

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.1.4
Halifax Regional Council
November 28, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: November 7, 2017

SUBJECT: Request for Permanent Encroachment, 5990 Spring Garden Rd., Halifax

ORIGIN

Application by Lowen Properties Limited for a permanent encroachment at 5990 Spring Garden Rd. Halifax

LEGISLATIVE AUTHORITY

- Encroachment By-law (E-200)
- Administrative Order 15, Respecting License, Permit and Processing Fees

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Authorize the Mayor and Municipal Clerk to execute the attached Encroachment Agreement, as provided in Attachment A, to enable the installation of an accessible ramp on the existing sidewalk within the Spring Garden Road right of way, as discussed in this report; and
2. Waive the annual fees associated with this encroachment.

BACKGROUND

The property owner, Peter Lawen on behalf of Lowen Properties Limited, has requested permission to construct a ramp to improve accessibility to the commercial space located at 5990 Spring Garden Road. This application was made at the request of the commercial tenant; National Access Cannabis, (a permitted medical cannabis consulting service, not a dispensary). The commercial space is currently accessed from the street by stairs outside the building, within the private property. The ground floor elevation of the store is 0.73 m (2.4 ft) above the sidewalk.

The sidewalk width in this area is 5.00 m (16.4 ft), with several parking meters and utility poles located within the sidewalk area. The commercial buildings along Spring Garden Road in this area commonly have seasonal sidewalk cafes extending into the right of way.

As outlined in the Encroachment By-law, permanent encroachments within the HRM street right-of-way, require an encroachment agreement, as well as authorization from Regional Council. The proposed access ramp is a type of encroachment which requires approval from Regional Council, and is also subject to an annual fee as outlined in Administrative Order 15.

DISCUSSION

The applicant proposes to install an accessible ramp along the building frontage which will connect to the existing access. The proposed ramp is 6.10 m (20.0 ft) long and 2.48 m (8.2 ft) wide, with the first 0.34 m (1.1 ft) of width to be located on private property. The sidewalk width at this location is 5.00 m (16.4 ft) and the proposed ramp would not encroach on the pedestrian through zone. This would allow 2.48 m (8.2 ft) of clear space for pedestrians, which is greater than the recommended minimum of 2.10 m (6.9 ft).

In new developments, building accessibility can easily be accommodated in the building design. However, in this case, creating a ramp inside the building to improve accessibility is not feasible, as it would require significant structural changes within the building.

The area of the encroachment is 13.18 m² (141.9 ft²). As per Administrative Order 15, an encroachment of this size would require a one-time license fee of \$125.00 and an annual encroachment fee of \$132.00. In accordance with bylaw E-200, Section 10 (b) (ii), Council may waive all or any encroachment fees for an encroachment in respect of a structure located on a street that provides a barrier free path of travel such as a ramp.

The proposed accessible ramp will not significantly impact the Municipality's operational requirements for this portion of the right of way, nor does it pose any hazards to sidewalk users. Accordingly, staff recommend approval of the requested encroachment and the waiving of the annual fee.

FINANCIAL IMPLICATIONS

The annual encroachment fee of \$132.00 can be absorbed within TPW's existing operating budget.

RISK CONSIDERATION

There are no risk considerations associated with the recommendations contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by HRM's Community Engagement Strategy is not applicable to this process.

In keeping with the motion of the Accessibility Advisory Committee, as approved by the Transportation Standing Committee on May 23, 2013, all applications for permanent encroachments on sidewalks are to be brought for review by the Accessibility Advisory Committee, and the Committee's feedback is to be incorporated as a part of the staff report to Council.

This application was presented to the Accessibility Advisory Committee (AAC) on September 18, 2017. The AAC voted to recommend that Council to approve this application. The AAC recommended adding tactile elements and high contrast visual elements to the ramp structure, to increase accessibility. The report was reviewed by members of the Canadian National Institute for the Blind, as well as representatives of Walk & Roll Halifax, who also recommended tactile elements and high contrast visual elements. These elements will be made a requirement of the encroachment license, should Council approve the encroachment request.

ENVIRONMENTAL IMPLICATIONS

No implications identified.

ALTERNATIVES

1. Council could choose not to approve the proposed Encroachment Agreement or waiving the annual fee. This is not recommended for the reasons contained within this report.
2. Council may choose to approve the encroachment and include other terms and conditions in the encroachment agreement as it may deem appropriate as per clause 10(a) of By-law E-200. Such modifications may require further discussion with the applicant.

ATTACHMENTS

- Attachment A Encroachment Agreement with plan showing proposed encroachment (Schedule A)
Attachment B Photo showing footprint of proposed encroachment marked on sidewalk
Attachment C Letter from applicant

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Shannon O'Connell, MAsc, P.Eng., Program Engineer, 902.476.2917

Original Signed

Report Approved by: _____
Ashley Blissett, P.Eng., Program Manager, Development Engineering, 902.490.6848

Original Signed

Report Approved by: _____
Peter Duncan, P.Eng., Manager, Infrastructure Planning, 902.490.5449

Original Signed

Report Approved by: _____
Kelly Denty, Acting Director, Planning and Development, 902.490.4800

This **Encroachment License Agreement** made this ____ day of _____, 20__.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
("HRM")

And **LOWEN PROPERTIES LIMITED**
(the "Licensee")

Recitals

- A. **Whereas** the Licensee owns property at 5990 Spring Garden Rd, Halifax and wishes to construct an Accessible Ramp (the "Encroachment") within the HRM street right of way as shown and described in Schedule "A";
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 2017, the HRM agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Sidewalk, identified in Schedule "A" to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the

street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

7. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or

alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 15 business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

12. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

Insurance

13. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

14. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is 13.2 square metres.

15. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

16. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

17. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed ;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this license agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

18. Any written notice or communication relating to the administration of this license agreement to be given or delivered by one party to the other shall be deemed to be duly

given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Peter Lawen, Lowen Properties Limited,
1245 Barrington Street, Halifax, Nova Scotia, B3J 1Y2

19. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

20. This license agreement shall endure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

21. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

22. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

23. The parties agree this is a public document within the meaning of the *Municipal Government Act*, SNS 1998, c 18.

24. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

IN WITNESS WHEREOF the parties hereto have executed this license agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in

The presence of:

LOWEN PROPERTIES LTD

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

Schedule "A" – Plans Showing and Describing the Proposed Encroachment, including the type of encroachment, the civic address where such encroachment is authorized, and any other terms and conditions as may be necessary in the opinion of Council, the Inspector or the Engineer.



Proposed Entrance Elevation



THE CITY OF
CHICAGO
CRIME STOPPERS
1 800 237 2373



EAT IN
TAKE OUT

444-7776
404-1600

CANNABIS





To the Honorary Members of the City Council of HRM,

The following is in support of National Access Cannabis and our request for wheelchair access to be granted to the front of the entrance to 5990 Spring Garden Road in Halifax, N.S. We are hoping to be open for the 15th of September, 2016.

I write to confirm that National Access Cannabis (NAC) does not sell or dispense any cannabis, cannabis derivatives or products that contain cannabis. NAC is in the business of providing assistance and information to patients with medical problems who have medical documents allowing them to acquire medicinal marijuana from third party, off-site, licensed producers. NAC does not deal in medicinal marijuana itself.

NAC's business is the provision of professional advice and knowledgeable counselling and help for patients with medical conditions that may be treated by medical marijuana. NAC occupies a critical role between license producers and patients.

Please note that here at NAC, we are passionate about what we are doing to better our community and as well to make sure we are providing a safe and fair experience for all citizens that will be needing access to our facility. It is with this goal in mind that I write our submission.

First and foremost, I would like to state that every member of the community should be able to access the front entrance to any business or facility and not have to enter the back entrance as their only recourse. I have spoken directly to a number of members in the community who are in need of wheelchair access and they have made it very clear that being denied access to the front door is not only degrading and demoting, but it is a harsh reminder of their disability and possibly a denial of their chartered rights and freedoms. Front door access certainly should not be reserved for those who are blessed with the ability to access without disabilities.

To be clear, the back access is only being made available to accommodate a worst case scenario in which we are denying many of our disabled patients access through the front entrance, something that we certainly hope and ideally expect not to be the case.

The back entrance is just that; a back entrance. Our back entrance, like many other businesses in the area, has garbage and recycling bins surrounding the entire area from all the existing buildings which poses a number of concerns. The route and distance the users of this entrance will be forced to use is quite long. It is approximately 50 feet and creates a less than ideal approach, or welcoming feeling in to our facility. In non-ideal climate conditions that are very frequent throughout the Nova Scotian autumns, winters and springs, one can only relate to the concerns that heavy rains, high winds, snow and sleet will bring. There is also the issues of vermin and rodents in the core area of Halifax with restaurants and garbage bins, although properly stored, surrounding our facility. We are certainly not an exception to this problem.



NATIONAL ACCESS
CANNABIS

Appendix C

I could continue to list many more reasons our facility should be granted front entrance wheelchair access but I suspect that the Council will certainly concur to the above mentioned reasons and recognize the need for providing proper access to the facility for all of our patients.

When considering the actual location of the entrance, the distance needed to travel from the road off the sidewalk, then down a make shift path that is approximately 50 feet, would only be a reminder of the inconveniences disabled persons need to incur in a world that is certainly difficult enough for them as is.

People are coming to our clinic seeking help, this is a tough of enough challenge in itself. We are simply trying to make getting our help as accessible as possible to any and all persons.

We have a number of members in this community who are disabled and are more than willing to support our cause if so required.

I want to thank the council for its time in review of this matter and your consideration. I urge you to consider the importance of our medical facility having wheelchair access at the front entrance. I trust that this letter addresses all of your concerns but please do not hesitate to contact me if you need further information.

Yours Very Truly,


Atlantic Regional Manager
National Access Cannabis

let's talk answers

