1970

c 157 The City of Niagara Falls Act, 1970 (No. 2)

Ontario
CHAPTER 157

An Act respecting the City of Niagara Falls

Assented to May 4th, 1970
Session Prorogued November 13th, 1970

WHEREAS The Corporation of the City of Niagara Falls, herein called the Corporation, by its petition has prayed for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the prayer of the petition;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Notwithstanding any general or special Act, By-law No. 70-21 passed by the council of the Corporation on the 16th day of February, 1970 and the agreement dated the 16th day of February, 1970 between the Corporation and Niagara Monorail Limited granting to the said Niagara Monorail Limited the right to construct and operate a monorail transportation system in the City of Niagara Falls and to construct and maintain parts of the monorail transportation system on, across and over highways in the City of Niagara Falls upon and subject to the terms and conditions set forth in the agreement, both the said by-law and agreement being set forth in the Schedule hereto, are and each of them is hereby confirmed and declared to be valid and binding upon the parties thereto and the said parties are hereby empowered to carry out their respective obligations and exercise their respective privileges under the said agreement.

(2) The council of the Corporation is hereby authorized and empowered to pass such by-laws and enter into such other agreements and do all such other acts, matters and things as may be considered necessary by the Corporation for the full and proper carrying out of the provisions of the said agreement.

2. None of the provisions of any by-law passed under section 30 of The Planning Act or a predecessor of section 30 by the council of the Corporation or by the council of The Corporation of the Township of Stamford or by the council of

The
The Corporation of the Village of Chippawa shall apply to prevent the construction, maintenance and operation of the monorail transportation system in accordance with the provisions of the said agreement set forth in the Schedule to this Act.

3. The Corporation is not required to obtain the assent of the electors of the City of Niagara Falls or any class thereof to the by-law set forth in the Schedule to this Act or to any other by-law passed by the council of the Corporation under this Act.

4. Niagara Monorail Limited is deemed not to be a railway for the purposes of The Railways Act.

5. This Act comes into force on the day it receives Royal Assent.

6. This Act may be cited as The City of Niagara Falls Act, 1970 (No. 2).

SCHEDULE
A BY-LAW to authorize an agreement with Niagara Monorail Limited.

WHEREAS it is deemed expedient to enter into an agreement with Niagara Monorail Limited granting the said Company the right to construct and operate a monorail transportation system in the City of Niagara Falls for a period of 20 years on the terms set out in the said agreement;

NOW THEREFORE the Council of the Corporation of the City of Niagara Falls enacts as follows:

1. That the agreement dated the 16th day of February, 1970 between The Corporation of the City of Niagara Falls and Niagara Monorail Limited, a copy of which is set forth in the schedule attached to and forming part of this by-law, is hereby approved and authorized.

2. The Mayor and Clerk are hereby authorized and directed to execute the said agreement and the Clerk is hereby authorized and directed to affix the corporate seal thereto and to deliver the said agreement.

PASSED this 16th day of February, 1970.

J. L. COLLINSON,  
Clerk.  

F. J. MILLER,  
Mayor.

(Seal)
SCHEDULE
TO CITY OF NIAGARA FALLS
BY-LAW No. 70-21

This Agreement made the sixteenth day of February, 1970.

BETWEEN:

THE CORPORATION OF THE CITY OF NIAGARA FALLS (Hereinafter called the “City”),

OF THE FIRST PART

—and—

NIAGARA MONORAIL LIMITED, a private company incorporated under the laws of the Province of Ontario and having its head office in the City of Niagara Falls, in the Regional Municipality of Niagara, (Hereinafter called the “Company”),

OF THE SECOND PART.

WHEREAS the Company was incorporated by letters patent of the Province of Ontario dated the 1st day of November, 1966 and has applied to the City for the right to construct and operate a monorail transportation system in part of the City of Niagara Falls together with the right to use or occupy parts of highways of the City for the purpose of the said monorail transportation system; and

WHEREAS the City deems it desirable to grant the said request subject to the provisions of this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE PREMISES, the City and the Company covenant and agree each with the other as follows:

1. In this agreement,

(a) “highway” means a common and public highway and includes a street, road, lane, road allowance, bridge, and any other structure incidental thereto;

(b) “monorail transportation system” means and includes a system for the carriage of passengers in cars suspended from elevated tracks and operated by means of gasoline, diesel fuel, electricity or other power, except steam, and all structures, tracks, works, cars and other equipment used in connection therewith including buildings or structures for stations;

(c) “railway” means that section of the railway of Penn Central Transportation Company between Queen Street in the City of Niagara Falls and Front Street in the former Village of Chippewa, now in the City of Niagara Falls, referred to in Order No. R-7570 of the Railway Transport Committee of the Canadian Transport Commission dated the 22nd day of December, 1969;

(d) “road authority” includes the City, The Regional Municipality of Niagara and the Department of Highways of Ontario; and

(e) “utility authority” means any public body, commission or authority established or exercising any power or authority under any general or special Act with respect to waterworks, electric light
light, heat or power works or sewage works and includes the City, The Regional Municipality of Niagara, The Hydro-Electric Power Commission of Ontario and The Hydro-Electric Commission of the City of Niagara Falls.

2. Subject to the agreements, obligations, terms and conditions hereinafter contained, the City grants to the Company the right to construct and operate a monorail transportation system on, across and over those highways in the City of Niagara Falls now crossed by the Penn Central Transportation Company right-of-way listed in Schedule "A" to this agreement and hereinafter referred to as "the said highways".

3. Nothing in this agreement shall be deemed to grant the Company an exclusive right to construct or operate a monorail transportation system.

4. The Company shall have the right to construct and maintain overhead tracks across and over the said highways subject to the following:

(a) the minimum clearance between the surface grade of each of the said highways and the lowest point of any structure, track, car, wire or other work or equipment of the monorail transportation system at any time erected, existing, maintained or operated above any part of each such highway shall be 23 feet;

(b) prior to submitting the plans referred to in clause c of this paragraph to the Railway Transport Committee, the Company shall obtain the approval of the City Engineer of the location and type of the columns which the Company intends to construct;

(c) detailed plans of the said tracks and supporting structures, as approved by an engineer of the Railway Transport Committee of the Canadian Transportation Commission, the Chief Engineer of Penn Central Transportation Company, and a structural engineer registered with the Association of Professional Engineers of Ontario shall be filed with the City Engineer before construction is commenced;

(d) the Company shall not erect any columns, poles or other structures, whether to support the overhead tracks or for any other purpose, on any part of the said highways without the express approval in writing of the City;

(e) the Company shall be responsible for determining the precise location of any and all watermains, sewer mains, forcemains, underground pipes, cables, wires and utilities of every type in or adjacent to each area in which the Company proposes to construct any works and the Company shall take all precautions necessary, including provision of such means of support as may be required by the owner thereof, to ensure that the said watermains, sewer mains, forcemains, pipes, cables, wires and utilities are not interfered with or damaged in any way.

5. (a) If, at any time or times hereafter, in the opinion of the City or other road authority or utility authority the presence or use of, or operation of monorail cars from, any structure, track, work or other equipment of the monorail transportation system except station buildings interferes with any existing work of or work to be constructed by the City or other road authority or utility authority, the Company shall, at its own cost and expense and within the time hereinafter specified, upon notice in writing from the City or other road authority or utility authority, remove to another location or locations or alter the height of one or more of such structures, tracks, works or other equipment of the monorail transportation system except station buildings as may be designated by the City or other road authority or utility authority or both remove to another location or locations and alter the height of the said structures, tracks, works or other equipment, provided in any case that it is possible to carry out such work of removal or alteration of height or both on or within the limits of the land and
air space across, on, over or through which the Company has acquired rights from the Penn Central Transportation Company or on or within the limits of adjoining land now or hereafter owned by the City or other road authority or utility authority and across, on, over or through which the Company is granted rights equivalent to those which it has acquired from Penn Central Transportation Company; and all the terms and conditions of this agreement shall then apply to the said structures, tracks, works and other equipment in their new location or locations.

(b) The Company shall complete any work of removal or alteration of the height of the said structures, tracks, works or other equipment mentioned in clause (a) within 12 months after notice has been given to it by the City or other road authority or utility authority.

6. If the City or other road authority acquires the railway right-of-way or any part or parts thereof for highway purposes, the provisions of paragraph 5 shall apply, mutatis mutandis, to any station buildings and structures in addition to the structures, tracks, works and other equipment mentioned in the said paragraph 5.

7. If the railway right-of-way or any part or parts thereof is lowered the Company shall at its own cost and expense and within 12 months of notice in writing from the City make such changes in the elevation and location of the structures, tracks, works or other equipment of the monorail transportation system and of its station buildings and structures as the City shall direct.

8. The City and other road authority and utility authority shall not be required to compensate the Company for any cost, expense or loss (including any loss or revenue from interruption of service) incurred or sustained by the Company as a result of or in any way connected with any work of removal or alteration of the height of the structures, tracks, works or other equipment of the monorail transportation system and its station buildings and structures.

9. The Company shall have the right to erect station buildings or structures at the locations described in Schedule "B" to this agreement subject to the following regulations:

(a) the external design of all such station buildings and structures shall be approved by the Planning Committee of the Council of the City;

(b) all such station buildings and structures shall comply with the building by-law of the City;

(c) no such station building or structure shall be erected on or over any highway.

10. The Company shall provide such extensions to the monorail transportation system as may be agreed upon between it and the City and, subject to like agreement, the Company shall provide an additional station in the vicinity of the proposed parking lot of The Niagara Parks Commission above Dufferin Islands.

11. Within 36 months from the date upon which the Act of the Legislature ratifying this agreement shall have come into force, the Company shall construct and commence operation of the monorail transportation system along the entire route from the Queen Street station to the Chippawa station with not less than 10 monorail cars. All monorail cars shall be provided with rubber tires and adequate lighting, heating and ventilation and the Company shall keep the said cars at all times in good and sufficient state of repair and appearance and clean both inside and out and shall keep the said cars lighted, heated and ventilated at such hours and for such periods of the year as may be necessary for the comfort and convenience of passengers.

12. The Company agrees with the City to provide a regular daily service between the Queen Street and Chippawa stations during the whole of each year at such intervals and upon such schedules as may be annually agreed.
agreed upon between the parties hereto. Negotiations to settle the said intervals and schedules for each year during the currency of this agreement shall take place between the 1st day of October and the 31st day of December of each preceding year.

13. Without the written consent of the City, the Company shall not erect, place or maintain any column, track or other structure or building at a greater height than is reasonably necessary to provide the minimum clearance required above the rail level of the railway and surface grade of a highway, respectively.

14. The Company agrees that it will not erect, place, paint or attach or permit the erection, placing, painting or attaching of any signs as defined in the City's sign By-law No. 6661, 1964 and any by-law passed in substitution or amendment thereof on the exterior of any tracks, rails, structures, buildings or cars of the monorail transportation system, except signs at stations designating the name of the station, entrances, exits and similar directions.

15. The Company shall indemnify and save the City harmless from any and all loss, costs, damages, claims, actions and demands arising from or relating to the construction, maintenance, operation, extension, alteration, repair, control and management of the monorail transportation system or arising from the exercise of any of the rights herein granted.

16. In the event of the Company failing for the period of 6 continuous months to maintain and operate the monorail transportation system in substantial conformity with the provisions of this agreement, the City may declare that all privileges and rights to operate the monorail transportation system which the Company has acquired by this agreement are at an end and such privileges and rights shall thereupon cease and be at an end accordingly; provided however the Company shall not be held to be in default hereunder for failure to maintain and operate if such failure is the result of fire, act of God, strike, riot, insurrection, war or other cause beyond the control of the Company.

17. Whenever the Company ceases to operate the monorail transportation system in accordance with this agreement, the Company shall at its own expense remove all its columns, tracks and other installations and structures and clear the site thereof to at least one foot below grade within not more than 6 months after being requested in writing by the City to do so, and if the Company shall fail to do so the City and its workmen and contractors are hereby authorized to carry out such work of removal and the Company shall reimburse the City for all costs incurred by the City in performing such work (including interest on such costs at the then current bank rate paid by the City) within sixty days after an invoice therefor has been mailed by the City to the Company. The City shall have the right to retain, use or sell all material salvaged by it and shall apply the net proceeds of any material sold on account of the costs to be paid by the Company.

18. The Company shall at all times keep the monorail transportation system insured in a company authorized to carry on business as insurer in the Province of Ontario against public liability, liability to passengers and public and property damage as follows: bodily injury and death, one person—$1,000,000.00 one accident—$5,000,000.00 and property damage, one accident—$100,000.00. The policy evidencing such liability insurance coverage shall provide the City will be given ten days' notice before such coverage will be cancelled and the Company agrees that during said ten day period, it will obtain and provide the City with insurance coverage to meet the requirements of this agreement and failing to do so, this agreement at the option of the City shall cease and terminate its operation until so corrected. The City shall be furnished with a certified true copy of each policy evidencing such insurance coverage.

19. This agreement and the rights granted by the City to the Company shall not be assignable or transferable by the Company without the express consent of the City. The conversion of the Company into a public company shall not, in itself, be deemed an assignment or transfer of this agreement and the said rights.
20. The parties hereto acknowledge and agree that the Company is not a railway company and that the provisions of The Assessment Act, 1968-69 with respect to railway companies shall not apply to the Company.

21. All matters of difference in relation to this agreement shall be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise to three arbitrators, one to be appointed by the Company, one by the City and a third to be chosen by the two arbitrators first named before they enter upon the business of the arbitration, or, failing this agreement, to be appointed by a judge of the Judicial District of Niagara South, and the award and determination of such arbitrator or arbitrators or any two of such three arbitrators shall be binding upon the parties hereto and their respective successors and assigns. All costs of the arbitration shall be borne between the parties hereto in equal shares.

22. The parties hereto acknowledge and agree that the provisions of this agreement respecting the removal, relocation and alteration of the height of structures, tracks, works or other equipment of the monorail transportation system shall be subject to any required approval of the Canadian Transportation Commission.

23. Any notice required to be given by the City to the Company shall be in writing and shall be sufficiently given if mailed in a postage prepaid registered envelope addressed to the Company at Post Office Box 154, Niagara Falls, Ontario and deposited in the Post Office in Niagara Falls, Ontario and any such notice shall be deemed conclusively to have been received on the second day following the date of such mailing.

24. Subject to paragraph 19, this agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.

25. The parties hereto agree to join in applying to the Legislature of the Province of Ontario at its next Session for legislation confirming this agreement and declaring the same to be legal, valid and binding upon the parties hereto; the expense of such legislation shall be borne by the Company. This agreement shall take effect when such legislation comes into force and shall continue in force for a period of 20 years.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals attested by the hands of their proper officers in that behalf.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE
City of Niagara Falls:

Mayor.
Clerk.

Niagara Monorail Limited:

Presid.:

President.
Secretary-treasurer.

SCHEDULE
SCHEDULE A

to the agreement dated February 16th, 1970, between The Corporation of the City of Niagara Falls and Niagara Monorail Limited.

HIGHWAYS TO BE CROSSED

Huron Street
Erie Avenue
Morrison Street
Ellis Street
Ontario Avenue
Simcoe Street
Eastwood Street
Road allowance between Township Lots 127 and 128
Road allowance between Township Lots 127 and 129
Clifton Hill
Robinson Street
Murray Street
Oakes Drive
McLeod Road
Corfield Street
Chippawa Street, Chippawa
Short Street, Chippawa
Church Street, Chippawa
Unopened road allowance between Township Lots 193 and 223
Unopened road allowance between Township Lots 190 and 191 and 193 and 194
Unopened Dixon Street
SCHEDULE B

to the agreement dated February 16th, 1970, between The Corporation of the City of Niagara Falls and Niagara Monorail Limited.

Location of Stations

Queen Street (Downtown Station) — All of Lot 4 and parts of Lots 1 and 5 of Block F, Plan 35 for the Town of Niagara Falls, bounded on the north by Queen Street, on the west by Erie Avenue, on the south by Huron Street and on the east by the railway tracks.

Clifton Hill — On railway property adjacent to Victoria Avenue at Clifton Hill. Starting at Clifton Hill and running 240 feet south.

Skylon — On railway property commencing 200 feet south of Robinson Street, running southerly 240 feet to the southerly edge of the pedestrian walkway to Skylon Tower.

Heritage — On railway property commencing 140 feet southerly from the centre line of Oakes Drive overpass and running 250 feet southerly.

Marineland — On railway property commencing 1,040 feet north of the north limit of Corfield Street and running northerly 240 feet.

Chippawa — All of lots 12 and 22, registered plan 251 for the Village of Chippawa, bounded on the north by Chippawa Street, on the south by Front Street, and on the east by Norton Street.