

Authority: Item
Report
CM
Ward: City Wide

**CITY OF HAMILTON
BY-LAW NO. 25-XXX**

**Being a By-law Respecting the Passenger Transportation System Operated
and/or Funded by the City and to repeal By-law 16-111**

WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act, 2001*"), authorize the City to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 8 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of Persons; the provision of any service or thing that it considers necessary or desirable for the public; and the protection of Persons and property;

AND WHEREAS section 11.12 of the *City of Hamilton Act*, 1999, S.O. 1999, c. 14, Sched. C authorizes the City to operate a passenger transportation system;

AND WHEREAS section 425 of the *Municipal Act, 2001*, authorizes the City to pass by-laws providing that a Person who contravenes a by-law of the City passed under that Act is guilty of an offence;

AND WHEREAS section 434.1 of the *Municipal Act, 2001* provides that a municipality may require a Person, subject to such considerations as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that Person has failed to comply with a by-law of the municipality passed under the *Municipal Act, 2001*;

AND WHEREAS the *Municipal Act, 2001*, further authorizes the City, amongst other things, to delegate its authority, to impose fees or charges on Persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City enacts as follows:

DEFINITIONS

1. In this By-law:

"**Authorized Vendor**" means a Person who:

- (a) has entered into an agreement with the City or has otherwise received written permission from the City to sell Fare Media on behalf of the City; or
- (b) is authorized to sell Presto cards by Metrolinx;

"Bicycle" means any device which has one or more wheels and is propelled by human power and upon which any person may ride, and includes a unicycle and tricycle, but does not include a Motor-Assisted Bicycle or a Power-Assisted Bicycle;

"City" means the City of Hamilton or the geographic area of the city of Hamilton, as the context requires;

"DARTS" means any entity providing accessible transportation services on behalf of the City, including but not limited to the not-for-profit corporation Disabled and Aged Regional Transit System;

"Director" means the Director of Transit of the City, or their authorized representative unless the context requires otherwise;

"E-Scooter" has the same meaning as electric kick-scooter in O. Reg. 389/19, as amended, under the *Highway Traffic Act*, R.S.O. 1990, c. H. 8;

"Fare " means the compensation required to be paid, as approved by City Council from time to time, to be a passenger on a Transit Vehicle;

"Fare Media" means any valid ticket, pass, transfer, or other payment method approved by and acceptable to the City, and includes but is not limited to an electronic Fare card, any single or multi-ride ticket, a day pass or a student pass;

"Motor-Assisted Bicycle" has the same meaning as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

"Municipal Law Enforcement Officer" means a Person appointed by the Council of the City to enforce this By-law;

"Passenger Transportation System" means the system operating by or on behalf of the City that provides for the transportation of passengers using Transit Vehicles;

"Penalty Notice" means a penalty notice given to a person pursuant to the City's Administrative Penalties By-law No. 17-225, as amended or replaced;

"Person" includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural Person in the capacity of trustee, executor, administrator, or other legal representatives of a Person to whom the context can apply according to law;

"Power-Assisted Bicycle" has the same meaning as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

"Service Animal" has the same meaning as defined in O. Reg. 191/11, as amended, under the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11 and shall also include guide dog as defined in the *Blind Persons' Rights Act*, R.S.O. 1990, Ch. B 7, as amended.

"Smoke" means to hold, or otherwise have control over any lighted tobacco, lighted non-tobacco herbal shisha, lighted cannabis, or any other lighted substance that produces vapour, smoke, or gases that may be inhaled or exhaled, and includes use of a cigarette, electronic cigarette, pipe, waterpipe, or any other smoking equipment;

"Support Person" has the same meaning as defined in O. Reg. 191/11, as amended, under the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11;

"Transit Property" means all property owned, leased, or used by the City for the purpose of providing a Passenger Transportation System (not including roads) and includes the Transit Stations and the Transit Vehicles;

"Transit Station" means any building or structure owned, used, or occupied by the City for transit purposes which is open to the public;

"Transit Vehicle" means a vehicle owned, leased, or operated by or on behalf of the City to transport passengers in exchange for compensation, but does not include vehicles leased or operated by or on behalf of DARTS.

"Trespass By-law" means the City's Trespass By-law 19-259, as amended or replaced.

FARES

Regulation of Fares

2. No person shall board a Transit Vehicle unless such person;
 - (a) has paid the Fare by depositing a cash payment in at least the amount of the Fare;
 - (b) has paid the Fare by using their Fare Media; or,
 - (c) is authorized by the City.

Altering or Non-Authorized Use of Fare Media

3. (1) No Person shall use or have in their possession an unauthorized reproduction of or altered Fare Media.

(2) No Person shall alter Fare Media or create an unauthorized reproduction of Fare Media.

(3) No Person shall fail to comply with all rules and regulations for Fare Media and failure to do so may result in confiscation of the Fare Media.

AUTHORIZED VENDORS

4. (1) No Person shall sell Fare Media unless the Person is an Authorized Vendor.

(2) No Authorized Vendor shall sell Fare Media at an amount greater than the Fare approved by Council of the City from time to time.

ANIMALS

5. (1) No person shall travel on a Transit Vehicle or enter a Transit Station with an animal, unless:

(a) the animal is a Service Animal; or

(b) the animal is contained in an animal-carrier device, the Transit Vehicle is not crowded, and other passengers are not inconvenienced.

PRIORITY AND COURTESY SEATING: ASSISTIVE DEVICES AND SUPPORT PERSONS

Priority or Courtesy Seating

6. (1) A person with a disability or a visible need for priority seating has priority seating on a front seat of a Transit Vehicle but is not guaranteed a seat.

(2) A person carrying a child, an expectant mother, or a person carrying a bulky item has courtesy seating on a front seat of a Transit Vehicle but is not guaranteed a seat.

(3) A Passenger Transportation System employee may request that an occupied seat be vacated for a person described in subsection (1) or (2).

(4) Every person shall follow the direction of a Passenger Transportation System employee to vacate a seat on a Transit Vehicle.

Support Person

7. A Support Person accompanying a passenger on a Transit Vehicle, and who is exempt from paying a fare while supporting that passenger, shall board and alight from the Transit Vehicle at the same time as the person being supported.

PROHIBITED CONDUCT

8. (1) The behaviours or activities listed in section 8(2) are deemed to be prohibited conduct by Council and may result in a verbal or written trespass notice issued pursuant to the Trespass By-law, in addition to any other legal remedies or enforcement action available to the City.
- (2) No Person shall engage in behavior or activities that obstruct or hinder the rights of others, including Passenger Transportation Services employees, to use and enjoy Transit Property, including without limitation:
- (a) spit or cause unsanitary conditions;
 - (b) urinate or defecate, except in a facility designed for this purpose;
 - (c) use profanity, obscene or verbally abusive language, racial or ethnic slurs;
 - (d) cause or create a disturbance or nuisance;
 - (e) fight, molest or harass another person;
 - (f) intimidate or threaten others;
 - (g) engage in horseplay or cause unsafe conditions;
 - (h) ride on, stand on or hold onto the exterior of the Transit Vehicle;
 - (i) lean out of, or otherwise project any part of their body or an object outside of the Transit Vehicle;
 - (j) place large, bulky, or sharp objects in a way that would endanger other passengers;
 - (k) have in their possession liquor or other alcoholic product(s) the container for which has been opened;
 - (l) litter/ discard waste other than in containers provided for such purpose;
 - (m) except with the Director's permission, sell or attempt to sell any, merchandise or any other article or thing;
 - (n) activate any emergency alarm or device or use any emergency telephone, except in situations of emergency;
 - (o) damage or attempt to damage Transit Property, including but not limited to affixing any inscription, sign, drawing or graffiti;
 - (p) block corridors, thoroughfares, stairways, or exits;
 - (q) in-line skate, skateboard, scooter/E-scooter, or bike/e-bike except where permitted;
 - (r) operate any cell phone or electronic device or other noise generating device in or upon any Transit Vehicle, unless the sound therefrom is conveyed by an earphone at a sound level that does not disturb other passengers;
 - (s) allow their feet or footwear to remain on or against a seat, except the seat legs;
 - (t) hold open, block the detection sensors, or otherwise impede

- the operation of the doors of a Transit Vehicle;
- (u) transport a Bicycle on a Transit Vehicle, except when the Person properly secures the Bicycle on the Transit Vehicle equipped Bicycle rack;
- (v) transport a Bicycle, Motor-Assisted Bicycle, Power-Assisted Bicycle or E-Scooter contrary to the Transit Vehicle operator's direction and/or contrary to any related City policies regarding the transportation and use of micromobility on Transit Property;
- (w) fail to wear a shirt or shoes;
- (x) wear attire or display material that is intolerant of human rights;
- (y) act in contravention of instructions given by a police officer, Municipal Law Enforcement Officer or Passenger Transportation System employee who considers them necessary to:
 - (i) ensure orderly movement of Persons;
 - (ii) prevent injury to Persons;
 - (iii) prevent damage to the Transit Property; or
 - (iv) permit proper action in an emergency.
- (z) enter onto or depart from, or attempt to enter onto or depart from Transit Property except by the designated entrances or exits unless it is unsafe to do so;
- (aa) fail to comply with all rules and regulations which are either posted on Transit Property or are printed on Fare Media;
- (bb) unreasonably monopolize space or facilities to the exclusion of others;
- (cc) use Transit Property for other than intended purpose;
- (dd) Smoke or vape, or ignite a cigarette lighter or match;
- (ee) remove from any Transit Vehicle or Transit Station any article left thereon through apparent inadvertence, but such article shall be left in the possession of the City or its employees for disposition according to City policy;
- (ff) use of any cell phone, camera, personal digital assistant (PDA), or electronic equipment with photographic abilities in change rooms or washrooms of Transit Property or,
- (gg) remain on Transit Property when directed to leave by a police officer, Municipal Law Enforcement Officer or Passenger Transportation System employee or contractor.
- (hh) behavior contrary to the *Criminal Code*, R.S.C. 1985, c. C-46, other federal statutes, provincial statutes, municipal by-laws, or municipal policies; and,
- (ii) other behavior as may be prohibited from time to time by resolution of City Council.

9. No Person shall hinder or obstruct a police officer, Municipal Law Enforcement

Officer or Passenger Transportation System employee or contractor when they are performing their duties under this By-law.

Authority of Director

10. The Director is responsible for the administration and enforcement of this By-law and their authority includes, but is not limited to:
 - (a) appointing delegates or assigning duties to City staff under this By-law; and
 - (b) prescribing the format and content of any forms or other documents required under this By-law, including any relevant policies or procedures.

ENFORCEMENT

Refusal of Service, Direction to Leave

11. (1) If the Director, a police officer, Municipal Law Enforcement Officer or a Passenger Transportation System employee believes that a person:
 - (a) may be a threat to the safety of the Passenger Transportation System;
 - (b) may disrupt the operation of the Passenger Transportation System; or,
 - (c) has contravened this By-law,they may prohibit the person from boarding Transit Vehicles (even if the person has paid the Fare) and/or entering the Transit Property.

(2) Any person directed to disembark a Transit Vehicle or leave Transit Property pursuant to subsection 11(1) shall do so immediately.
12. Any verbal or written trespass notice shall be provided pursuant to the Trespass By-law.

Penalties

13. Every Person who contravenes any provision of this By-law is liable to pay to the City an administrative penalty in the amount specified in the Penalty Notice, and shall follow the procedures for payment, screening reviews and hearing reviews as outlined in the Administrative Penalty By-law No. 17-225, as amended or replaced. If a Person is required to pay an administrative penalty, the Person shall not be charged with an offence in respect of the same contravention.
14. Every Person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine, and such other penalties, as authorized under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, and the *Municipal Act, 2001*, as each may be amended from time to time.

15. Every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is, upon conviction, guilty of an offence and is liable:
 - (a) on a first conviction, to a fine of not more \$10,000; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.
16. Despite section 15, where the Person convicted is a corporation:
 - (a) the maximum fine in subsection 16 (a) is \$50,000; and
 - (b) the maximum fine in subsection 16 (b) is \$100,000.
17. Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 15 and 16, to a special fine, which may exceed \$100,000 and which is equal to the amount of the economic gain that the Person obtained by contravening this By-law.
18. If any Person is in contravention of any provision of this By-law and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected. In the case of a continuing offence, for each day or part of a day that the offence continues, the maximum fine shall not exceed ten thousand dollars (\$10,000) but the total of all fines for each included offence shall not be limited to one hundred thousand dollars (\$100,000).
19. Where a Person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the Person convicted.

MISCELLANEOUS

20. Should any part of this By-law be determined by a Court of competent jurisdiction to be invalid or of no force, it is the stated intention of Council that such invalid part of the By-law shall be severable and that the remainder of this By-law shall continue to operate and to be in force.

SHORT TITLE

21. This By-law may be referred to as the "Transit By-law" or the "Hamilton Transit By-law".

REPEAL

22. City of Hamilton By-law 16-111, being a By-law Respecting the Passenger Transportation System Operated and/or Funded by the City of Hamilton, is repealed.
23. The repeal of By-law 16-111 does not:
- (a) affect a right, privilege, obligation or liability that came into existence under the repealed by-law;
 - (b) affect an offence committed against the repealed by-law, or any penalty, forfeiture or punishment incurred in connection with the offence;
 - (c) affect an investigation, proceeding or remedy in respect of a right, privilege, obligation or liability described in subsection 23 (a) or a penalty, forfeiture or punishment described in subsection 23 (b).
24. An investigation, proceeding or remedy described in subsection 23 (c) may be commenced, continued, and enforced as if the By-law 16-111 had not been repealed.
25. A penalty, forfeiture or punishment described in 23 (c) may be imposed as if the By-law 16-111 had not been repealed.
26. Any sign, poster or other document that references By-law 16-111 shall be deemed to reference the new Transit By-law until that sign, poster or document has been updated accordingly.

EFFECTIVE DATE

27. This By-law comes into force on the day it is passed.

PASSED this _____ , _____.

A. Horwath
Mayor

M. Trennum
City Clerk