

CITY OF HAMILTON

NOTICE of M O T I O N

Council Date: April 10, 2013

MOVED BY COUNCILLOR S. MERULLA.....

Temporary Promotional Transit Fare Special Program

Whereas the City of Hamilton has a long history of progressive programs that provide accommodation to persons with disabilities, has an enviable record of accommodating the needs of its disabled transit users, and has shown leadership in specialized transit, often exceeding the experiences of other municipal transit providers; and

Whereas consistent with the historical practice of nearly every transit provider in Ontario, the City had in place, for at least 40 years, a Free Fare Policy that permitted transit users who were CNIB cardholders to ride the conventional transit system without payment of fare; and

Whereas in a program unique to the City of Hamilton, a Voluntary Pay Policy was introduced more than 15 years ago that gave disabled transit riders of the conventional transit system who use a “personal mobility device” (PMD), i.e., a wheelchair, scooter, walker, or 4-pronged cane, the option of paying the applicable fare or riding the HSR at no charge; and

Whereas the City’s conventional transit (HSR) fleet is fully accessible, providing low-floor, level entry and exit with no steps, and is unique in that the City is the only municipality in Canada where the entire conventional fleet is equipped with both front and rear-door boarding ramps; and

Whereas the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) regarding transit fare parity were addressed by Staff Report PW03128e, which was approved by Public Works Committee on October 15, 2012, and ratified by Council on October 30, 2012, with implementation subsequently deferred until June 1, 2013; and

Whereas the implications of the Staff Report include, among other things, the permanent elimination of both the Free Fare Policy for CNIB cardholders and the Voluntary Pay Policy for transit riders using a PMD; and

Whereas it is desirable that Council direct Staff to study and develop options for the implementation of a new transit fare discount or subsidy program for persons with disabilities, and report back for consideration of such program; and

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

Whereas in particular, Council recognizes that transit riders who require the use of a wheelchair, walker, or scooter and CNIB cardholders will be required, as of June 1, 2013, to pay the required fare in order to ride the HSR, and that in some cases this new requirement may impose an economic disadvantage and/or contribute to financial hardship for such riders; and

Whereas Council believes that, to the extent possible, the implementation of transit fare parity and other requirements of the AODA should not result in persons with disabilities who historically enjoyed an economic benefit to experience economic disadvantage and/or financial hardship; and

Whereas Council has sought and received the input of the Ontario Human Rights Commission on issues relating to transit fare parity and the provisions of section 14 of the Ontario *Human Rights Code* regarding “special programs” (as reflected in the letter dated March 14, 2013, from the Commission, a copy of which is attached hereto);and

Whereas Council believes it is appropriate to establish, pending the receipt and consideration of Staff’s report, a temporary transit fare special program for those riders of the HSR who either require the use of a wheelchair, walker, or scooter, or are CNIB cardholders in order to ameliorate any economic disadvantage and/or financial hardship that may be experienced by such disabled riders; and

Whereas Council believes that such a temporary transit fare special program would effectively promote the use of the conventional transit system and utilize the uniqueness of the HSR fleet’s front and rear-door boarding capabilities by those disabled riders who require the use of an assistive device, thereby improving the accessibility, capacity, and convenience of the conventional transit system, while also relieving pressure on the overburdened and more expensive specialized transit system; and

Whereas Council also believes that it is desirable to design its temporary special program so as to limit, to the extent possible, the potential abuse of the program by those who do not have a bona fide need for a PMD in order to ride the HSR; and

Whereas Council understands that, pending the receipt and consideration of Staff’s report, promotional transit fare programs that are temporary in nature do not form part of the “fare structure” of the conventional transit system for the purposes of section 66 of the *Integrated Accessibility Standards*, being Ontario Regulation 191/11 made under the AODA.

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Therefore Be It Resolved:

- (a) That, effective June 1, 2013, a temporary transit fare special program be implemented that would permit the below groups to ride the conventional public transit system (HSR) by either paying the applicable fare or riding at no charge, to be exercised at their own discretion:
 - 1. Those transit riders who require the use of a wheelchair, walker, or scooter in order to ride the conventional public transit system (HSR), and
 - 2. Those transit riders who are Canadian National Institute for the Blind (CNIB) cardholders

- (b) That Staff be directed to develop options for the implementation of a new transit fare discount program for persons with disabilities, and report back to the General Issues Committee.

Ontario
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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". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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>