be requested. |
| EXPERIENCE ELSEWHERE: | To be researched. |
| SOURCE OF INFORMATION: | Josh Hamlin, Legislative Attorney |
| APPLICATION WITHIN MUNICIPALITIES: | To be researched. |
| PENALTIES: | N/A |



ROCKVILLE, MARYLAND

MEMORANDUM

January 15, 2016

TO: Nancy Floreen, President, County Council *[Signature]*
FROM: Jennifer A. Hughes, Director, Office of Management and Budget
For Joseph F. Beach, Director, Department of Finance *[Signature]*
SUBJECT: FEIS for Bill 53-15E, Taxicabs - Credit Card Transactions

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Al Roshdieh, Acting Director, Department of Transportation
David Platt, Department of Finance
Brady Goldsmith, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Expedited Bill 53-15, Taxicabs – Credit Card Transactions

1. Legislative Summary.

This bill will limit taxi cab fleet owners from charging drivers more than what they are charged by banks for credit card processing

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

None

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

None

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

N.A.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

None

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

None

7. An estimate of the staff time needed to implement the bill.

None

8. An explanation of how the addition of new staff responsibilities would affect other duties.
No new staff responsibilities

9. An estimate of costs when an additional appropriation is needed.

None

10. A description of any variable that could affect revenue and cost estimates.

None

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

None

12. If a bill is likely to have no fiscal impact, why that is the case.

This is an amendment to an already existing law and is meant to give taxi drivers more protection from what the fleet owners can charge them. No funds pass through the County.

13. Other fiscal impacts or comments.

None

14. The following contributed to and concurred with this analysis: Anthony Alexiou, DOT



Jennifer A. Hughes, Director
Office of Management and Budget

1/15/16
Date

Economic Impact Statement
Bill 53-15E, Taxicabs – Credit Card Transactions

Background:

This legislation would limit the amount a licensee may charge a driver or affiliate for processing a credit card transaction and amend the requirements for credit card processing systems in taxicabs. Bill 53-15E amends Section 53-218 of the County Code such that a licensee may not impose on a driver or affiliate a charge of more than the fees paid by the licensee for processing any credit card transaction.

1. The sources of information, assumptions, and methodologies used.

The source of information is the Montgomery County Department of Transportation (DOT). There are no assumptions or methodologies used in the preparation of the economic impact statement. The reduction in the charges that a licensee receives for processing a credit card transaction is offset by the decrease in the driver's cost to operate the taxicab. Therefore, there is a revenue loss to the licensee but an equal gain to the driver because of the reduced fee.

2. A description of any variable that could affect the economic impact estimates.

There are no variables that could affect the economic impact estimates. While there is a negative economic impact on the licensee, the impact is directly offset by a positive economic impact on the driver.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 53-15E would have no economic impact on employment, spending, savings, investment, incomes, and property values in the County. It is a zero sum economic impact – one agent gains a benefit (reduced transaction cost) while the other agent loses a benefit (reduced transaction fee).

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph #3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Department Finance; Tony Alexiou, Department of Transportation.



Joseph W. Beach, Director
Department of Finance

1/13/16
Date

Testimony of County Executive Isiah Leggett

Bill 53-15

January 19, 2016

Good afternoon Council President Floreen and Council Members. My name is Al Roshdieh and I am the Acting Director for the Montgomery County Department of Transportation. I am here today testifying on behalf of County Executive Isiah Leggett regarding Bill 53-15 and its proposed amendments to Sections 53-218 and 53-313 of the County Code.

The County Executive does not object to this bill. He is concerned, however, about the unintended consequences of this bill for the County's seniors and disabled residents who rely on Call-N-Ride for their transportation needs.

Expedited Bill 53-15 amends the County Code to preclude taxicab companies from imposing upon drivers any charges in excess of the fees paid by the taxicab companies for processing credit card transactions. This part of the law is clear, but the Department needs the ability to verify that the companies are in compliance with the law. At the very least, we request that the bill be amended to include a requirement that the companies certify to the Department that they are not adding additional processing fees over and above what they are paying.

The Bill also repeals the current requirement that every system used in a taxicab to process credit card transactions also be able to process payments for the County's "Call-N-Ride" program. The Call-N-Ride program offers subsidies to low-income persons who are elderly or have disabilities and need transportation for medical appointments. The Call-N-Ride program only processes subsidy payments through electronic means because the previous paper voucher system was susceptible to fraud and abuse. In order to avoid disruptions in service to those who are eligible for and heavily rely on the Call-N-Ride program, the Bill should be amended to require that a system be in place to process Call-N-Ride payments.

Thank you for the opportunity to express the Executive's views on this Bill. My staff and I look forward to further discussing these points in greater detail during the T&E Committee session in February.



Testimony of Lee Barnes
EXPEDITED BILL 53-15, TAXICABS-CREDIT CARD TRANSACTIONS

January 19, 2016

Good afternoon Madam President and Council members. I'm Lee Barnes, President of Barwood Transportation. Thank you for allowing me to express my concerns with Bill 53-15 and to respectfully ask that you vote against this legislation.

53-15 raises more questions than it answers. It reflects an oversimplified perception of how credit card transactions are processed. It calls into question the continuance of Call-N-Ride. It oversteps the authority given to the newly created Taxicab Commission and places an even greater burden on locally regulated taxi service.

First, the bill adds the term "processing" to Chapter 53, as it relates to credit card fees. But what exactly does processing mean? The law that went into effect less than four months ago referred to "bank, merchant services and equipment provider fees." 53-15 replaces that language with "processing" yet provides no definition of the word.

The most important thing to understand is this: The fee charged by a financial institution is just one of the many costs taxicab companies incur when customers pay by credit card. We also pay fees for the credit card terminals, as well as for the secure software used to process the transaction and collect the data required by County and federal law.

DRIVEN FOR EXCELLENCE

1



The second question relates to the unintended consequence that 53-15 will have on providing Call-N-Ride services. The bill eliminates the requirement that a credit card system accept payment for County subsidized services. Many drivers are now using technology such as Square to take customer payments, even though this method has not been approved by DOT. If this is the direction the Council wishes to take, Barwood will no longer be able to maintain the safer and more secure credit card equipment currently in the back seats of our taxis.

Here's why: First of all, while popular with some drivers, technology such as Square doesn't allow for processing County-subsidized services. If we are only to use our equipment for processing Call-N-Ride – which does not generate revenue for taxi companies - we will not be able to fulfill our revenue obligation with the equipment provider. They will remove their equipment, leaving the County with no way to process Call-N-Ride services. Surely that is not the Council's intention.

Third, Bill 53-15 calls into question the purpose of the Taxicab Commission. Just last year the Council created a Taxicab Commission to examine issues such as this and provide recommendations. I ask that the Council give the Commission the opportunity to do its work before considering more new laws that hurt the taxicab industry and could negatively impact County services.

I am more than willing to sit down with each member of the Council to discuss the breakdown of our credit card transaction costs and what is actually charged to the driver so the Council can make an informed decision on Council Bill 53-15.

Thank you for your consideration.



Beth Levie, 9402 Russell Rd Silver Spring 20910, blevie@aficio.org 202 285-3667

My name is Beth Levie. I work for the National AFL-CIO and live in Montgomery County. I am testifying in favor of expedited Bill 53-15. In recent years, the AFL-CIO has been working to help organize hundreds of thousands of workers in this Country that are classified as independent contractors. These workers have no legal right under US law to earn minimum wage; are not covered by workers' compensation, overtime rules or other workplace protections; and do not receive social security or unemployment benefits. One of the ways these workers gain protections is through legislation such as the legislation that was signed into law this summer. We thank the council for voting 9-0 for reforms that will regulate the taxi industry through uniforms leases and caps on rent and other fees, and a fair dispute resolution system.

Lowering the credit card rates have always been central to the drivers' struggle. Why, because more customers want to use their credit cards; accepting payment is mandated by County law; and a company with a high credit card ran can decrease a driver's income by 10% or much more.

For example a driver works 338 days and takes in \$82,000 in fares and \$4453 in tips together its \$86,453.00. Drivers estimate that currently 70% of all fares paid with credit cards. In our example, that would be \$60,517.

Barwood charges drivers 7.45% which would be \$4,508 credit card costs to a driver. When you take rent in to consideration -- \$33,000 -- and the cost of gas -- about \$14,000 -- the driver is left with \$39,453. Subtract \$4508 in credit card charges and now he is taking home \$34,945. That's 13%; not considering other fees and other expenses which would make the credit card expense an even larger portion of his take home income.

It looks even worse for a driver what takes in only \$54,000 in fares and tips. Using the 70% estimate, that means \$37,800 of his fares and tips via credit card, yielding \$2,816 credit card charges. After subtracting \$33,000 in rent, \$10,000 for gas, and \$2816 in credit card fees, the drivers is left with \$8,184. His credit card fees would represent 31% of his earnings.

The County can do something about this and bring fees charged to drivers in line with other merchants' fees for credit card use. Please pass legislation that works to lower credit card cost to drivers.

BARWOOD DRIVER INCOME: AFL-CIO ASSUMPTIONS VS. ACTUAL DATA

1/27/16

| | Assumptions AFL-CIO Hypothetical Driver \$82,000 Annual Revenue | Actual Barwood Driver 2014 \$82,083 Annual Revenue | Actual Average Barwood Driver 2014 \$69,224 Annual Revenue |
|---|--|---|---|
| Annual Days Worked (Meter Days) | 338 | 331 | 320 |
| Fares Collected | \$82,000.00 | \$82,083.00 | \$69,224.00 |
| Tips Received (by credit card - does not include cash tips) | \$4,553.00 | \$4,454.00 | \$4,047.00 |
| Total Driver Revenue (less cash tips) | \$86,000.00 | \$86,537.00 | \$73,271.00 |
| Percentage of Fares Collected by Credit Card Transaction | 70.00% | 38.87% | 43.00% |
| Gas (see * and **) | -\$14,000.00 | -\$6,315.80 | -\$6,315.80 |
| Lease Fees or Rent | -\$33,000.00 | -\$24,500.00 | -\$24,500.00 |
| Estimated Credit Card Charges | -\$4,500.00 | -\$2,536.21 | -\$2,366.42 |
| Net Earnings | \$34,000.00 | \$53,184.99 | \$40,088.78 |

* AFL-CIO Assumption: Assumption of gas cost of \$14,000/\$2.00 per gallon = 7,000 gallons used. At MPG of 19, this means the driver would have driven 133,000 miles in one year.


** Barwood Data: Drivers average 60,000 miles per year, divided by 19 miles per gallon = 3160 gallons x \$2.00 = \$6,315.80

CONFIDENTIAL & PROPRIETARY

Hon. John M. Glynn
November 13, 2014
Page 3

Standard Lease Cap Rates. An Owner of a Taxicab can charge a lease rate to a Driver that is not greater than the following Standard Lease Caps:

\$105, for all 12-hour day shifts
\$115, for the 12-hour night shift on Sunday, Monday and Tuesday
\$120, for the 12-hour night shift on Wednesday
\$129, for the 12-hour night shifts on Thursday, Friday and Saturday
\$630, for any one-week day shift for one week or longer
\$737 for any one week night shift for one week or longer.

- 
2. Drivers should be able to determine their own means to accept credit cards, and a 5% maximum charge to drivers should be imposed where a company's terminal is used

As you know, the majority of cab drivers in Montgomery County are forced to pay exorbitant fees to process credit card transactions. Those fees can range from 5% to as high as 7.9% (8.5% in some instances) for Barwood drivers. Your report should recommend that the County set certain standards that must be met and allow drivers the freedom to choose a credit card terminal that best fits their needs. If, however, the drivers are forced to use company terminals, then the county should set the maximum credit card fee at 5%. That type of system is consistent with those in surrounding jurisdictions.

For example, in Alexandria, Section 9-12-32(t)(1) of the Alexandria Virginia Taxi Ordinance mandates a 5% maximum percentage credit card fee if a certificate holder mandates that its affiliated drivers use a specific credit card processor.

It is important to remember that each driver in Montgomery County is treated as an independent contractor. Although the drivers understand the County's need to mandate that credit cards be an acceptable form of payment, as independent contractors, the drivers should be the ones to determine how best to meet such a mandate. It is the drivers, and not the fleet companies, who depend upon the customers' fare to run their business. The City of San Francisco has recognized this very basic idea. Section 1124-(d)(1) of the San Francisco Transportation Code stipulates that a driver has the right to choose a credit card payment processing merchant account service so long as it conforms to the standards placed by the city. No fleet company, under the San Francisco Code, may retaliate against a driver for electing, or not electing, to establish his or her own credit card processing account.

**301.984.1900**

Follow Us:



Dear Valued Driver,

On Tuesday, July, 21, 2015 Expedited Bill 53-14 was signed into law. There have been many rumors about these changes. This communication will separate the myth from the facts.

What You Need to Know

Effective Date of the changes:

There are several changes but they are effective at different times. Changes are either:

- Effective upon approval by the Director of Montgomery County's Department of Transportation.
- Effective October 1st, 2015

More individuals can own PVLs

PVL ownership is no longer restricted to only 20% for individuals. The County will issue new PVLs over the next six months.

However, NEW PVLs are not transferable, meaning they can NEVER BE SOLD.

If you get a new PVL from the County you can't sell it, will it to your children or spouse, you can only run it as a taxi. Existing PVLs will be grandfathered in, meaning IF you currently own a PVL or buy a PVL that was first issued before January 1st, 2015 then you are allowed to sell *that* PVL for its value.

So now is a good time to own a PVL that still has value! We have a list of available PVLs. If you're interested in owning, email ptp@barwoodinc.com or call Vanessa Curtin 240-514-1232.

PVL Leasing

The County is currently designing regulations for leasing a PVL. They expect to be finished with these regulations in approximately 3 months. Therefore you will have to wait 3 months or longer to lease a PVL. As soon as we have more information, we will let you know.

However, keep in mind there are more advantages to owning a PVL.

Card Swipe Devices

There has been a lot of misinformation about the use of card swipe devices, such as Square. Here are the facts:

- All devices **MUST** be approved by Montgomery County's Director of Transportation
- All devices **MUST** be able to integrate with the fleet dispatch system and must integrate with and accept user side-subsidy programs like, Call N Ride
- Per Chapter 53 Code section 53-313. Any system or service used to process credit card transactions **MUST** meet these requirements.
- It is a violation of Chapter 53-313 to use non-approved swipe devices.

Fees

There is NO change to current lease rates. There are rumors that lease rates were lowered by the County. This is NOT true.

The Department of Transportation will set a *maximum* lease rate but as a private business, each fleet and affiliate owner will individually decide what they charge to lease their vehicles. This will be based on their brand, dispatch and costs.

Credit Card Fees

Barwood's Technology Marketing and Service Fee (TMSF) covers all equipment provider costs, such as bank merchant fees, credit card charge-back fees, transaction fees and air time fees, plus all fees for Call N Ride processing. Per Chapter 53-218, we are allowed to collect for all of these fees plus 1%.

Over the last month we have been testing new software in an effort to bring down the costs. Unfortunately, this has also stopped our direct deposit ACH process.

We were successful in bringing the cost down somewhat. So, effective later this week our TMSF fee of 7.95% will change to 7.45% We will no longer charge our own .50%. However it will require the distribution of manual checks for a bit longer.

We fought for other changes that would be very positive for drivers, like dynamic fare pricing, when customers use our taxi app. This would allow surge pricing similar to TNCs, like Uber and Lyft and drivers could make more money. However, some drivers fought this fare flexibility and the dynamic pricing model was voted down.

This is the first in many communications in regards to these changes. Future communications will discuss:

- Our new taxi booking app
- Positive changes to our dispatch system
- A new marketing team and plan to get more fares
- New driver incentive plans



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

October 23, 2015

Mr. Al Roshdieh, Acting Director
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

Dear Mr. Roshdieh:

Earlier this year, the County Council passed, and the County Executive signed, Bill 53-14 to regulate the taxicab industry. We appreciate the work that is being done in your department to enact the new requirements of the law—and to that end, we wanted to make you aware of several concerns we have regarding the recovery of costs associated with credit cards.

As enacted, Section 53-218 of Bill 53-14 contains the following provision:

A licensee must not impose on a driver or affiliate:

- (1) a charge of more than 1% over bank, merchant services and equipment provider fees paid by the licensee on any credit card transaction; or*
- (2) any other charge of a type or amount other than those on the list adopted by regulation under Section 53-111.*

It has been brought to our attention that Barwood Taxi company may be circumventing this section of the law. In a memo to its drivers addressing credit card fees, Barwood states it has reduced its "Technology Marketing and Service Fee" (TMSF) from 7.95% to 7.45%. However, the company does not state the actual costs of the credit card transaction. It seems unlikely that the credit card companies are charging 6.45% for their services.

Further, the fees subject to the 1% limit must be "paid by the licensee on any credit card transaction." This means that if the licensee rents or leases equipment for a set amount, it *cannot* try to pro-rate that cost and pass it on as a per-transaction cost for the driver. It can, however, pass that cost along to drivers as part of the lease or as a separate fee. We are concerned that taxi companies may be playing fast and loose with the interpretation of "any credit card transaction," and may be "packaging" other expenses alongside those permitted by this provision.

Mr. Al Roshdieh
Page 2

Therefore, we would like you to determine what is being included in these charges—including the 7.45% charge being passed on to drivers by Barwood—so that we may assess whether additional legislation is needed to address or clarify this issue.

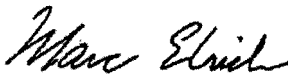
Finally, it is our understanding that DOT requested the adopted amendment to the Bill requiring that any alternate card swipe device be able to accept Call N Ride cards. We would like to know whether DOT has identified any such devices that can accept Call N Ride. If not, we'd like to discuss the possibility of an interim solution to expedite approval of an alternative for drivers.

We appreciate your prompt response, as these are urgent financial issues that directly impact cab drivers across our county daily.

Sincerely,



Sidney A. Katz



Marc Elrich



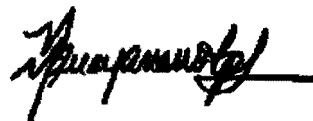
George Leventhal



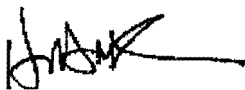
Roger Berliner



Tom Hucker



Nancy Navarro



Hans Riemer

MONTGOMERY COUNTY PROFESSIONAL DRIVERS UNION

November 12, 2015

Mr. Al R. Roshdieh, Acting Director
Montgomery County Department of Transportation
Tenth Floor
101 Monroe Street
Rockville, MD 20850

Re: The 2015 Reformed Montgomery County Taxicab Industry Regulations, Implementation and, Enforcement.

Dear Mr. Roshdieh,

The Montgomery County Professional Drivers Union – MCPDU, write to:

1. Ask for clarification of some sections of the County's newly reformed and passed taxicab industry regulations.
2. Seek explanation to some disturbing and misguided interpretations of some of the sections of the law thus far offered by your office and Barwood Taxi Company..

On July 31, 2015, the County Executive signed the Expedited Bill 53-14 into law. While most elements of the Bill have later effective dates, some aspects of it became immediately effective to give the fleet, drivers and affiliates the much needed immediate relief on a faster timeline and earnestly begin the process of mending the County's badly broken taxicab system.

On October 1, 2015, a number of the aspects of Bill 53-14 became effective. Amongst them are:

- ▲ issues with credit card as a form of fare payment;
- ▲ daily lease and affiliation fees capping;
- ▲ uniform lease agreement/contract form and;
- ▲ dispute resolution procedure.

Most drivers are confused with all sorts of explanation coming from your office – per your letter to Ms. Beth Levie and, from CCTI – per Mr. Lee Barnes memo to Barwood drivers. We are aware that you, and the council members, have read Mr. Barnes interpretation of the law as it pertains to his business. We are also aware that seven of the council members feel the same way the drivers feel about his outlandish interpretation..The seriousness of this issue for drivers cannot be understated. We pay thousands of dollars in credit card fees. One driver, among many who paid exorbitant fees, paid \$5,000 in fees last year. Per Barwood daily rent calculation formula, \$5,000 divided by 312 days would be \$16.03. When this figure is added to this driver's fixed daily rent of \$111.30 on a 2010 Ford Crown Victoria, his daily average rent would be \$127.33. Could you possibly imagine what it would cost this driver daily to operate a taxicab in Montgomery County after all other fees such as \$3.00 late fee and fuel cost are added?

Mr. Roshdieh, you are an intelligent, well-schooled and personally good-natured man but, you seem lacking in knowledge of the facts of the industry. It is high time you took an honest and critical look at the County's entire taxicab industry. This includes but not limited to the innate purpose of the industry creation; the identified and potential needs of all the players in the industry; the financial versus public

interests of the industry's players; the purpose and duties of the active players or executors in the industry; the areas of success and failures of the active players; the overall health of the industry and, most importantly, the County's residents level of satisfaction with the industry's services.

The groups of players in the industry consists of the three branches of the County Government through their specific Departments; the County residents; the taxicab companies and the taxicab drivers. The most active players include the DOT, the residents, the cab companies and, the drivers. With all these interrelating bodies, the industry's problem today is well beyond the issues between the drivers and the companies. The obvious partiality of the Executive branch and its DOT in enforcing some aspects of the industry's regulations is the biggest single hindrance to the quality of service the drivers deliver to the residents. The drivers quest for survival urges them to do all they can do to maintain good working relationship with the customers .but, the companies constant and senseless exploitative acts which are often deliberately overlooked by the DOT badly inhibit the drivers efforts. This favoritism seem to have accomplished only one goal – **FAILURE TO PROVIDE EFFICIENT TAXI SERVICE TO THE COMMUNITY.**

Mr. Roshdieh, the drivers need relief and **they need it now!** We cannot wait for bureaucracy to play out and so, we will ask you to clarify the following sections of Expedited Bill No 53-14 so we can go about our business and actually experience the true meaning of having a process expedited:

1. 53-218: Responsibility of Licensees, Affiliates and Drivers:

A) Subsection (e)(5) states:

“not require a driver or affiliate to use fleet or association system for processing credit card transaction.....”

You must agree that this subsection is self-explanatory. It simply states that any driver or affiliate who does not like the service fees offered by any fleet or association **DOES NOT HAVE TO USE THE FLEET'S OR ASSOCIATION'S SYSTEM** to process credit card transactions. If, however, our interpretation of this law is incorrect, please feel free to explain to us what it is actually saying.

B) Subsection ((f) lines 533 – 537) states:

“ A licensee must not impose on a driver or affiliate a charge of more than 1% over bank, merchant services and equipment provider fees paid by the licensee on any credit card transaction.....”

Barwood,s interpretation of this same subsection to Barwood drivers and affiliates which was titled “Credit Card Fees” states:

“Barwood’s Technology Marketing and Service Fee (TMSF) covers all equipment provider costs, such as bank merchant fees, credit card charge-back fees, transaction fees and air time fees, plus all fees for Call N Ride processing. Per Chapter 53-218, we are allowed to collect for all of these fees plus 1%”

We all do in fact understand that Barwood is a legitimate private business entity which has the right to charge whatever it chooses. We all also do understand that the drivers and affiliates are legitimate private business persons and/or entities who have the right to choose what they believe is best for their businesses.

Barwood may have invested millions of dollars into its business and hopes to make substantial profit to be comfortable with its operation. By the same token, the drivers and affiliates invested hundreds and thousands of dollars and likewise hope to make adequate profit to sustain their businesses. Since none

of the parties invested to lose, the question becomes, 'how must one invest to insure a good and steady rate of return without tilting the balance?' In a market full of sellers and buyers of similar items, one logical answer to this question would be to invest wisely so to minimize pitfalls. Another logical answer would be for the buyers to purchase the lowest priced and equally effective item that would serve the investment purpose.

Now, back to the true meaning of 53-218. The first two lines (533 and 534) – per Councilmember Sidney Katz's amendment of 7/21/15 at 2:16pm clock time states, "A licensee **MUST NOT IMPOSE** on a driver or affiliate a charge of more than 1% over bank...."

Barwood's Credit Card Fee declaration states, "Barwood's Technology and Service Fee (TMSF) covers all equipment provider costs....." This is way more than necessary to provide this service.

The drivers and affiliates found a cheaper way to provide the same service to their customers. This enables them to better manage their business, make ends meet and possibly make marginal profit. For Barwood to tell the affiliates and drivers that using their individual devices to perform credit card transactions is a violation of Chapter 53 is unfounded and irresponsible. Barwood **MUST BE RESTRAINED** from using falsified interpretations of the County code as a shield to protect the owner's bad business decisions.

2. 53-313: Passenger Receipts; Credit Card Transactions:

Mr. Roshdieh, to say that we are disappointed in you and your response letter of October 15, 2015 addressed to Mrs. Beth Levie in regard to the use of individual credit card processing device by drivers and affiliates would be a gross understatement. You are supposed to be the custodian and the enforcer of the law and, you are supposed to be fair to all and trusted by all. How could you write such a biased letter that reads so much like something out of Mr. Lee Barnes own office?" Do you really think so little of drivers that we cannot be responsible charging customers on devices that are used in all sectors of the economy? It is very unfortunate you chose at this time to narrowly interpret the new reforms.

Nevertheless, as far as this section which formed the base of both of your letter and that of Mr. Barnes to the drivers and affiliates goes, we offer the following. For ease of reference, we quote this same section 53-313:

- "(a) A driver must give each passenger a receipt showing the name of the fleet or association, the time and place of origin and destination of each trip, and the amount of the fare, on a form authorized by the Department, unless the passenger declines to receive the receipt.
- (b) Any system or service used to process credit card transaction must:
 - 1. be compliant with all applicable tax laws
 - 2. accept payment through any County user-side subsidy; and
 - 3. be approved by the Director".

Mr. Roshdieh, 53-313 clearly relates to fleets' and/or associations' existing and already approved operating systems. As indicated by these statements:

"A driver must give each passenger **a receipt showing the name of the fleet or association** on a form authorized by the Department...." and

"Any system or service" used to process credit card transaction must accept payment through any County user-side subsidy program....."

The fact that drivers are required in this section to give receipts to passengers who may need to have receipts is simply because:

1. the drivers are the closest “representatives” of the fleet or association to the passengers;
2. the drivers are the ones who provided the actual service to the passengers and;
3. the drivers are capable of operating the fleet’s or association’s on-board system that is equipped to produce the approved form of receipt.

If the phrase, “A driver” were removed from this section, it would become much clearer that the section is addressing the responsibilities of a fleet or association. When the drivers owned and operated cooperative is up and running, this section would then apply to us as a fleet. All that we ask for at this time is to be able to freely exercise our rights by using our individual and lawful devices to process regular credit cards while we continue trying to provide better service to the customers.

As for the user-side subsidy (Call N Ride), we have the following to propose:

1. In order to accommodate all riders, we propose to use the fleet on-board system to service the program and then pay 1% processing fee on each transaction to the fleet, or
2. That the Department makes arrangement to award each driver the contract to individually service the program as an entity. This would then enable the DOT to inspect and approve each contractor’s device or system or service according to regulations, or
3. That the Department exempts drivers from servicing the program since (as in the case of Orange Taxi Company which had been exempted from the same because it has less than 29 vehicles in its fleet) no driver has enough number of vehicles to be considered a fleet.

Reduced Taxicab Insurance Requirement:

The next big, or even bigger, issue on our (drivers) minds is to find out exactly when the reformed insurance requirement of 50/100/25 became effective. The reduction of insurance requirement to the level of TNCs State requirement, we understood, is to even the playing field across the board with TNCs. This means that the fleet and private owners would get to pay less monthly premium on the vehicles insurance coverage. This also means that the drivers would get to pay reduced daily premium on the vehicles they drive which, as a result, would immediately reduce the daily lease on the vehicles.

Mr. Roshdieh, why is Mr. Lee Barnes telling drivers that the Department is responsible for the companies uphold of the current lease rates because of its delay in setting the lease cap? We know that lease cap setting has nothing to do with the immediate realization of cost savings prompted by the insurance requirement reduction. We demand immediate enforcement of this law..

Immediate Relief Needed

Mr. Roshdieh, we, the drivers and private owners who are lawfully licensed by Montgomery County to do business in the County as law abiding citizens and entrepreneurs have decided to **STOP** being pushed around by the fleet owners whom your office is aiding by its inaccurate interpretation of the law. We have therefore resolved to take the following actions, and more as the need may be, until all of our concerns are thoroughly, rightfully and, conclusively addressed:

1. Per 53-218 (e)(5) - **“not require a driver or affiliate to use the fleet or association system for processing credit card transactions.....”**

Effective immediately:

- We will stop providing service to credit card customers through the fleet or association system.

- We can **ONLY** process credit card transactions through our individual devices unless the fleet or association can beat or match the processing fees charged by our merchant and equipment provider and/or the bank.

2 Per 53-224 - **“Insurance required”** provision:

- ▲ On October 1, 2015, the reformed minimum vehicle insurance coverage became effective. According to Amalgamated Casualty Insurance Company estimate on reformed minimum coverage of 50/100/25 (which, by the way, was requested by CCTI), **the fleet’s monthly premium for leased vehicles is \$208.00 or \$6.93/day. Up until date (over 42 days since this requirement became effective) leasing drivers are still paying a monthly premium of \$609.70 or \$23.45/day.**

Since this piece of legislation was primarily passed to relief the fleet and the drivers from the burden of high insurance costs we demand:

1. that you use your authority under the law to call for reduced rates immediately;
2. that our reduced premium be made effective from October 1, 2015 and/or;
3. according to Mr. Barnes driver contract term regarding vehicle insurance which states, “Lessee agrees to purchase and maintain at all times a public liability insurance policy in such amounts as may be required by law, naming Lessor as an additional insured, and to provide proof of such coverage upon request”, we demand the option to so choose.

3 **Any Act or sign of retaliation against any driver or affiliate by the fleet or association:**

Please be advised that **ANY** act or sign of retaliation against any driver or affiliate by the fleet or association for demanding equitable measures to regain his or her rights will be met with drastic actions against the fleet or association by the Union. We have for long been trying to remain reasonable and accommodating but it has now become obvious that the fleet owners have always taken our spirit of tolerance for weakness. We will no longer neither tolerate the fleets inconsiderate acts and slaving mentality nor pretend to the customers as though everything is well with us and the business. These types of fleet owners behavior caused this County the serious shortage of experienced taxi drivers that we all are now experiencing. We now say that it is **ENOUGH**. We want to concentrate on providing adequate and professional taxi service to the well deserving residents and visitors of Montgomery County.

4 **Our immediate course of action:**

- ▲ We will henceforth begin using our individual credit card processing device to process **ONLY** credit and debit cards. The passengers will be provided with receipts that will protect the fleet or association from any claim that may arise from any processing transaction.
- ▲ We will expect that all of the elements of the taxi reform are effective and shall accordingly encourage drivers to utilize all of their rights.
- ▲ Because we sincerely appreciate our customers, we wouldn’t want to play a part in further disruption of the already fragile transportation system in the County. However, we shall reserve the right to take some serious actions if the drivers and affiliates situations do not immediately improve significantly.
- ▲ We will no longer be ignored. We, just like you, Mr Roshdeih, and the fleet owners have families to raise. We need every single penny we earn to do so.

We thank you very much for reading through this letter and hope that you do now understand our plight. We do not mean to cause harm or, be disrespectful to anyone but we must do what we must to feed our families. We thank you in advance for your cooperation and expediency in resolving these matters to everyone's satisfaction.

Yours truly,

Peter Ibik, President, MCPDU

Copies forwarded to:

Mr. Isiah Leggett, County Executive
Mr. Sidney A. Katz, Councilmember
Mr. Marc Elrich, Councilmember
Mr. George Leventhal, President, County Council
Mr. Roger Berliner, Chairman, T&E Committee
Mr. Tom Hucker, Councilmember
Mrs. Nancy Navarro, Councilmember
Mr. Hans Riemer, Councilmember

Mr. Reza Raoofi – Action Taxi
Mr. Lee Barnes – Barwood Taxi
Mr. Robert Alexander – Orange Taxi
Mr. David Mohabbi – Regency Taxi
Mr. Dewght Kines – Sun Taxi

Mr. Christian Sweeney – AFL/CIO
Ms. Beth Levie – AFL/CIO



Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Al Roshdieh, Director
Department of Transportation

VIA: Edward B. Lattner, Chief *EBL*
Division of Government Operation

FROM: Robert J. Birenbaum *RJB*
Associate County Attorney

DATE: January 5, 2016

RE: **Bill Review of Bill No. 53-15E**

Background

This past summer, the County enacted significant amendments to Chapter 53 of the County Code (the "Taxicab Code") that overhauled the County's regulation of the taxicab industry. Unlike this past summer's sweeping reforms to the Taxicab Code, Expedited Bill No. 53-15 (the "Bill") has a narrow focus that relates to credit card transactions and the requirements of the device that processes those transactions.

Taxicab passengers may pay their fare in cash or with a credit card. Unlike with cash, when a passenger uses a credit card, the driver receives his remuneration for the fare from the taxicab company. As such, the driver has been entirely dependent upon the taxicab company for reimbursement for the fare when processed through the taxicab company's credit card machine. Credit card companies impose fees upon the taxicab companies for credit card transactions. In consequence thereof, the taxicab companies pass those charges onto drivers when reimbursing the drivers. However, current law also allows the taxicab companies to impose upon the drivers an additional charge of up to 1% **above** the costs for processing credit card transactions. That means that if the credit card company charges a fee of 3% of the fare for processing a credit card transaction, the taxicab company may impose upon the drivers a charge of up to 4%. The imposition of charges in excess of costs has caused great acrimony within the taxicab industry.

Al Roshdie
January 5, 2016
Page 2

Discussion

Expedited Bill 53-15 amends § 53-218(f) of the County Code to preclude taxicab companies from imposing upon drivers any charges in excess of the fees borne by the taxicab companies in processing credit card transactions. This part of the law is clear. However, the law should be strengthened to mandate taxicab companies to provide the Department of Transportation their fee arrangement with various credit card companies in processing credit card transactions on a regularly scheduled basis. Currently, there may not be sufficient authority in the Taxicab Code to mandate and compel taxicab companies to provide such information to the Department of Transportation, nor are there any regulations addressing this topic. The Department of Transportation needs the ability to verify the fee agreements that credit card companies have with taxicab companies in order to investigate complaints by drivers who claim that they are being overcharged. Without such clearly defined authority, the Department of Transportation may not be able to effectively police taxicab companies for compliance with the County Code.

A policy matter: Expedited Bill No. 53-15 also amends § 53-313 of the County Code. Under current law, every system used in a taxicab to process credit card transactions must also be able to process payments for the County's "Call-n-Ride" program. The Call-n-Ride program offers subsidies to low-income persons who are elderly or have disabilities and need transportation for medical appointments.¹ The Call-n-Ride subsidy is processed electronically through the credit card reader. The Bill proposes to eliminate the requirement that every system used to process credit cards have the ability to process Call-n-Ride subsidies. This amendment may have serious implications for the Call-n-Ride program because not every credit card reader has the ability to process Call-n-Ride payments. The Call-n-Ride program only processes subsidy payments through electronic means because the previous paper-voucher system was susceptible to abuse and fraud. If the County wishes to avoid disruptions in service to those who are eligible for the Call-n-Ride program, the Bill should be amended to require that a system be in place to process Call-n-Ride payments.

cc: Marc P. Hansen, County Attorney
Bonnie Kirkland, Assistant CAO
Josh Hamlin, Legislative Attorney

15-007567
OCA bill review

¹ <http://www.montgomerycountymd.gov/dot-transit/seniors.html>

COMCOR - Code of Montgomery County Regulations

COMCOR 53.223.01 Taxicab Participation in User-Side Subsidy Programs

53.223.01.01 Background Information

Montgomery County Code Section 53-223 requires that a regulation be established to define participation by taxicab fleets or associations in the County's user-side subsidy programs.

53.223.01.02 Participation Requirements

1. Taxicab fleets or associations that hold 30 or more taxicab Passenger Vehicle Licenses (PVLs) must participate in the County's user-side subsidy programs.
2. Taxicab fleets or associations that have 29 or fewer Passenger Vehicle Licenses (PVLs) are encouraged to participate in the County's user-side subsidy programs but are not required to participate.

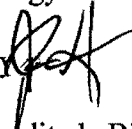
53.223.01.03 Effective Date

This regulation becomes effective when the Council adopts a resolution approving the regulation or on a later date specified in the regulation. If the Council takes no action of approval or disapproval, the regulation becomes automatically effective 61 days after the Council received it, or on any later deadline set by regulation.

(Administrative History: Reg. No. 21-07 (Method 2); Orig. Dept.: Public Works and Transportation)

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Worksession Addendum:** Expedited Bill 53-15, Taxicabs – Credit Card Transactions

Additional Materials for Committee Consideration

Attached to this memorandum are three items that may be helpful to the Committee in considering the issues for discussion in the February 4, 2016 worksession. The first is a response from DOT Director Al Roshdieh to the October 23, 2015 letter from seven Councilmembers that is included in the packet. Also, Council staff received two additional items late on February 3: (1) a chart to illustrate Barwood's credit card processing costs; and (2) a letter from Cornerstone Montgomery expressing concern about possible impacts of Bill 53-15.

DOT's response to Councilmembers' letter

As discussed in the packet, seven Councilmembers signed a letter to then Acting DOT Director¹ Al Roshdieh, expressing concern about the amount of the charge and inquiring about the Department's progress in identifying alternative credit card processing systems that could accept payment through the County's user-side subsidy program. In his January 15, 2016 response, Mr. Roshdieh indicated that he "was unable to obtain sufficient detailed information from the fleets in order to develop a specific breakdown of the percentages paid by the fleets to credit card companies." Mr. Roshdieh also indicated that DOT has not been able to identify any other credit card processing devices capable of accepting payment through the County's Call-n-Ride program.

Chart illustrating Barwood's costs for processing credit card transactions

As mentioned above, Council staff received, at 11:25 p.m. on February 3, a chart from Barwood that illustrates the company's costs to process credit card transactions. Staff has not had sufficient time to fully analyze the chart, but it appears that at least some of the charges shown are not incurred on a per-transaction basis. Mr. Barnes will be at the worksession to answer questions on this document from Committee members.

Letter from Cornerstone Montgomery

Also at 11:25 p.m. on February 3, staff received a letter from Cornerstone Montgomery expressing concern that Bill 53-15's provisions allowing drivers to select their own credit card processing devices, subject to approval by DOT, will negatively impact the recently expanded

¹ Mr. Roshdieh was confirmed as DOT Director on January 26, 2016.

'Road to Independence' program. As with the Barwood chart discussed above, staff has not had adequate time to consider the concerns expressed in the letter, but notes that this concern, if valid, would also be valid under the law *as it currently exists*. The law already allows drivers to use their own processing devices, but requires that they be capable of accepting Call-n-Ride payments. Bill 53-15 merely shifts the Call-n-Ride requirement from the system to the vehicle. Also, it is not clear from the letter exactly why the use of a different processing system would prevent tracking transactions, or why the payment couldn't be made through the device/system that will still have to be in each taxicab to accept Call-n-Ride payments.

This packet contains:

DOT response to October 23 letter, January 15, 2016
Barwood credit card costs chart
Letter from Cornerstone Montgomery, February 3, 2016

Circle #

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DEPARTMENT OF TRANSPORTATION

MEMORANDUM

Isiah Leggett
County Executive

Al R. Roshdiah
Acting Director

January 15, 2016

TO: Sidney Katz, Councilmember
Marc Elrich, Councilmember
Roger Berliner, Councilmember
Tom Hucker, Councilmember
Nancy Navarro, Councilmember
Hans Riemer, Councilmember

FROM: Al R. Roshdiah, Acting Director
Department of Transportation

SUBJECT: Taxicab Credit Card Cost Recovery

I am writing in response to your October 23, 2015 letter, in which you asked me to look into the fees paid by the taxicab companies for processing credit card transactions, and what is included in those fees. I apologize for the delay in responding to your inquiry.

I was unable to obtain sufficient detailed information from the fleets in order to develop a specific breakdown of the percentages paid by the fleets to credit card companies. Most of the fleets simply responded that they either charge no additional fee to the driver, or only 1% additional. Barwood's response stated that "there are a multitude of components that go into what a company is charged for various 'merchant services' so the fee is not a flat x.x%" and "... the fees are composed of and vary as follows: Transaction Fees, Basis Point Fees, Verifone Fees, Airtime Fees, store/forward floor fees, and Web services fees." Barwood additionally stated their costs are "... based on an average trip for credit cards" and "Verifone including Transaction Feed Equipment fees Airtime & web portal fees 6.45%".

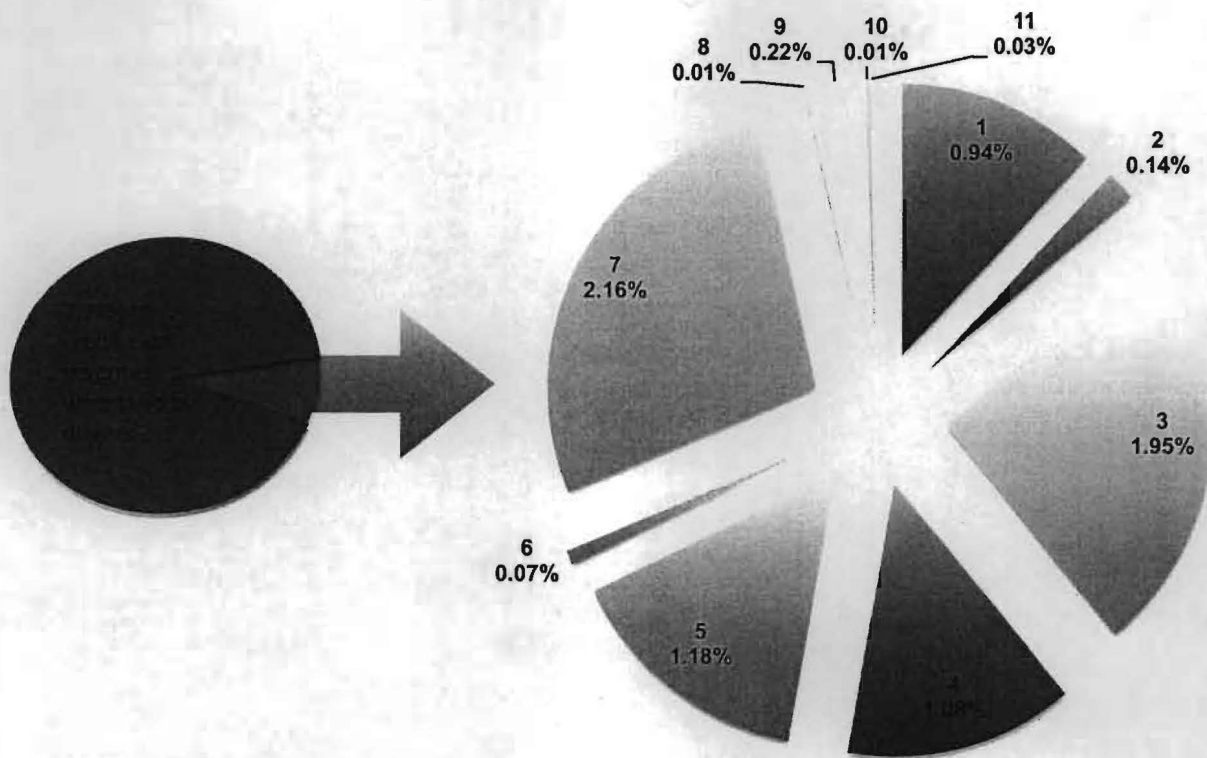
In regards to your question about other devices accepting Call-N-Ride, we have not yet been able to identify any such device. My staff is continuing to look for potential solutions.

If you have any further questions, please feel free to contact me or my Chief of Management Services, Anthony Alexiou at 240-777-7198 or by email at Anthony.alexiou@montgomerycountymd.gov.

Office of the Director

101 Monroe Street, 10th Floor • Rockville, Maryland 20850 • 240-777-7170 • 240-777-7178 FAX
www.montgomerycountymd.gov/dot

2014 Credit Card Processing Costs Passed on to Drivers as % of Total Credit Card Revenue



| | 2014 Vendor Credit Card Processing Charges Passed on to Drivers | Vendor Fees Charged to Barwood | Shown in Pie Chart: Annual Credit Card Fees as % of 2014 Credit Card Revenue |
|----|--|--------------------------------|--|
| 1 | VeriFone Transaction Fees (# of transactions * fee) | \$ 0.25 | 0.94% |
| 2 | VeriFone Basis Points per Transaction (total credit card revenue * fee) | 0.15% | 0.14% |
| 3 | VeriFone Processing Fee for Visa, MasterCard, Discovery (revenue * fee) | 2.85% | 1.95% |
| 4 | American Express Processing Fee (revenue * fee) | 4.33% | 1.08% |
| 5 | VeriFone/Verizon Airtime Fee (# of cars * fee) | \$ 25.00 | 1.18% |
| 6 | Web Service and Credit Card Gateway VPN (monthly flat fee) | \$650.00 | 0.07% |
| 7 | VeriFone Call-N-Ride Transaction Fees - Preauthorization & Sales (# of swipes * fee - County requires an additional card swipe before trip starts) | \$ 1.50 | 2.16% |
| 8 | Gift Card Per Transaction Fees (number of gift cards used * fee) | \$ 0.75 | 0.01% |
| 9 | Credit Card Account Billing for Executive and Institution Accounts (revenue * fee) | 3.35% | 0.22% |
| 10 | Charge Anywhere Monthly Fee (applies to a passenger fare paid by another party) | \$140.00 | 0.01% |
| 11 | IRN Fee for account reconciliation (monthly fee) | \$ 24.00 | 0.03% |
| | TOTAL 2014 CREDIT CARD PROCESSING FEES PASSED ON TO DRIVERS AS % OF CREDIT CARD REVENUE | | 7.77% |



February 3, 2016

Dear Council President Floreen,

I am writing to you today on behalf of Cornerstone Montgomery and our partners to express concern about Expedited Bill 53-15, Credit Card Transactions. We are concerned that this legislation will negatively impact our recently expanded 'Road to Independence' transportation assistance program.

The Road to Independence initiative began as a public private partnership between our organization, The Rotary Club of North Bethesda and Barwood Taxi. This program provides taxi service to disabled individuals in Montgomery County to places of employment at hours when and in locations where public transportation systems are not operating.

A key component of the program is our partnership with Barwood Taxi. Our program participants receive a reloadable Barwood travel vouchers with a fixed dollar amount to cover their transportation costs. The gift cards are swiped through the payment terminals just like a credit card. Using the secure payment terminal is essential as it allows us to keep track of each transaction and generate the reports necessary to audit the success of our efforts.

Cornerstone Montgomery recently received a grant from the Montgomery County Council that is helping to expand our funding base and allow us to serve more individuals with disabilities through partnerships with the following charities: Luke's Wings, Peer Wellness and Recovery Services, Inc., Family Services, The Treatment and Learning Center, Easter Seals and Interfaith Works.

Bill 53-15 proposes to amend the requirements for credit processing systems, allowing drivers to use a system of their choosing. Our concern is that this will inhibit use of the travel vouchers we rely on as well as our ability to access what is now a new County supported program. We will be unable to track the transactions of our program participants and we will lose the data needed to evaluate the program.

The grant we received demonstrates that the Council recognizes the need for unique transportation assistance programs like ours. There is a need in the County for subsidized transportation assistance and our program brings together the business and nonprofit sectors of the County to address that need. It would be unfortunate to jeopardize a valuable community initiative in its infancy.

We urge the Council to weigh the potential unintended consequences of Bill 53-15. Limiting the ability of taxicab companies to process County subsidized trips would jeopardize the operations of our program and any future efforts to attract additional partners.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cari Guthrie Cho', is written over a faint, larger version of the same signature.

Cari Guthrie Cho, LCSW-C
President & CEO