

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 2022-38

A BY-LAW TO ESTABLISH THE NIAGARA TRANSIT
COMMISSION AS A MUNICIPAL SERVICE BOARD

WHEREAS Council for The Regional Municipality of Niagara (Region) enacted By-Law No. 2017-21 on March 23, 2017 and effective June 1, 2017 transferring responsibility by triple majority to provide inter-municipal transit within the region of Niagara to the Region with the unanimous support of all local municipalities; and

WHEREAS Dillon Consulting was retained to prepare a report on the goals shared by all of building a connected transit network across the region, and that report entitled the Niagara Transit Services Delivery and Governance Strategy report (Dillon Report) was completed in 2017; and

WHEREAS the Region entered into a Memorandum of Understanding (MOU) with the Cities of Niagara Falls, St. Catharines and Welland to determine how to best move forward and the MOU established the Linking Niagara Transit Committee to develop a consolidated transit model and that Committee was made up of members appointed from the Region and by the Cities of St. Catharines, Niagara Falls, and Welland and that Committee endorsed a proposed governance model for the consolidation of transit at its meeting on September 29, 2021; and

WHEREAS the Chief Administrative Officer Governance Steering Committee endorsed transit consolidation, the transfer of authority for transit to the Region, and also an approach to asset transfer based on the transfer of assets at a nominal value; and

WHEREAS on November 25, 2021, the Council of the Region considered and approved report PW 55-2021 titled *Moving Transit Forward in Niagara: Creation of a Consolidated Transit Commission* approving the creation of a consolidated transit system to begin operations on January 1, 2023 and to be formed on the basis of the principles set out in that report and endorsed by Council; and

WHEREAS in accordance with the section 189 of the Municipal Act, 2001, By-law No. 2021-96 was enacted by the Region on November 25, 2021, being a by-law to provide the Region with the exclusive authority to establish, operate and maintain a consolidated passenger transportation system for the Niagara Region subject to triple majority requirements; and

WHEREAS By-law No. 2021-96 together with the comprehensive report PW 55-2021 was circulated for approval following that meeting and on January 31, 2022, the last of the twelve local area municipalities considered the By-law for the transit consolidation and uploading of authority to operate public transit to the Region; and

WHEREAS on March 24, 2022 the Clerk of the Region by memorandum to Council confirmed that the triple majority requirements as set out in section 189 of the Municipal Act, had been met and the authority to operate intra-municipal transit within the region of Niagara has been transferred to the Region effective February 2, 2022; and

WHEREAS the Council resolution of November 25, 2021, directs staff to report back on the establishment of a transit commission as a municipal services board pursuant to Section 196 of the Municipal Act, 2001, which is also a body corporate and a local board of the Region pursuant to Section 197 of the Municipal Act, 2001;

NOW THEREFORE, the Council of The Regional Municipality of Niagara hereby enacts as follows:

ARTICLE 1
Definitions

1.1 In this by-law,

"Act" means the *Municipal Act, 2001*, S.O. 2001, c.25, as may be amended from time to time;

"Board" means the Board of Directors of the Niagara Transit Commission;

"Commission" means the members constituting the body corporate of the Niagara Transit Commission;

"CAO" means the Chief Administrative Officer of The Regional Municipality of Niagara or their designate;

"Chair" means the Chair of The Regional Municipality of Niagara or their designate;

"Commission Chair" means the Niagara Transit Commission board member designated as the Chair of the Commission by the Commission;

"Council" means the Council of The Regional Municipality of Niagara;

"General Manager" means the General Manager of the Niagara Transit Commission;

"NTC" means the Niagara Transit Commission established under Article 2;

"NTC Advisory Committee" means the advisory committee to be formed to provide a liaison with the Commission and the public for discussion of issues of community concern affecting the regional transit system;

"Region" means The Regional Municipality of Niagara;

"Regional Clerk" means the Regional Clerk for The Regional Municipality of Niagara or their designate;

"Regional Treasurer" means The Commissioner of Corporate Services and Treasurer of The Regional Municipality of Niagara or their designate;

"Transition Board" means the first Board of Directors of the NTC that will undertake an independent review of best practices and recommend a governance model for the future Board of Directors of the NTC to Council to be appointed following the 2026 municipal election;

"Transition Period" means the period between when the Transition Board is first appointed and until Council appoints the successor Board to take office following the 2026 municipal election;

"Year One" means 2023, being the first year of operation of the NTC.

ARTICLE 2

Niagara Transit Commission

- 2.1 A municipal service board to be known as the Niagara Transit Commission ("NTC") is hereby established as a body corporate, and a local board of the Region. The Commission may make a recommendation to Council for approval to change the name of the NTC.
- 2.2 The Region shall negotiate and Council shall approve all agreements respecting the transfer of assets, personnel, and agreements related to the operation of transit, on its behalf and on behalf of the NTC, from any municipal transit operator within the Region, including the St. Catharines Transit Commission, the Region, City of Niagara Falls, City of Welland, City of St. Catharines and Town of Fort Erie.
- 2.3 The NTC has the authority to accept the transfer of assets related to the operation of transit from any municipal transit operator within the Region, including the St. Catharines Transit Commission, the Region, City of Niagara Falls, City of Welland, City of St. Catharines and Town of Fort Erie, for the purpose of operating a consolidated regional transit system and maintaining, adjusting or improving service levels within the municipalities. Ownership of transit facility buildings shall be transferred to the Region; but such facilities shall

be used and maintained by NTC for transit.

- 2.4 No person other than the NTC may provide public transportation or operate a public passenger transit system within the geographical boundaries of the Region, subject to the following exceptions:
- (a) buses operated by or under the authority of: The Niagara Parks Commission and otherwise comprising the WEGO transit system; GO Transit; or, any other Provincial authority;
 - (b) buses operated by or on behalf of school boards, private schools or charities to transport students;
 - (c) buses operated exclusively for purposes related to transporting tourists between hotels and tourist destinations, including winery tours;
 - (d) airport shuttles;
 - (e) licensed vehicles operated as taxis and ride-sharing services;
 - (f) vehicles authorized by federal or provincial law.

ARTICLE 3

Purpose

- 3.1 The purposes of the NTC are:
- (a) to operate, manage and maintain a comprehensive regional transit system known as "Niagara Transit" within the region of Niagara, and provide advice to the Region on matters related to the delivery of transit across the region which could include specialized, conventional and on-demand service;
 - (b) to exercise such powers in connection with the regional transit system as are delegated to it by Council;
 - (c) to establish such operational by-laws, policies, procedures and guidelines respecting the operation and use of the transit system as deemed appropriate, and subject to the provisions of this by-law and all applicable legislation.

ARTICLE 4
Governance

- 4.1 The NTC shall be governed by a Board of Directors of no greater than fifteen (15) members appointed by the Council of the Region from time to time, and shall hold office at the pleasure of the Council of the Region;
- (a) the Transition Board is made up of members appointed to the Commission who are members of local or regional council and are appointed based on recommendations from the local area municipalities and serve at the pleasure of Council.
 - (b) the Transition Board is responsible to make recommendations to Council on a governance and board membership model for the Commission going forward following the Transition Period, based on an independent review of best practices including recommending the skills and professional qualifications of potential members that should be taken into account in making future appointments, and Board term, such report to be submitted to Council no later than January, 2026 in order that any proposed changes will be in effect for the next Council term commencing in 2026.
- 4.2 The Chair and the CAO shall at all times be ex officio members of the Board and shall count towards quorum and have all the rights of members except the right to vote.
- 4.3 A member of the Commission may resign from office by providing notice in writing to the Commission, or in the case of elected officials the member's seat may be declared vacant if the member is not re-elected or otherwise no longer entitled to hold office as a member of council pursuant to the Act, following which the Commission will inform the Regional Clerk who will in turn inform Council; and Council will determine whether to appoint a replacement member.
- 4.4 The term of the Transition Board of the Commission shall be:
- (a) firstly, from May 26, 2022 until their term on municipal or regional council ends or until January 31, 2023 whichever is first; and
 - (b) secondly, following the 2022 municipal election, Council will appoint Board members based on the recommendations of local area municipalities, to hold office until the end of the municipal or regional council term in 2026, as applicable, or until their successors are appointed.

- 4.5 The Commission shall report to Council annually on the status of its operations through the budget process and as requested by Council.
- 4.6 Board members shall attend a mandatory orientation session provided by the Region prior to attending their first Board meeting.
- 4.7 Board members shall be reimbursed by the NTC for reasonable travel and out of pocket expenses necessarily incurred in attending Board and committee meetings and otherwise approved by Board policy in writing, and subject to budget approval.
- 4.8 Board remuneration shall be made only in accordance with a NTC policy respecting remuneration that has been approved by Council.
- 4.9 An NTC Advisory Committee shall be established made up of community members representing the public across the region including but not limited to accessibility advisory stakeholders, post-secondary students, Niagara's Chamber of Commerce, indigenous representation, seniors, youth, and representatives that reflect diversity, equity and inclusion. The terms of reference for the Committee shall be determined by the Board. Committee members shall be appointed by Council and determined in consultation with the Board and the local area municipalities, from time to time. The NTC Advisory Committee shall meet at least quarterly or more frequently if determined by the Board, and shall provide non-binding advice to the Commission.

ARTICLE 5

Meetings

- 5.1 Regular meetings of the Commission shall be held on the dates, and at such locations within the region as the Commission may determine. The Regional Clerk is authorized to call its first meeting in each new term of the Board. The first meeting shall not take place until all members have completed their mandatory orientation, to be provided by the Region.
- 5.2 Agendas, minutes and reports shall be made public and all meetings of the Commission and its committees, including the NTC Advisory Committee, shall be open to the public except where reports or a meeting may be closed to the public in accordance with the Act.
- 5.3 A majority of members of the Board or a committee constitutes a quorum.
- 5.4 The Regional Clerk shall serve as the corporate secretariat for the Commission.

- 5.5 Meetings of the Commission or a committee thereof may be held in person, by electronic means or by a combination of both as long as the NTC complies with the open meetings requirements in the Act and the date and procedures for participation are made available to the public in advance of the meeting in accordance with its procedural by-law. The method and technology used for electronic participation in open or closed session meetings and the procedure for voting shall be determined by the Commission Chair in consultation with the General Manager and the Regional Clerk based on advice and available resources, and the prevailing circumstances.
- 5.6 The minutes of all meetings of the Commission shall be prepared and kept by the Regional Clerk or designate and shall be approved at the next Commission meeting.
- 5.7 The Regional Clerk shall retain and preserve the records of the Commission including its by-laws, resolutions, minutes and proceedings of regular, special or committee meetings. Such records will be retained and preserved in accordance with the record retention period and policies established by Council, and shall be publicly available.
- 5.8 The Commission shall adopt and apply a procedural by-law that is consistent with Council's Procedural By-law and the requirements of the Act, with respect to its own proceedings.
- 5.9 The Regional Clerk shall be deemed to be the NTC Head for purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*; and the Commission shall comply with such policies and procedures regarding MFIPPA, and other applicable privacy legislation, as may be established by the Region from time to time.
- 5.10 Any reference to the Regional Clerk in this by-law and the Regional Clerk's duties shall adhere to the Clerk's statutory duties and requirements as listed under s. 228(1) of the Act and such other duties as may be applicable under the Act or any other law.
- 5.11 The Region's Integrity Commissioner shall be the Integrity Commissioner for the NTC and the Code(s) of Conduct that applies to local boards, and if applicable to citizen advisory committees, of the Region at any given time shall apply to the NTC, and its' Advisory Committee.

ARTICLE 6
Commission Responsibilities and Authority

- 6.1 Subject to the limitations and conditions contained in this By-law, the following powers, rights, authorities and privileges of Council with respect to the control and management of the Region's transit system are delegated to the Commission Board:
- (a) Supervise the management, planning, maintenance and operations of the NTC and the delivery of transit on behalf of the Region; including ensuring that existing local service levels in each municipality, defined as a minimum of the budgeted 2020 local service hours, are maintained for a minimum of seven (7) years from January 1, 2023, unless otherwise consented to by the local municipality;
 - (b) Appoint from among the board members a Commission Chair, who will preside over meetings and be designated as the Chief Executive Officer and a signing officer for the NTC; and a Vice-Chair to serve in circumstances where the Commission Chair is unavailable;
 - (c) Appoint a General Manager to manage and be responsible for the day to day administration of the operations of the NTC;
 - (d) Establish an organizational structure to efficiently and effectively carry out the powers and authority delegated to the NTC;
 - (e) Consult with the local area municipalities and make recommendations to Council respecting individuals from each municipality, as well as from the sectors of the public referenced in Section 4.9 above, to be appointed to the NTC Advisory Committee;
 - (f) Establish a head office for the Commission that shall be located in the region of Niagara;
 - (g) Establish annual and long term plans and strategies for improving transit across the region that take into account the Commission and Region's objectives and strategic priorities including but not limited to respecting accessibility, the Regional Transportation Master Plan and Official Plan, the Region's environmental and carbon neutral goals, Council's annual budget direction, and the input received from the NTC Advisory Committee;

- (h) Manage the workforce employed by the NTC, in a manner consistent with the Region's policies respecting staffing, compensation (including ensuring parity with the Region's approved annual non-union salary rate table) and other human resource matters that are not unique to transit services;
- (i) Manage the Commission's and Region's assets used in connection with the transit system including making all operational decisions in connection with said assets and ensuring that existing fleet vehicles delivering local service and transferred to the Commission from a local area municipality will continue to be used exclusively within that local area municipality for the remainder of their useful life;
- (j) Enter into contracts in connection with the provision of transit services where budget approval exists, having a term not greater than twenty (20) years; and acquire or dispose of fee simple title to land only with the approval of Council by specific Council resolution and in accordance with the Region's Sale and Disposition of Lands By-law as may be amended from time to time;
- (k) Collect fees and charges imposed by Council in respect of the provision of a transit system;
- (l) Delegate in writing the exercise of the authority of the NTC delegated to it by Council, to such employees of the Commission as deemed appropriate;
- (m) Establish such committees of the Board as deemed appropriate from time to time and develop a process whereby the Advisory Committee will have input into matters under review by the NTC where appropriate;
- (n) Subject to subsection (o), establish policies and procedures as the Board determines are appropriate that will align with the Region's programs, by-laws, policies and procedures including related to Accountability and Transparency, Execution of Documents, Delegation of Authority, Inventory Procedures, Disposal of Surplus Assets, Employee Travel and Expense Policy, Accounts Receivable, Cost Allocation, Hiring of Employees; Employee ID and Dress Code; Performance Management, Flexible Work Arrangements; Attendance Support Program, Video Surveillance, Commencement of Litigation, Media Relations, Emergency Building Closures; and Procedural by-law;

- (o) Comply with the by-laws and policies set out in Schedule "A" and related procedures of the Region as updated, amended and replaced from time to time; and such new by-laws, policies and related procedures as may be established by the Region from time to time governing the corporate and administrative support services provided by the Region to the NTC as set out in Schedule "B";
- (p) Consult with the Region in the preparation of media releases and communications to the public on major initiatives or policies during the Transition Period.

ARTICLE 7

Budget; Business Plan; Annual Report; Fees and Charges

- 7.1 During Year One, NTC will be initially allocated funding not to exceed fifty percent (50%) of the estimated Special Levy Financial Strategy in accordance with Report PW 55-2021 of \$48.6 million, being the consolidated budget of local and regional transit adjusted for inflation and capital funding, until Council approves an operating and capital budget for 2023 for the Commission.
- 7.2 The Commission shall submit to the Regional Treasurer, in the form and at the time specified in accordance with the approved Regional processes and timetables for budget and business planning:
 - (a) Annual operating and capital budgets and business plans;
 - (b) Two (2) year forecast and ten (10) year capital plans; and
 - (c) Any other information or data required by the Regional Treasurer or Council.
- 7.3 The Commission shall, at all times and in the form requested, provide the Region with information relating to the operations of NTC; and shall attend Regional Council and Standing Committee meetings when requested to present its budget and business plans.
- 7.4 The Commission may obtain and pay the cost for available corporate and administrative support services from the Region as identified Schedule "B" attached and otherwise where it is cost-efficient to do so. The Commission shall be solely responsible for providing the corporate and administrative services set out in Schedule "C".

- 7.5 The Region shall maintain all necessary policies of insurance related to the NTC including its officers and directors, its assets including its employees, agents, operations and facilities and the Region will charge-back the cost to the Commission. The Commission shall be responsible for maintaining records regarding maintenance and operations of equipment, as well as appropriate accident reports, and will provide them to the Region's Risk Manager immediately in the event of an accident or incident that could trigger an insurance claim.
- 7.6 The Regional Treasurer shall consult with the NTC in developing the transit-related portions of the Region's Development Charges study and draft by-law for Council approval.
- 7.7 Council shall be responsible for passing by-laws imposing fees and charges in respect of regional transit services operated by the NTC after receiving input from the Commission.
- 7.8 The Commission shall submit to the Regional Treasurer quarterly reports in the form and in accordance with the annual schedule as provided by the Regional Treasurer that shall include the following:
- (a) Financial operating statements;
 - (b) Information regarding the efficiency and effectiveness in its delivery of Regional transit services and any barriers to the achievement of improvements in the delivery of those services identified by the Commission, with reference to performance measures tracked by the transit industry where appropriate;
 - (c) Explanations and information regarding any material discrepancy between the actual results from operations and the current approved budget and business plan; and
 - (d) Any other information required by the Regional Treasurer or Council.
- 7.9 To ensure financial accountability and transparency, the Commission shall consult with the Regional Treasurer in the event that:
- (a) a matter falls under the Regional Treasurer's statutory authority under s. 286(1) of the Act; or

- (b) a matter may have a material impact on the year end budget results of the Commission or the Region in comparison to what was approved within the Commission budget for that given year; or
- (c) a matter may have a material impact on a future year budget or subsequent year budget forecast.

ARTICLE 8

Auditor

- 8.1 The auditor appointed by the Region to annually audit its own accounts, transactions and financial statements shall be the auditor for the Commission. The NTC will be responsible for the costs of any special purpose audit.
- 8.2 The auditor shall have the right of access at all reasonable times to all records of the Commission.

ARTICLE 9

General Manager Responsibilities

- 9.1 In addition to any duties and responsibilities assigned by the Commission, the General Manager shall be responsible to:
 - (a) Administer the operations of the NTC and the public transit system consistent with the approved capital and operating budget, the applicable programs, policies and procedures of the Region, and with the approved principles that formed the basis of triple majority approval included as Appendix 3 to Report PW 55-2021, and the policies and by-laws of the NTC and all applicable legislation;
 - (b) Review all operating agreements on a regular basis to ensure they are consistent with the approved budgets and with the policies of the NTC and that the Commission remains in compliance with their terms and conditions;
 - (c) Employ or retain persons necessary for the business and operations of the NTC, and define their duties and remuneration having regard to all applicable policies including the job descriptions and pay scales effective at the Region at any given time;
 - (d) Negotiate service level agreements with the Region for the corporate and administrative support services provided by the Region, for Board approval.

9.2 This By-law shall apply immediately upon being enacted by Council.

THE REGIONAL MUNICIPALITY OF NIAGARA



James Bradley, Regional Chair



Ann-Marie Norio, Regional Clerk

Passed: May 26, 2022

SCHEDULE "A"
Policies that Apply to the Niagara Transit Commission

The following by-laws, programs, policies and associated procedures of the Region, as may be updated, amended and replaced from time to time, shall apply to NTC:

1. Budget Planning By-law
2. Budget Control By-law
3. Fees and Charges By-law
4. Financing Lease Policy
5. Surplus/Deficit Policy
6. Reserve and Reserve Funds Policy
7. Capital Asset Management Policy
8. Capital Financing Policy
9. Financial Reporting Policy
10. Health and Safety Policies including workplace violence prevention, workplace harassment, respectful workplace conduct and all hazard specific health and safety procedures
11. Procurement By-law, Unsolicited Proposals and Purchasing Card Policies
12. Code of Ethics/ Conflict of Interest Policy
13. Whistleblower Policy
14. Legal Indemnification Policy
15. Legal Holds Policy
16. Vacation Policy
17. Non-Union Compensation and Overtime policies
18. Summons to Witness Policy
19. Sale and Disposition of Lands By-law
20. Disconnecting From Work Policy

21. Electronic Monitoring Policy
22. Electronic Communications and Internet Use Policy
23. Software Licenses, Acquisition, Installation and Support
24. Technology Acquisition
25. Remote Access Policy
26. Mobile Device Policy
27. Telecommunications Policy
28. Password Policy
29. Vehicle Use and Drivers Licence Requirements Policy
30. Records Retention By-law and policies related records management, information governance, MFIPPA and PHIPPA

SCHEDULE “B”
Niagara Region Corporate and Administrative Support Services

The following support services may be provided by the Region to NTC on a cost recovery basis:

1. Corporate secretariat services, including responsibility for updating and interpreting the NTC’s procedural by-law, providing notices for meetings, preparing minutes of meetings, carrying out NTC’s responsibilities under the *Municipal Freedom of Information and Protection of Privacy Act* and records management.
2. Human Resources responsibilities regarding Human Resources Management Systems (Peoplesoft HRIS), payroll processing, pension and benefits administration, compensation planning for non-unionized personnel (management and non-management), personnel policy development, employee records and administration, and administration and overseeing an employee assistance program.
3. Finance services regarding budgeting, internal financial reporting, external financial reporting, financial analysis, accounts payable processing, revenue transaction processing, Peoplesoft ERP financial system support, internal audit, external audit, and asset management planning.
4. Information Technology services respecting cybersecurity systems, desktop technologies and applications, data centre/servers/SANS, data analytics, administrative peripherals, user help desk, other corporate backbone systems and technologies as adopted from time to time.
5. Procurement and Realty Management services.
6. Legal and Risk Management (including insurance) services.

SCHEDULE "C"

Commission Corporate and Administrative Support Services Responsibilities

The following support services shall be the sole responsibility of the NTC:

1. Human Resources responsibilities regarding staff recruitment, collective bargaining agreement negotiation, employee relations, employee timekeeping, employee training and development, personnel and performance management, occupational health and safety and attendance and disability management.
2. Information Technology matters respecting transit scheduling software, driver management and timekeeping systems, transit planning system, automated stop and announcement system, CAD/AVL system, automated vehicle management system, automatic passenger counters, transit radio system, onboard CCTV system, farebox system, paratransit scheduling software, paratransit AVL system and other transit operational systems and technologies.
3. Communications.
4. General clerical support as required for operations.
5. Fleet maintenance.
6. Facilities maintenance.