

TEXT OF PROPOSED ORDINANCE PROPOSITION F

Be it ordained by the people of the City and County of San Francisco:

Section 1. Findings and Purpose.

The people of the City and County of San Francisco find and declare that:

The rates and types of fees charged by financial institutions have increased at an alarming rate in recent years. According to a study conducted by the United States Public Interest Research Group (USPIRG), from 1993 to 1995, the rate of bank fees nationwide increased at least double the rate of inflation, as measured by the Consumer Price Index. The USPIRG study also found, from 1993 to 1995, average monthly maintenance fees for regular (non-interest bearing) checking accounts increased 22 percent.

Much of the increase in the overall amount of fees comes from the imposition of new fees. Banks now charge "human teller," "deposit-item return" (charge against persons depositing checks from others that bounce), "telephone access," and "computer access" fees. Only a few years ago, these services were provided for free.

Another of the new "fees" is a surcharge that many financial institutions impose on non-account holders for using their ATMs. This surcharge is in addition to an "off-us" fee that nearly all financial institutions already charge their account holders for using another institution's ATM. Together the surcharge and the "off-us" fee can total \$4.00 for a mere \$20.00 withdrawal. According to USPIRG, the average total is \$2.41 per transaction, an amount that can still equal more than a 10% charge for withdrawing \$20.00 of an account holder's own funds.

Industry advocates contend that ATM surcharges are necessary to compensate institutions for the use of their ATMs. However, those advocates fail to acknowledge a significant portion of the off-us fees are already paid to the institutions that own the ATM used by the non-account holder. Industry advocates also contend that ATM surcharges are necessary to finance the cost of installing new ATMs. However, as Senator Alfonse D'Amato testified on the floor of the Senate this year, "122,000 out of the 165,000 machines [in existence nationwide] were installed well before the double charges."

Despite the fact that financial institutions are already compensated for the use of their ATMs by non-account holders and the fact that they have proven themselves capable of installing tens of thousands of new ATMs without the imposition of ATM surcharges, financial institutions are imposing ATM surcharges in record numbers. According to Senator D'Amato, at the beginning of 1996, only 17% of ATMs

imposed such surcharges. By 1998, the number of ATMs imposing surcharges has increased to 79%.

Imposition of ATM surcharges raises serious anti-competitive concerns. Large financial institutions with more ATMs (in California, just two banks own more than 60% of the ATMs in the state) are able to impose higher costs on account holders of small institutions who in many cases have little choice but to use the ATMs of the large institutions. Account holders who wish to avoid these surcharges are pressured to defect from small institutions to large institutions. This presents a perverse form of price competition where institutions can actually gain customers by raising prices. As University of Houston economist Paul Horvitz observed, "there is little downside to such a strategy - either you gain substantial market share or earn substantial fee income."

Small banks and credit unions serve important functions in the local community by servicing segments of the population that might otherwise be neglected. Recent studies by the Federal Reserve Board and consumer groups have shown that credit unions and small banks tend to offer higher interest rates on deposits and tend to charge lower account fees. They are also often the leaders in providing the most efficient, consumer-friendly levels of service. Losing or even hobbling these efficient and low-cost institutions harms all customers. The elderly, who are often dependent on fixed incomes, are even more likely to be harmed because of their greater reliance on the higher rates of return offered to account holders at these smaller institutions. Likewise, younger persons in school or beginning careers are more likely to be harmed because of their reliance on lower account fees charged by the smaller institutions.

Federal and State laws do not adequately address the unfairness and anti-competitive-ness of surcharges. Therefore, the Board finds that an ordinance prohibiting financial institutions from imposing a surcharge on non-account holders using their ATMs located in San Francisco is essential for the promotion and protection of the general welfare of the citizens of San Francisco. The purpose of the prohibition is to protect consumers from exorbitant and unfair fees and to protect smaller financial institutions from anti-competitive business tactics.

Section 2. Chapter VIII, Part 2 of The San Francisco Municipal Code (Police Code) is hereby amended by adding Section 648.1 thereto, to read as follows:

Section 648.1. ATM Surcharges

(a) Definitions.

(i) "Access" means to use any function on the ATM, including but not limited to cash withdrawal, fund transfer, etc.

(ii) "Access device" means a card, code, or

other means of access to a customer's account, or any combination thereof, that may be used by the customer to an initiate electronic fund transfer.

(iii) "Automated teller machine (ATM)" means any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations, or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.

(iv) "Customer" means a natural person to whom an access device has been issued for personal, family, or household use.

(v) "Financial institution" means any bank, savings association, savings bank, credit union, or industrial loan company.

(vi) "Surcharge" means any fee charged by the financial institution for the use of the ATM.

(b) Prohibition on Certain Fees.

A financial institution may not impose a surcharge of any kind on a customer for accessing an ATM of that financial institution located in the City and County of San Francisco with an access device not issued by that financial institution.

(c) Enforcement and Penalties.

(i) **Civil Action.** Any person injured by a violation of this ordinance may enforce its provisions by means of a civil action.

(1) Any financial institution that violates this ordinance shall be liable to the person injured for the actual damages as determined by a jury, or a court sifting without a jury, but in no case less than \$250.

(2) Any financial institution that violates this ordinance shall also be liable for such attorney's fees and court costs as determined by the court. Furthermore, in cases where the financial institution has engaged in a pattern of willful violations, the financial institution shall be liable for punitive damages not to exceed \$5,000 per violation.

(ii) Injunction.

(1) Any financial institution that commits an act or engages in any pattern and practice in violation of this ordinance may be enjoined therefrom by any court of competent jurisdiction.

(2) Action for injunction under this subsection may be brought by any person injured by a violation of this ordinance, by the City Attorney, by the District Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

(iii) **Nonexclusive Remedies and Penalties.** Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.