MEDIA RELEASE: Friday, October 18, 2013, 4:00 p.m.

REGIONAL MUNICIPALITY OF WATERLOO
PUBLIC MEETING OF THE
ADMINISTRATION AND FINANCE COMMITTEE
AGENDA

Tuesday, October 22, 2013
10:30 a.m. (Time is approximate)
Regional Council Chamber
150 Frederick Street, Kitchener

1. DECLARATIONS OF PECUNIARY INTEREST UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT

2. REPORT – CORPORATE RESOURCES – FACILITIES MANAGEMENT & FLEET SERVICES
   a) CR-FM-13-018, Public Meeting – Code of Use By-Law

3. DELEGATIONS

4. ADJOURN
RECOMMENDATION:

For information.

SUMMARY: Nil

REPORT:

1. Code of Use By-law

In 2005, the Region enacted By-law Number 05-055, A By-law Respecting the Conduct of Persons Using the Public Transit System (“Grand River Transit”) Operated by the Regional Municipality of Waterloo (the “GRT Code of Conduct By-law”). This By-law designated certain activities such as littering, rollerblading, etc., as well as any other conduct that obstructs, prevents or hinders other person’s use of GRT premises, as Prohibited Activities and it gave staff the authority to issue trespass notices pursuant to the Trespass to Property Act to enforce such.

Subsequent to the GRT Code of Conduct By-law, staff determined that a similar by-law would assist in regard to regulating public use and activities at all Regional facilities. The proposed Code of Use By-law is based, in large part, on the GRT Code of Conduct By-law. The major changes in the new by-law relate to laying charges in addition to issuing trespass notices, regulating signs on Regional premises (except Regional roads which are governed under the Sign By-law) and codifying an internal appeal process for persons who are the subject of a trespass notice. These changes reflect some of the challenges that have been experienced under the GRT Code of Conduct By-law and the need, in regard to signs, to find a balance that regulates visual blight on Regional premises and the right to freedom of expression on public property pursuant to the Canadian Charter of Rights and Freedoms.

Any trespass notice is to be reasonable in regard to its scope and any person subject to such will have an appeal right to the Director, Facilities Management & Fleet Services. This reflects the informal appeal process that has been created pursuant to the GRT Code of Conduct By-law.

The Code of Use By-law, if passed by Council, would repeal and replace the GRT Code of Conduct By-law for GRT. The Code of Use By-law would not apply to Regional roads or private residences of persons residing at community housing units that are owned or operated by the Region.

2. Public Consultation

Staff has scheduled a public meeting on October 22, 2013 in regard to the draft Code of Use By-law. The purpose of the public meeting is to obtain any input from the general public. Notice of the public meeting has been placed on the Region of Waterloo website and advertised pursuant to the Region’s Notice Policy.
It is the intention of staff to consider any public input and to report back to this Committee before the end of 2013 with a recommended by-law for passage. Staff has also been working on an internal Regional policy in regard to the usage of Regional buildings and premises. This policy is interconnected with the draft Code of Use By-law and would come forward at the same time for this Committee’s consideration.

CORPORATE STRATEGIC PLAN:

The proposed Code of Use By-law supports focus Area 5, Service Excellence and the strategic objective to “Improve the accessibility of Regional programs and services to support our diverse community.” This document also supports Focus Area 2, Growth Management and Prosperity and the strategic objective to “Develop, Optimize and maintain infrastructure to meet current and projected needs”.

FINANCIAL IMPLICATIONS:

Nil.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Staff of the Legal Services Division assisted in regard to the preparation of the proposed Code of Use By-law and this Report.

ATTACHMENTS

Appendix “A” – Draft Code of Use By-Law

PREPARED BY: Christopher Gibson, Project Manager, Facilities Management

APPROVED BY: Gary Sosnoski, Commissioner, Corporate Resources
APPENDIX “A”

DRAFT

BY-LAW NUMBER 13-XXX

OF

THE REGIONAL MUNICIPALITY OF WATERLOO

A By-law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by The Regional Municipality of Waterloo

WHEREAS The Regional Municipality of Waterloo owns or occupies certain buildings, grounds and public transportation vehicles for the purpose of carrying out its municipal services;

AND WHEREAS persons, from time to time, enter onto these buildings, grounds and public transportation vehicles and cause physical damage to the premises, disruption to Regional operations or the use and enjoyment of these premises by other persons;

AND WHEREAS it is the desire of The Regional Municipality of Waterloo to create a code of use in regard to these premises;

AND WHEREAS The Regional Municipality of Waterloo has the capacity, rights, powers and privileges of a natural person and the ability to govern its affairs as it considers appropriate pursuant to sections 8 and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

AND WHEREAS The Regional Municipality of Waterloo has the authority to enact by-laws respecting its public assets and the protection of persons and property pursuant to subsection 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

NOW THEREFORE THE COUNCIL OF THE REGIONAL MUNICIPALITY OF WATERLOO ENACTS AS FOLLOWS:

PART I - DEFINITIONS

1. In this By-law:

   (1) “Designated Personnel” means those persons listed in Schedule “A” of this By-law;

   (2) “Designated Premises” means any public transportation vehicle that is owned or operated by the Region or any building, grounds or other premises, other than a highway or the private residence of an individual, that are owned or occupied by the Region;

   (3) “Director” means the Director of Facilities Management and Fleet Services or any successor position, or his or her designate;

   (4) “highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;

(6) “Prohibited Activity” means those activities listed in Schedule “B” of this By-law;

(7) “Region” means The Regional Municipality of Waterloo;

(8) “sign” means any device, object or thing that creates a design or conveys a message, or that is designed to convey a message and that is placed for the purposes of advertising, announcing, directing or promoting any idea, event, activity, product, service or facility, identifying a business or enterprise, or conveying any other type of message; and

(9) “Trespass to Property Act” means the Trespass to Property Act, R.S.O. 1990, c. T.21, as amended, or any successor legislation.

PART II – PROHIBITION

2. No person shall do a Prohibited Activity on Designated Premises.

3. (1) No person shall place, or cause or permit to be placed, a sign, or any part of a sign, on Designated Premises.

(2) Subsection (1) of this section shall not apply to a sign that is placed at a location that is designated for signs by the Director and the sign meets the following criteria:

(a) the sign is less than 1,600 square centimeters in area;
(b) the sign does not promote an unlawful activity or discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;
(c) the sign does not contain profanity or obscenity; and
(d) the sign is not obsolete in relation to a past event or a business or enterprise that is no longer conducted, or an activity, product, service or facility that is not in season or is no longer provided.

4. Every person who contravenes section 2 or 3 of this By-law is guilty of an offence and on conviction is liable to a fine not exceeding $100, exclusive of costs, for the first offence and a fine not exceeding $500, exclusive of costs, for each subsequent offence pursuant to section 429 of the Municipal Act, 2001, or any successor provision thereof.

PART III - TRESPASS

5. Without limiting Part II of this By-law, Designated Personnel may exercise any of the following enforcement options at Designated Premises when a person is doing or has done a Prohibited Activity:

(1) Issue a verbal direction to refrain from a Prohibited Activity;

(2) Issue a verbal direction to leave the Designated Premises citing as the reason the failure to refrain from a Prohibited Activity;

(3) Serve a written notice upon a person prohibiting a Prohibited Activity citing as the reason the failure of the person to refrain from a Prohibited Activity;

(4) Serve a written notice upon a person prohibiting entry upon a Designated Premises citing as the reason the failure of the person to refrain from a Prohibited Activity;

(5) Post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Designated Premises prohibiting a
Prohibited Activity;

(6) Post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Designated Premises prohibiting entry upon the Designated Premises by a person citing as the reason the failure to refrain from a Prohibited Activity; and

(7) Exercise any other rights or powers pursuant to the *Trespass to Property Act* that are reasonable in the circumstances.

6. Any verbal direction, written notice or sign pursuant to section 5 of this By-law shall be reasonable in relation to the conduct prohibited, the breadth of the location and the duration of the time imposed.

7. (1) Any person who is subject to a verbal direction, written notice or sign pursuant to section 5 of this By-law may apply to the Director in writing with a request that the verbal direction, written notice or sign be rescinded or modified.

(2) Any written request pursuant to subsection (1) of this section shall set out the grounds for the request and shall be submitted to the Director within 30 calendar days of: (a) the person’s receipt of the verbal direction or written notice or the person’s observance of the sign; or (b) any changed circumstance that relates to the impact of the verbal direction, written notice or sign upon the person.

(3) Upon the receipt of the written request pursuant to subsection (1) of this section, the Director shall investigate and determine whether the verbal direction, written notice or sign should be rescinded or modified and the Director shall advise the person of his or her decision in writing.

8. Designated Personnel may contact the Waterloo Regional Police Service, or any other police service having lawful jurisdiction, at any time to request assistance or to initiate any other action as the police service may deem necessary in the circumstances.

**PART IV - GENERAL**

9. This By-law may be enforced by a Designated Personnel, a municipal law enforcement officer as appointed by the Region or a police officer.

10. (1) The Director shall have all necessary authority to administer this By-law.

(2) Without limiting subsection (1) of this section, the Director shall have the authority to:

   (a) prescribe any administrative forms for the purposes of this By-law;
   (b) designate permitted locations for signs at Designated Premises; and
   (c) remove, or cause the removal, of any sign that does not meet the requirements of this By-law.

11. This By-law may be cited as the “Code of Use By-law”.

12. Any procedural by-law of the Region governing the conduct of any person during a session of Council of the Region, or of a committee of Council of the Region, shall govern and this By-law shall apply with necessary modification.

13. If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of Council of the Region to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found illegal.

14. (1) By-law 05-055 of The Regional Municipality of Waterloo, A By-law Respecting the
Conduct of Persons Using the Public Transit System ("Grand River Transit") Operated by the Regional Municipality of Waterloo, shall be repealed effective on the coming into force and effect of this By-law.

(2) Notwithstanding subsection (1) of this section, any direction or notice issued to a person pursuant to By-law 05-055 of The Regional Municipality of Waterloo, A By-law Respecting the Conduct of Persons Using the Public Transit System ("Grand River Transit") Operated by the Regional Municipality of Waterloo, that is in effect at the time that the By-law is repealed shall be deemed to be a direction or notice pursuant to this By-law and shall continue in full force and effect.

15. This By-law shall come into force and take effect on xxxxxxx, 2013.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this ... day of ____, A.D., 2013.

REGIONAL CLERK

REGIONAL CHAIR

SCHEDULE “A”

DESIGNATED PERSONNEL

1. The following are Designated Personnel:

   (1) the Director having responsibility for the Designated Premises;

   (2) the employee of the Region having responsibility for the Designated Premises, or any part thereof, at the particular time;

   (3) Manager, Business Services, for the Region, or any successor position thereto;

   (4) Supervisor, Security Services, for the Region, or any successor position thereto;

   (5) Supervisor, Transit Security for the Region, or any successor position thereto;

   (6) a municipal law enforcement officer as appointed by the Region;

   (7) security guards under contract to the Region; and

   (8) other persons from time to time as may be designated by Council of the Region.

SCHEDULE “B”

PROHIBITED ACTIVITIES

1. In this Schedule:

   (1) “authorization” means written permission from the Director for the Region having responsibility for the Designated Premises, or his or her designate;
(2) “loitering” means to linger without due cause or purpose;

(3) “nuisance” includes any conduct or behavior which interferes with the ordinary enjoyment of persons using Designated Premises; and

(4) “service line” means an indoor or outdoor line of two or more persons awaiting service of any kind, regardless of whether or not such service involves the exchange of money, including but not limited to, sales, provision of information, transactions, or advice and transfers of money or goods.

2. The following activities are Prohibited Activities:

(1) An activity that obstructs, prevents or hinders the rights of others to use and enjoy Designated Premises or which obstructs, prevents or hinders the operations of the Region or any of its employees, agents or contractors.

(2) Without limiting the generality of the foregoing, an activity that obstructs, prevents or hinders the rights of others to use and enjoy the Designated Premises or which obstructs, prevents or hinders the operations of the Region or any of its employees, agents or contractors includes, but is not limited to:

(a) smoking tobacco or holding lit tobacco in any elevator or escalator, in any service line, public area or area designated as a “No Smoking Area”;

(b) committing any nuisance, disturbing the peace or acting contrary to public order;

(c) spitting, urinating or otherwise causing unsanitary conditions;

(d) littering;

(e) loitering;

(f) rollerblading or skateboarding without authorization;

(g) using profanity, obscene language or racial slurs;

(h) vandalizing the Designated Premises or any personal property on the Designated Premises;

(i) using any personal property of the Region without authorization;

(j) selling or attempting to sell, distribute or solicit any good or service without authorization;

(k) operating any radio, tape recorder, DVD, CD or MP3 player, musical instrument or similar device, without authorization, unless the sound is conveyed by earphone at a decibel level that does not disturb any other person;

(l) operating for commercial purposes any camera, video recording device, movie camera or any similar device without authorization;

(m) carrying any goods, without authorization, which are offensive, dangerous, toxic, corrosive, flammable or explosive in nature that are likely to alarm, inconvenience, cause discomfort or injure any person, or cause damage to property, whether or not such good are contained in an approved container;

(n) bringing any large animal onto the Designated Premises, without authorization, other than during an emergency or for use as a service or guide animal;
(o) entering, without authorization, onto the Designated Premises without a shirt or footwear;

(p) bringing a small animal or bird, without authorization, that is not in a cage or carrying device designed for secure and safe transport;

(q) acts which are perceived as threatening, intimidating or sexual harassment;

(r) entering, without authorization, any area that is designated or used as a work area for an employee;

(s) erecting, without authorization, any structure, tent or temporary shelter;

(t) consuming alcohol without authorization;

(u) acts which are contrary to any specific rules or terms of use for the Designated Premises provided that the specific rules or terms of use have been posted in a conspicuous location at the Designated Premises; or

(v) any activity contrary to the Criminal Code of Canada, R.S. 1985, c. C-46, as amended, other federal statutes, provincial statutes or municipal by-laws.