



Hamilton
Public Works

Public Works Department Transportation Division

Transit Fare Parity, AODA Integrated Standard (PW03128e)
April 3, 2013 (UPDATED)

Providing services that bring our City to life !

Background

- Staff Report PW03128e approved by Public Works Committee on October 15, 2012 and ratified by Council on October 30, 2012.
- December 12, 2012 motion to reconsider at GIC led to amendment to implementation date from January 1, 2013 to April 1, 2013 with direction to Staff to report back prior to April 1 with additional information.
- March 18, 2013 Public Works Committee heard Public Delegations, deferred implementation to June 1, 2013, and referred the Staff presentation to the April 3 General Issues Committee.

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Additional Information

- How do Hamilton Fare Policies differ from other Ontario Municipalities?
- Additional background on Legislation
- Alternatives for Consideration
- Additional Consultation
- Invitation to Ontario Human Rights Commission (Response dated March 14, 2013 attached)

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Hamilton Policies vs. other Ontario Municipalities

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- **Hamilton's fare policies provide a better benefit.** Most other municipalities only have free fare being offered to CNIB cardholders, and no/limited complementary policies, while Hamilton offers:
 - Free fare to CNIB cardholders
 - Voluntary Pay on HSR for those using a Personal Mobility Device
 - Free Golden Age Pass (Age 80+)
 - Deep Discount Seniors Annual Pass (Age 65 to 79)
 - Affordable Bus Pass Program
 - Front and rear door boarding for persons using Personal Mobility Devices
 - Fully accessible, low floor, ramp equipped, conventional (HSR) & Specialized Transit (DARTS) fleets
 - Early implementation of functional eligibility

Legislation

- **The *Accessibility for Ontarians with Disabilities Act (AODA)***: requires compliance respecting fare parity between conventional and specialized transit programs by January 1, 2013.
- **MCSS Website**: in regards to AODA Legislation and Regulations states the following:

“The Integrated Accessibility Standards Regulation does not replace or affect legal rights or obligations that arise under the Ontario Human Rights Code and other laws relating to the accommodation of people with disabilities. This means that the Ontario Human Rights Code or other applicable legislation may require additional accommodation measures that go beyond or are different from the standards established by the regulations of the AODA. “

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Legislation

The *Accessibility for Ontarians with Disabilities Act* and the *Ontario Human Rights Code* define a disability as:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997

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Legislation

Fares

- 46.(1) No conventional transportation service provider shall charge a higher fare to a person with a disability than the fare that is charged to a person without a disability where the person with a disability uses conventional transportation services, but a conventional transportation service provider may charge a lesser fare for a person with a disability.
 - A person means all persons
 - A disability means all disabilities
 - Current policies only recognize mobility and vision

MCSS Website: Intent of this Requirement

- “The intent of this requirement is that no conventional transportation service provider will charge people with disabilities more than people without disabilities.
- In addition, conventional transportation service providers must offer accessible fare payment options.”

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Legislation

Fare Parity

- 66(8) In this section, “fare structure” means the fare price determined by fare media, such as cash, tickets, passes and bulk quantity discounts and by fare category, such as adults, seniors and students, but does not include promotional fares that a transportation service provider may employ from time to time i.e.) Free Fares on New Year’s Eve.
- The policies for free fares for CNIB cardholders and Voluntary Pay for PMD’s create fare prices and fare categories and are in place on a regular and ongoing basis therefore form part of the conventional service fare structure per 66(8).

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Legislation

Fare Parity

- 66(5) Where a transportation service provider provides both conventional transportation services and specialized transportation services, the transportation service provider shall ensure that the same fare structure is applied to conventional transportation services and specialized transportation services.
- Since free fare for CNIB cardholders and Voluntary Pay for PMD's are part of the conventional service fare structure, these policies also apply to the specialized transportation program – DARTS service is now free only to those with PMD's and CNIB cardholders per 66(5)

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Alternatives for Consideration

All Alternatives deal with Recommendation (b) of PW03128e

- a) Consideration of riders disabilities: Free fares to all persons with disabilities on Public Transit (includes, HSR, DARTS, Trans Cab and Taxi Scrip)
 - AODA compliant and defensible under OHRC
 - Revenue loss estimate: in excess of \$7,400,000
 - FTE estimate: 5-7
 - Administration cost estimate: \$525,000
- b) Consideration of riders income: Free fares for all persons if their income is below a low income cut off on Public Transit (includes, HSR, DARTS, Trans Cab and Taxi Scrip)
 - AODA compliant and OHRC compliant
 - Revenue loss estimate: in excess of \$6,700,000
 - FTE estimate: 5-7
 - Administration cost estimate: \$525,000

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Alternatives for Consideration

All Alternatives deal with Recommendation (b) of PW03128e

- c) Consideration of both income and disabilities: Free fares to all persons with disabilities if their income is below an income cut off on Public Transit (includes, HSR, DARTS, Trans Cab and Taxi Scrip)
 - AODA compliant and defensible under OHRC
 - Revenue loss estimate: in excess of \$2,000,000
 - FTE estimate: 2-3
 - Administration cost estimate: \$225,000

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Summary

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CONSIDERATIONS	STAFF RECOMMENDATION	ALTERNATIVES		
	Current fare structure applies to all riders	a) All persons with a disability ride free	b) All persons below LICO ride free	c) All persons with a disability below LICO ride free
AODA compliant	Yes	Yes	Yes	Yes
Human Rights compliant	Yes	Defensible	Yes	Defensible
Revenue Impact	<ul style="list-style-type: none"> • Est. \$450k revenue loss 	<ul style="list-style-type: none"> • 138,245 or 20% of population* • \$7.4m revenue loss 	<ul style="list-style-type: none"> • 18% of population* • \$6.7m revenue loss 	<ul style="list-style-type: none"> • % of population unknown • \$2.0m revenue loss
Administration Costs	<ul style="list-style-type: none"> • n/a 	<ul style="list-style-type: none"> • Est. \$525k • +5-7 fte 	<ul style="list-style-type: none"> • Est. \$525k • +5-7 fte 	<ul style="list-style-type: none"> • Est. \$225k • +2-3 fte
Risk	n/a	Upset costs can only be determined by experience	Upset costs can only be determined by experience	Upset costs can only be determined by experience
Net Levy Impact	Est. \$450,000	Est. \$7.9m	Est. \$7.2m	Est. \$2.2m
*Note: assumes the same population mix in our ridership, revenues pertain to HSR and DARTS				

Consultation

Accessibility for Persons with Disabilities Committee at its January 8th meeting put forward the following recommendations:

- a) “That the Advisory Committee for Persons with Disabilities recommends that all persons with all disabilities be treated in a fair and equitable manner; to this end different people with different disabilities should not be charged a different rate for the same service.”

- b) “That the Advisory Committee for Persons with Disabilities support the implementing of the equitable fare structure as presented with the added provision that a reduced fare structure or subsidy be provided for those who are both disabled and economically disadvantaged.”

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Consultation

- City Manager's Office, Legal Services Division
- Human Resources Department, Human Rights
- Customer Service, Access & Equity.
- Finance & Administration
- Accessibility for Persons with Disabilities Committee (ACPD) Transportation Sub-Committee.
- Community Services
- External Legal Counsel

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Current HSR Fare Concessions

Concession Type	Average Concession Fare	Per Trip Value of Concession vs. \$2.00 Adult Ticket	Annual Value of Concession vs. \$2.00 Adult Ticket
Elementary / Secondary School Ticket	\$1.65	(\$0.35)	(\$610,000)
Elementary / Secondary School Monthly Pass	\$1.17	(\$0.83)	(\$940,000)
Adult Monthly Pass	\$1.55	(\$0.45)	(\$1,410,000)
Senior Annual Pass	\$0.53	(\$1.47)	(\$1,330,000)
Golden Age Pass	\$0.00	(\$2.00)	(\$1,490,000)
TOTAL			(\$5,780,000)
Note: Based on 2013 HSR Revenue Budget.			

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Analysis/Rationale For Recommendations

- Accessibility for Ontarians with Disabilities Act compliant
- Ontario Human Rights Commission compliant
- Achieves both Strategic objectives of AODA implementation and Fiscal sustainability
- Recommended policies applied equally to all persons with disabilities, which is supported by recommendations put forward by Council's ACPD
- 11,000 ATS/DARTS clients will benefit from access to new fare structure: Golden Age Pass, Senior's Annual Pass, fare discounts, etc.

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Provincially Funded Transit Fares

- Persons receiving Ontario Works or Ontario Disability Support Program may be eligible for the “mandatory medical transportation benefit” if the individual or family spends \$15 or more a month on medical transportation (approximately 4 trips per month).
 - ODSP total cost is \$4.6M. The Province funds this 100%.
 - OW total cost is \$0.9M. The Province funds this at 86%.

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Other Fare Discount Programs: Affordable Transit Pass

To qualify you must meet ALL of the following:

- You live in the City of Hamilton
- You are currently working in a full time, part time or casual position (does not include those who are self-employed)
- You are between the ages of 18 to 64 years (does not include those who qualify for HSR's student or senior fares)
- Receiving assistance from Ontario Works, the Ontario Disability Support Program but not receiving transportation costs for other activities (e.g. medical transportation)

OR

Family income falls below the 2006 Statistics Canada Low-Income Cut-Off for your family size, able to provide last year's Notice of Assessment from the Canada Revenue Agency and pay stubs that show 4 weeks in a row (weekly, bi-weekly, monthly)

This program remains as a pilot currently funded to December 31, 2013. Current cost of the program, \$266,910 net annually funded from Social Services Initiative Reserves

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Appendices / Schedules

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Appendix "A" Recommended Fare Policy			
Fare Type	Current Non-integrated Fare Structure		Recommended AODA Integrated Standard
	HSR	DARTS	HSR & DARTS
Cash	\$2.55	n/a	\$2.55
Adult Ticket	\$2.00		\$2.00
Student Ticket	\$1.65		\$1.65
Adult Monthly Pass	\$87.00		\$87.00
Student Monthly Pass	\$71.00		\$71.00
Seniors Annual Pass	\$205.00		\$205.00
Golden Age Pass	free		free
Voluntary Pay with PMD's	free		n/a
CNIB	free		n/a
DARTS Ticket	n/a		\$2.35

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Questions ?

Ontario
Human Rights
Commission

Executive Director
180 Dundas Street West
7th Floor
Toronto, Ontario
M7A 2R9
(416) 314-4562

Commission
ontarienne des
droits de la personne

Directeur général
180, rue Dundas ouest
7e étage
Toronto (Ontario)
M7A 2R9
(416) 314-4562



MGT2013-000044

March 14, 2013

Don Hull
Director of Transportation
City of Hamilton
Hamilton Street Railway
Transit Division, Public Works
2200 Upper James Street
Mount Hope ON L0R 1W0

Dear Mr. Hull:

**Re: Invitation to attend Public Works Committee Meeting of the City of Hamilton
Transit Fare Parity**

I am following up on your letter dated January 21, 2013 that lead to subsequent discussions between Nancy Purser, Manager of Transit Support Services at the City of Hamilton, and Jeff Poirier, Senior Policy Analyst at the Ontario Human Rights Commission (the OHRC).

Jeff Poirier will attend the City of Hamilton's Public Works Committee meeting scheduled for 9:30 am on March 18, 2013 to answer any questions regarding the Ontario *Human Rights Code* (the *Code*) and OHRC policies that may relate to the fare parity and voluntary pay / free fare policies that are before the Public Works Committee.

The following information also may help the Public Works Committee in its deliberations.

Governments are empowered to decide how and where they allocate resources, so the OHRC takes no position on whether the City of Hamilton should keep or end its voluntary fare policy for riders with mobility restrictions or free fare policy for riders registered with the CNIB. This is a policy decision, not a legal or *Code* issue.

The OHRC recognizes that many people with mobility and vision disabilities have experienced and continue to experience hardship, economic disadvantage, unequal opportunity and discrimination generally in society.

Programs like voluntary / free pay policies could be considered *bona fide* and reasonable special programs within the meaning of section 14 of the *Code*¹ and the OHRC's special programs guideline² if it can be shown that the purpose of the programs is to address hardship, economic disadvantage, unequal opportunity or discrimination faced by the targeted group or groups, and that the eligibility criteria are appropriate in the circumstances.

The OHRC's special programs guideline states:


- All organizations are required to prohibit unfair treatment based on *Code* grounds and must remove barriers that cause discrimination and stop it when it occurs.
- Organizations can also choose to develop "special programs" to help disadvantaged groups improve their situation.
- The *Code* and the Canadian Charter of Rights and Freedoms³ both recognize the importance of dealing with historical disadvantage by protecting special programs to assist marginalized groups.
- An organization can design a special program "for some people within a *Code*-protected group, and not others.
- Special programs should be designed to meet the specific and pressing needs of particular groups. It may be that a program is especially needed in a certain context.
- An organization has the right to choose which special program will work best, depending on the needs of the individuals it is trying to serve. This may mean designing a program for just some of the people within an already marginalized *Code*-protected group.
- [R]estrictions on who is eligible for the program must be supported by the evidence and the rationale.
- Special programs cannot leave out people from a group who may benefit from the program, without reason.
- Organizations do not need permission from the OHRC to develop or designate a special program.

Special programs are voluntary and it is the organization's discretion if and when to set them up and close them down, unless the program is required as a result of a settlement or decision by a tribunal or court.

Finally, keep in mind the OHRC has found that para-transit bus service is not a special program, but rather forms part of the duty to accommodate riders with disabilities who face barriers on the conventional transit system.⁴

This information is based on the Ontario *Human Rights Code* and OHRC interpretive policies and guidelines. It is not legal advice and does not bind the OHRC in any way, or preclude it from inquiring into any matter brought to its attention under the *Code*.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. J. Austin', written in a cursive style.

Nancy Austin
Executive Director

¹ http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm#BK16

² <http://www.ohrc.on.ca/en/special-programs-and-ontario-human-rights-code-self-help-guide>

³ Section 15(2) of the Canadian Charter of Rights and Freedoms outlines the protection of affirmative action programs, to prevent them from being attacked by people who are excluded from the programs' purpose.

⁴ See "Hamilton Street Railway..." under "Cases in Higher Courts" in the Appendix of the OHRC's 2006-07 Annual Report: <http://www.ohrc.on.ca/en/annual-report-2006-2007/tables>