

HALIFAX

P.O. Box 1749
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Item No. 14.1.1
Halifax Regional Council
April 24, 2018

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Jacques Dubé, Chief Administrative Officer

DATE: March 1, 2018

SUBJECT: Red Tape Reduction - Amendments to By-law E-200

ORIGIN

Item 14.6.2, Regional Council, August 15, 2017.

Motion approved that Halifax Regional Council request a staff report to consider amendments to By-law E-200 Respecting Encroachment upon, under or over a street that would allow Transportation and Public Works staff to proceed the approval process for encroachment license requests without council authorization.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, R.S.N.S. 2008, c. 39 Subsection 188(2) "...the Council may, in any by-law (e) provide for a system of licenses, permits or approvals... and (f) where decision making is delegated by by-law to a person or committee other than the Council, provide for an appeal of the decision, the body that is to decide the appeal and related matters.

and

Subsection 324(2) The Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments.

RECOMMENDATION

It is recommended that Halifax Regional Council adopt By-law E-205, amending By-law E-200 Respecting Encroachments Upon, Under or Over a Street, as set out in Attachment 2 of this report.

BACKGROUND

During the 2017-2018 Budget process, Transportation and Public Works (TPW) identified an initiative for economic development to complete a review of the Streets By-law (S-300) and the Encroachments By-law (E-200). The purpose of the review is to ensure consistency among bylaws, streamline process, and reduce red tape.

At the August 15, 2017 Regional Council meeting, a motion was approved that Halifax Regional Council request a staff report to consider amendments to By-law E-200 Respecting Encroachment upon, under or over a street that would allow Transportation and Public Works staff to proceed the approval process for encroachment license requests without council authorization. During discussion of this motion, it was clarified that the question of an appeal process would be considered in the staff report.

DISCUSSION

Several meetings were held with representatives of HRM departments identified as stakeholders in By-law E-200, including Traffic Management, Planning and Development, Building Standards, By-law Enforcement, and License Standards. During these meetings, staff identified concerns and challenges with the current legislation. Business processes were also reviewed to identify potential efficiencies, changes to business process since the by-law was first implemented, and new business processes that would need to be developed with changes to this by-law.

The amendments to By-law E-200 include the following categories, as discussed below:

- Changes to Approval Requirements
- Removal of the Inspector
- Housekeeping Amendments

Changes to Approval Requirements

Upon review of typical encroachments within the right of way, several changes to the approval process are recommended by HRM Staff. A summary of current and recommended approval requirements is in Table 1.

Telephone Booths

Staff has not received a request for an encroachment for a telephone booth in over a decade, and it is not anticipated that new locations would be installed given the change in technology. If a request is made for an encroachment for a telephone booth is made, it would be considered under the category of 'Other Permanent Encroachments' and would go to Regional Council for consideration.

Sandwich Board Signs

Sandwich board signs are legislated under By-law S-801 Respecting Licensing of Temporary Signs. This encroachment type has been removed, and subsection 7(5) has been added to clarify that encroachments that are authorized under another by-law are exempt from By-law E-200.

Facilities Owned by a Party Other Than a Utility

Typically, facilities installed with the right of way are owned by a utility, and are governed under an agreement with the Municipality pursuant to Section 10 of By-law E-200 and/or By-law S-300 Respecting Streets. From time-to-time, a private third-party may request to install and own facilities within the right of way, e.g. a utility conduit between two buildings that must cross beneath HRM right of way. Under the current By-law E-200, these encroachments must be authorized by Council.

Staff has experience reviewing facility locations for utilities, and issuing Streets and Services Permits for the installation of these facilities. In the past, Council has authorized these types of encroachment requests, as the third-party provides justification for the need for the facilities to be located within the right of way. Therefore, it is proposed that requests for installation of facilities within the right of way from private third-parties be reviewed and authorized by Staff.

Staff would review these requests following the same criteria currently used for utilities, with consideration given to public impacts and proximity to other facilities in the right of way. It is proposed that Staff would issue an Encroachment License for a permanent encroachment, with an annual fee as prescribed by subsection 5(2) of By-law E-200.

Barrier-free Access

When property owners have a need to add barrier-free access to existing buildings, either through a requirement of the Nova Scotia Building Code or a need to provide access to building users, there may not be an opportunity to provide access within the property footprint. This situation could occur where existing buildings are located at or near the property line adjacent to the right of way. This would not apply to new construction; new construction is required to incorporate barrier-free access within the property boundaries.

The promotion and support of accessibility and inclusion has been adopted by Regional Council in the past through the HRM Strategic Plan. Amendments to By-law E-200 to authorize Council to waive fees associated with these types of encroachments were adopted on June 13, 2017. To date, Staff has received two requests for Encroachment Licenses for barrier-free access, which Council approved on November 24, 2017.

The specifications for barrier-free access are clearly defined by the Nova Scotia Building Code, and the construction of permanent structures would be overseen by building officials. Staff has clear guidelines with respect to temporary and permanent encroachments onto the sidewalk, which would be incorporated into the review of these applications. If the proposed amendments are adopted, Staff would also consult other stakeholders, such as the Accessibility Advisory Committee, before issuing an encroachment license. Staff would also be able to waive fees for encroachments that meet the requirements of subclause 10.b(ii) when an encroachment license is issued.

Temporary Installation of Beautification Elements by BIDs

HRM has partnered with HRM's eight Business Improvement Districts (BIDs) to establish a coordinated approach for the delivery of enhanced maintenance services. Within these districts, this collaborative approach demonstrates a shared commitment to the enhancement of HRM's BIDs as vibrant and prosperous areas to do business. As part of this plan, BIDs are encouraged by HRM through their service agreements to install temporary beautification elements (e.g. planters) within the right of way to increase the vibrancy of the area.

If the proposed amendments are adopted, staff would issue an Encroachment License for a period of one year for these temporary elements. Staff has clear guidelines with respect to temporary encroachments onto the sidewalk or right of way, which would be incorporated into the review of these applications. Special conditions may be imposed on these encroachments, such as time of year, on a case-by-case basis.

Pole-Mounted Infrastructure

Poles within the right of way are typically owned by HRM or by a utility. In the past, Regional Council has approved Encroachment Licenses to permit the installation of pole-mounted infrastructure, such as banners or wreaths, where the pole owner has provided permission for the installation.

Pole-mounted infrastructure is typically located out of the path of pedestrians and/or vehicles within the right of way. If the proposed amendments are adopted, staff would require confirmation of the pole owner's permission as part of the application, and the review would include clearance for users of the right of way, both vertically and horizontally.

Infrastructure to Facilitate the Construction of a Building

During construction of buildings on properties where a 'zero-setback' has been approved, there may be a need to install construction infrastructure within the right of way, such as underpinning or shoring. This infrastructure does not typically interfere with existing or future use of the street. If the proposed amendments are adopted, staff could issue an encroachment license for this infrastructure to remain within

the right of way, if a professional engineer deems it is required for the construction of the building, and, in the opinion of staff, would cause excessive disruption to remove.

Decorative Building Features

There are certain Municipal by-laws, such as Land Use By-laws, which have requirements for decorative building features (e.g. cornices), to meet the cohesiveness of the area. These decorative features could encroach into the right of way, depending on the distance of the building face from the property line. These features would typically be located well above grade, and would not impact pedestrian and/or vehicle use of the right of way. Staff would issue an encroachment license for these elements when the building permit is issued.

Building Mechanical Equipment

Building mechanical equipment, including air conditioning units, heat pumps, exhaust fans, etc., are typically attached to the exterior of a building face. In areas where the building face is adjacent to the right of way, the only feasible location for equipment to be installed is within the right of way. If the proposed amendments are adopted, staff would issue a license for the installation of this equipment. Staff has clear guidelines with respect to encroachments onto the sidewalk or right of way, which would be incorporated into the review of these applications. The review would include clearance for users of the right of way, both vertically and horizontally.

Encroachments Exempt from License or Rental Fees

Under By-law E-200, subsection 7(3), encroachment license fees are not payable for any encroaching structure which existed in the former City of Halifax on May 15, 1965, or in the remainder of the Municipality on the effective date of the by-law (July 17, 1999). These encroachments have been in place prior to any by-law respecting encroachments, and therefore would only be removed if a safety or operational concern related to the presence of the encroachment was raised. Although these encroachments do not generate any fees, an encroachment license must be issued for their presence.

If the proposed amendments are adopted, these encroachment licenses could be issued by staff, upon confirmation of no safety and/or operational concerns.

Table 1, Recommended Approval Requirements By-law E-200

Encroachment Type	Current Approval under E-200		Recommended Approval	
	Council	Staff	Council	Staff
Canopies for a commercial, industrial or institutional building		X		X
Awnings or signs attached to a commercial, industrial or institutional building		X		X
Steps, foundations or other structures of existing buildings where the structure must encroach, or where an encroachment already exists and there is no additional encroachment toward the curb		X		X
Telephone Booths		X	Removed	
Underground communications conduit and manholes to service the conduit		X		X
Sandwich board signs		X	Removed	
Temporary encroachment associated with construction, demo, restoration of a structure abutting a street		X		X
Facilities owned by a party other than a utility	X			X
Barrier-free access for existing buildings where such access cannot be provided within the property boundary	X			X
Temporary installation of beautification elements by Business Improvement Districts where an enhanced maintenance plan is in place	X			X
Infrastructure mounted on a pole located in the right of way	X			X

Encroachment Type	Current Approval under E-200		Recommended Approval	
	Council	Staff	Council	Staff
Infrastructure to facilitate the construction of a building, where the infrastructure is deemed by an engineer to be required for the construction of the building, and in the opinion of staff would cause excessive disruption to remove	X			X
Decorative building features required by a Municipal by-law	X			X
Building mechanical equipment, including HVAC and exhaust fans	X			X
Encroachments exempt from license or rental fees under subsection 7(3), which had not previously been formally licensed	X			X
Other Permanent Encroachments	X		X	

Reduction to Approval Time

The current process for issuing encroachment licenses for encroachments that must be authorized by Council takes two to six months from the time that all information is received from the property owner. If the amendments to By-law E-200 are adopted, most applications for an encroachment could be approved by staff within two to eight weeks once all information is received. These changes would align with the Municipality’s goal to reduce red tape for residents, without compromising the need to protect the public interest in the street.

Encroachments on Sidewalk

At the June 13, 2013 Regional Council meeting, a motion was passed that Regional Council request that any future applications for permanent encroachments on sidewalks be brought for review by the Accessibility Advisory Committee (AAC), and that the Committee’s feedback be incorporated as a part of the staff report. Staff has incorporated this into our process, with feedback from the AAC incorporated into the community engagement section of the staff report to Council where a permanent encroachment is on a sidewalk.

If the proposed amendments are adopted, when a request for a permanent encroachment on a sidewalk is made, staff will bring the application to the AAC for feedback. This feedback will be used to support authorization of the permanent encroachment, or denial of the request.

Appeals

If the proposed amendments are adopted, appeals will continue to be addressed by Section 8 of By-law E-200. Any person who had been refused an Encroachment License by the Engineer may appeal such refusal. The appeal will be to the Appeals Committee, and be handled in the standard process of Appeals Committee.

Removal of the Inspector

Encroachment licenses are no longer issued by building officials (the Inspector). Encroachments that are approved by HRM staff are reviewed and approved by staff in Right of Way Services or Development Engineering, due to the impact typically resting within the right of way. Therefore, references to “the Inspector, the Building Inspector for the Municipality”, were either removed, or replaced with “the Engineer, the Engineer for the Municipality”, to match the current business process. Staff approving encroachment licenses under the proposed amendments will be acting under the supervision and direction of the Engineer.

Summary of Housekeeping Amendments to By-law E-200

In addition to updating the approval process for applications for Encroachment Licenses, By-law E-200 was also reviewed to determine if other amendments are required. Additional amendments were identified and are summarized as follows:

- Changing the heading of “Definitions” to “Interpretation” for consistency with other by-laws;

- Updating the definition of “street” to match the HRM *Charter*;
- Addition of the definition of “utility” for consistency with other by-laws;
- Revising subsection 5(5) to clarify the licenses which may be cancelled by the Municipality upon breach of any term or condition subject to which the license is issued, at any time; and
- Adding subsection 7(5) to clarify the provisions of By-law E-200 do not apply to an Encroachment authorized under another by-law, such as sidewalk cafes or temporary signs.

FINANCIAL IMPLICATIONS

No significant financial implications are expected with the proposed changes. There may be minor cost savings to the Municipality and residents due to the streamlined process.

RISK CONSIDERATION

The risk associated with adopting these amendments is considered low. If the proposed amendments are adopted, the encroachments authorized by staff will be encroachments that have clear guidelines for review, and have typically been authorized by Regional Council during past reviews. In cases where an application for encroachment has been denied, the applicant will be able to appeal the decision of the Engineer through the Appeals Committee.

COMMUNITY ENGAGEMENT

There has been no formal community engagement other than discussions during the August 15, 2017 Regional Council meeting. Staff will communicate changes to applicants for an Encroachment License as they make requests for encroachments.

Internal HRM stakeholders have been engaged to identify issues with By-law E-200, potential process improvements, and provide input on By-law E-200 amendments.

ENVIRONMENTAL IMPLICATIONS

There were no implications identified.

ALTERNATIVES

Council could choose to not adopt By-law E-205 amending By-law E-200 Respecting Encroachments and either:

1. Proceed with no changes to By-law E-200 at this time, or
2. Request Staff to initiate amendments to By-law E-200 differing from those laid out in this Report.

These alternatives are not recommended.

ATTACHMENTS

- Attachment 1 – Showing Proposed Changes to By-law E-200 Respecting Encroachments with Amendments
Attachment 2 – Amending By-law E-205

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Megan Soroka, Right of Way Engineer, 902.490.6219

**HALIFAX REGIONAL MUNICIPALITY
BY- LAW E - 200**

**RESPECTING ENCROACHMENTS UPON,
UNDER OR OVER A STREET**

BE IT ENACTED by the Council of the Halifax Regional Municipality as follows:

Number and Short Title

1 This bylaw shall be known as By-law E - 200 and may be cited as the “Encroachment By-law”.

Definitions Interpretation

2 In this bylaw:

(ja) “Appeals Committee” means the Appeals Committee established pursuant to Halifax Regional Municipality By-law A-100, the Appeals Committee By-law;

(aa) “Council” means the Council of the Halifax Regional Municipality;

(b) “encroachment” means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice;

(c) “Engineer” means the Engineer for the Halifax Regional Municipality and includes a person acting under the supervision and direction of the Engineer;

(d) “facility” means any pole, pole lines (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment;

(e) ~~“Inspector” means the Building Inspector for the Municipality~~ **Repeal**;

(f) “~~m~~Municipality” means the Halifax Regional Municipality;

(fa) "owner" includes

(i) a part owner, joint owner, tenant in common or joint tenant of the whole or any part of land or a building, and

(ii) in the absence of proof to the contrary, the person or persons assessed for the property;

- (g) “person” means a natural person, corporation, partnership, an association, society, firm, agent, trustee, or registered Canadian charitable organization as defined in section 3(bc) of the Halifax Regional Municipality Charter, and includes the heirs, executors or other legal representatives of a person, or owner;
- (h) “street” includes a public alley, boulevard, bridge, court, footway, highway, lane, parking lot, place, sidewalk, square and any part thereof, owned by the municipality;
- (i) “structure” includes any building, bridge, pedway, balcony, bay window, elevator, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, porch, portico, railing, retaining wall, sign attached to a building, step, storage tank, tunnel, vault, veranda, or any part thereof; and
- (j) “utility” includes any person or corporation that provides water, wastewater services, stormwater services, electric power, telecommunications service, natural gas or other gas intended for use as fuel to the public.

License Required

- 3 No person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the mMunicipality unless an encroachment license has been issued by the mMunicipality.

Approval Required

- 4 ~~An encroachment license shall not be issued unless the Council authorizes such encroachment~~

~~except for the following, which may be issued by the Inspector without the authorization of Council:~~

- ~~(i) canopies for commercial, industrial and institutional buildings only and to be restricted in width to not more than the entrance width plus six feet for a period of 5 years, renewable after inspection;~~
- ~~(ii) awnings and signs attached to a building for commercial, industrial and institutional buildings only and to be restricted to not more than the width of the building, or in the case of a corner installation, not more than the width of the building plus the width of the awning only issued for a period of 5 years, renewable after inspection; and~~
- ~~(iii) steps, foundations and other structures for buildings where steps, foundations and other building features must encroach, or where an~~

~~encroachment already exists, the area of encroachment may be increased provided there is no additional encroachment toward the curb for a period of 5 years, renewable after inspection;~~

~~(b) — except for the following, which may be issued by the Engineer without the authorization of Council:~~

~~(i) — telephone booths provided the free flow of pedestrians is not impeded, a traffic hazard is not created, and the location is acceptable to the municipal department using the property for a period of 5 years, renewable after inspection.~~

~~(ii) — underground communications conduit, and manholes to service the conduit, provided that the installation and use of the telecommunications cable will not interfere with the proper operation and maintenance of existing underground utilities, nor interfere with planned street works.~~

~~(iii) — sandwich board signs located on a public sidewalk, as may be permitted under Section 7 of By law S 800, The Sign By law. **Repeal**~~

4A The Engineer may authorize a temporary encroachment in association with construction, demolition or restoration of a structure abutting a street if the Engineer is satisfied that the temporary encroachment complies with the conditions set out in the Construction Impacts Mitigation Administrative Order and such further conditions as may be imposed by the Engineer in the interest of public safety.

4B An encroachment license shall not be issued unless the encroachment is authorized by Council except for the following encroachments, which may be authorized by the Engineer,

(a) for a period of 1 year for the temporary installation of beautification elements by a Business Improvement District where an enhanced maintenance plan is in place;

(b) for a permanent encroachment for:

(i) for a canopy for a commercial, industrial or institutional building, restricted in width to not more than the width of the entrance plus six feet;

(ii) for an awning or sign attached to a commercial, industrial or institutional building, restricted to not more than the width of the building, or in the case of a corner installation, not more than the width of the building plus the width of the awning;

(iii) for steps, a foundation or other structure of a building where the steps, the foundation or other building structure must encroach, or where an encroachment already exists, the area of encroachment may be increased provided there is no additional

encroachment toward the curb;

(iv) subject to permission granted by the owner of the pole, for infrastructure mounted on a pole located in the right of way for the installation of elements including banners, planters, and wreaths;

(v) for the installation of building mechanical equipment including HVAC and exhaust fans;

(vi) an underground communications conduit, and manholes to service the conduit, provided the installation and use of the telecommunications cable will not interfere with the proper operation and maintenance of existing underground utilities, nor interfere with planned street works;

(vii) the installation of facilities, owned by a party other than a utility;

(viii) an existing building that requires barrier-free access and such access cannot be provided within the property boundary;

(ix) the installation of infrastructure to facilitate the construction of a building, where the infrastructure is deemed by an engineer:

i. to be required for the construction of the building, and

ii. in the opinion of the Engineer would cause excessive disruption to remove;

(x) the installation of a decorative building feature required by a by-law, including a land-use by-law; or

(xi) an encroachment exempt from license or rental fees under subsection 7(3).

Encroachment License

5 (1) Every encroachment license shall indicate:

- (a) the type of encroachment authorized;
- (b) the civic address where such encroachment is authorized;
- (c) the length of time for which such encroachment is authorized; and
- (d) such terms and conditions as may be necessary in the opinion of Council, ~~the Inspector~~ or the Engineer.

- (2) The fee for an encroachment license shall be as prescribed by Administrative Order 15.
- (3) No license fee shall be payable for the renewal of a license.
- (4) The Council may, in its sole discretion, cancel an encroachment license at any time, without notice.
- (5) Without restricting the generality of subsection (4), those licenses listed in paragraphs 4(a)(i) to (iii) inclusive section 4A, clause 4B(a) and paragraphs 4B(b)(i),(ii), (iii), (iv), (v) and (viii), may be cancelled by the Municipality upon breach of any term or condition subject to which the license is issued, at any time, without notice.

Annual Rental Fee

- 6 In addition to the license fee, the owner of an encroachment shall pay rental fees as prescribed by Administrative Order Number 15.

Exceptions

- 7 (1) The provisions of this bylaw shall not apply to an encroachment by the Halifax Regional Water Commission or the Halifax-Dartmouth Bridge Commission.
- (2) Where the provision for payment of an encroachment fee is made by special statute as in the case Nova Scotia Power Inc. and the Maritime Telegraph and Telephone Company, the provisions of Sections 5(2) and 6 shall not apply.
- (3) License fees or rental fees, with the exception of temporary rental fees, shall not be payable in respect of any encroaching structure which existed
- (a) in the former City of Halifax on May 15, 1965, or
 - (b) in the remainder of the Municipality on the effective date of this bylaw
- or to any repair or replacement of the encroaching structure that does not increase the amount of the encroachment.
- (4) The Engineer may waive the fees required for an encroachment license respecting subclause 10(b)(i).
- (5) The provisions of this By-law shall not apply to an encroachment authorized by another by-law of the Municipality.

Orders by the Engineer

- 7A (1) If after an inspection, the Engineer is satisfied that in some respect the encroachment is not constructed or maintained in compliance with the conditions of the encroachment license, the Engineer shall serve or cause to be served to the owner(s) of the encroachment license, an Order to comply.
- (2) Every Order shall contain:
- (a) the standards to which the encroachment does not comply;
 - (b) the date after which the encroachment will be subject to a re-inspection to confirm compliance with the Order; and
 - (c) the action that will be taken against the owner, should the encroachment not comply to the prescribed standards at the time of the re-inspection.
- (3) Where an Order has been served upon an owner, and the owner provides the Engineer with a schedule outlining specific time frames within which the work specified in the Order will be completed, the Engineer may accept or amend the schedule at which time the schedule will become a part of the Order.
- (4) Where an owner fails to comply with the requirements of an Order within the time specified in the Order, the Engineer may enter upon the property and carry out the work specified in the Order.

Appeals

- 8 (1) Any person who has been refused an Encroachment license by ~~the Inspector or~~ the Engineer may appeal such refusal.
- (2) The appeal shall be to the Appeals Committee.
- (3) Such appeal shall be in writing, in the form of a notice, and filed with the municipal clerk within 15 days of such refusal, and shall clearly state the grounds for such appeal.
- (4) The Appeals Committee shall determine such appeal at such time and place as it determines and may confirm such refusal by the ~~Inspector or~~ Engineer, as applicable, or direct the ~~Inspector or~~ Engineer, ~~as applicable,~~ to issue such license upon such terms and conditions that the Appeals Committee determines may be appropriate.
- (5) If the Appeals Committee directs the ~~Inspector or~~ Engineer, ~~as applicable,~~ to issue such license, the same shall be issued immediately.

Penalties

- 9 (1) Any encroachment which is not authorized by a current encroachment license shall be removed by the owner within 30 days after notice to remove the encroachment has been given to such owner by ~~the Inspector or~~ the Engineer.
- (2) If any owner fails to remove the encroachment within such 30 day period, the ~~Inspector or~~ Engineer may remove the encroachment.
- (3) Any owner who fails to remove the encroachment within such 30 day period shall be liable to a penalty not less than \$100 not exceeding \$2,000 and, in default of payment thereof, to imprisonment for a period not exceeding 60 days.

Cost of Work

- 9A If the Council, a committee, the ~~Inspector~~ **Engineer** or another employee of the HRM causes work to be done pursuant to section 7A or subsection 9(2) the owner shall be fully responsible for the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment.
- 9B In addition to any other remedies at law, if the Council, a committee, the Engineer, ~~Inspector~~ or another employee of the HRM causes work to be done pursuant to this By-law, the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment, is a first lien on the principle use property upon which, or for the benefit of which, the work was done.

Service

- 9C (1) Any Notice, Order, decision or other document required to be served under this By-law may be served personally, by mailing it to the person at the latest address shown on the assessment roll or the application for the license, by electronic mail or by facsimile.
- (2) A Notice, Order, decision or other document is deemed to have been served on the third day after it was sent.

Encroachment Agreements

- 10 Notwithstanding the provisions of this bylaw, Council may
- (a) enter into an agreement permitting any person to construct or maintain an encroachment upon such terms and conditions as Council may deem appropriate, and the provisions of this bylaw shall not apply to such encroachments provided that consideration for such agreement shall not be less than the fees payable by a licensee for a similar structure pursuant to subsection 5(2) and section 6 of this bylaw;
- (b) waive all or any of the fees otherwise payable pursuant to any provisions of this

bylaw for an encroachment in respect of:

- (i) overhead pedways or underground pedestrian tunnels, if in the opinion of Council, the pedways or tunnels provide a public benefit, or
- (ii) a structure located on a street that provides a barrier free path of travel pursuant to Schedule C of the Nova Scotia Building Code Regulation, such as a ramp, passenger elevators, inclined moving walkways or a passenger elevating device; and
- (c) enter into an agreement with a gas distribution company which has been approved by the Nova Scotia Utility and Review Board to distribute gas within the municipality, or communications company licensed by the Canadian Radio-television Telecommunications Commission, or Canada Post Corporation, permitting the construction or maintenance of an encroachment upon such terms and conditions that Council may deem appropriate. The provisions of this by-law shall not apply to such encroachments, and the fees payable shall be determined by Council.

Done and passed in Council this 13th day of July, 1999

Mayor

Municipal Clerk

I, Vi Carmichael, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above-noted By-Law was passed at a meeting of Halifax Regional Council held on July 13, 1999.

Vi Carmichael, Municipal Clerk

BY-LAW E-200

Notice of Motion:	May 4, 1999
First Reading:	May 11, 1999
ANotice of Intent@ Publication:	May 15, 1999
Second Reading:	July 13, 1999
Effective Date:	July 17, 1999

Amendment # 1 (V-101)

Subsection (3) of Section 9

Notice of Motion:	August 19, 2003
First Reading:	August 26, 2003
ANotice of Public Hearing@ Publication:	September 6, 2003
Second Reading:	September 23, 2003
Approval of Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	September 27, 2003

Amendment # 2 (E-201)

Section 4 (b)

Notice of Motion:	June 27, 2006
First Reading:	July 4, 2006
Notice of Public Hearing Publication:	August 26, 2006
Second Reading:	September 12, 2006
Notice of Approval by Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	November 18, 2006

Amendment # 3 (E-202)
Sections 2 & 4
Notice of Motion: Waive April 7, 2009
First Reading: April 7, 2009
Notice of Public Hearing Publication: April 11, 2009
Second Reading: May 5, 2009
Approval by Service Nova Scotia and Municipal Relations: N/A
Effective Date: October 24, 2009

Amendment # 4 (A-500)
Amended Section 2 & 8
Notice of Motion: March 20, 2012
First Reading: March 27, 2012
Notice of Second Reading Publication: March 31, 2012
Second Reading: April 17, 2012
Approval by Service Nova Scotia and Municipal Relations: N/A
Effective Date: April 21, 2012

Amendment # 5 (E-203)
Amended Section 10
Notice of Motion: June 10, 2014
First Reading: June 24, 2014
Notice of Second Reading Publication: July 5, 2014
Second Reading: July 22, 2014
Approval by Service Nova Scotia and Municipal Relations: N/A
Effective Date: July 26, 2014

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**Attachment 2
(Amending By-law)**

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW E-205
RESPECTING ENCROACHMENTS UPON,
UNDER OR OVER A STREET**

BE IT ENACTED by the Council of the Halifax Regional Municipality that By-law E-200, the *Encroachment By-law*, is amended as follows:

1. Section 2 is amended by:
 - (a) striking out the header “Definitions” before the start of the section and after section 1;
 - (b) adding the header “Interpretation” before the start of the section and after section 1;
 - (c) re-lettering clause j as clause a of section 2;
 - (d) re-lettering clause a as clause aa of section 2;
 - (e) repealing clause e of section 2;
 - (f) capitalizing the word “Municipality” at the beginning of clause f of section 2;
 - (g) adding the letters and word “ing lot” at the end of the word “park” and before the comma and word “place” in clause h of section 2;
 - (h) adding the word “and” after the semicolon at the end of clause i of section 2; and
 - (i) adding a new clause j immediately after the clause i of section 2 as follows;
 - (j) “utility” includes any person or corporation that provides water, wastewater services, stormwater services, electric power, telecommunications service, natural gas or other gas intended for use as fuel to the public.
2. Section 3 is amended by capitalizing the word “Municipality” as it appears in the section.
3. Repealing section 4.
4. Section 4B is added immediately after section 4A and before section 5:

4B An encroachment license shall not be issued unless the encroachment is authorized by Council except for the following encroachments, which may be authorized by the Engineer,

 - (a) for a period of 1 year for the temporary installation of beautification elements by a Business Improvement District where an enhanced maintenance plan is in place;
 - (b) for a permanent encroachment for:
 - (i) for a canopy for a commercial, industrial or institutional building, restricted in width to not more than the width of the entrance plus six feet;
 - (ii) for an awning or sign attached to a commercial, industrial or institutional building, restricted to not more than the width of the building, or in the case of a corner installation, not more than the width of the building plus the width of the awning;
 - (iii) for steps, a foundation or other structure of a building where the steps, the foundation or other building structure must encroach, or where an encroachment already exists, the area of encroachment may be increased provided there is no additional

encroachment toward the curb;

(iv) subject to permission granted by the owner of the pole, for infrastructure mounted on a pole located in the right of way for the installation of elements including banners, planters, and wreaths;

(v) for the installation of building mechanical equipment including HVAC and exhaust fans;

(vi) an underground communications conduit, and manholes to service the conduit, provided the installation and use of the telecommunications cable will not interfere with the proper operation and maintenance of existing underground utilities, nor interfere with planned street works;

(vii) the installation of facilities, owned by a party other than a utility;

(viii) an existing building that requires barrier-free access and such access cannot be provided within the property boundary;

(ix) the installation of infrastructure to facilitate the construction of a building, where the infrastructure is deemed by an engineer:

i. to be required for the construction of the building, and

ii. in the opinion of the Engineer would cause excessive disruption to remove;

(x) the installation of a decorative building feature required by a by-law, including a land-use by-law; or

(xi) an encroachment exempt from license or rental fees under subsection 7(3).

5. Section 5 is amended by:

(a) striking out comma and the words “,the Inspector” immediately after the word “Council ” and before the words “or the” in clause d of subsection 1;

(b) striking out the words “paragraphs 4(a)(i) to (iii) inclusive” after the words “listed in” and before the comma and the words “may be” in subsection 5;

(c) adding the words “section 4A, clause 4B(a) and paragraphs 4B(i), (ii), (iii), (iv), (v) and (viii)” after the words “listed in” and before the comma and the words “may be” in subsection 5; and

(d) capitalizing the word “Municipality” in subsection 5.

6. Section 7 is amended by:

(a) capitalizing the word “Municipality” in clause b of subsection 3; and

(b) adding subsection 4 and 5 immediately after subsection 3 and before section 7A as follows:

(4) The Engineer may waive the fees required for an encroachment license respecting subclause 10(b)(ii).

(5) The provisions of this By-law shall not apply to an encroachment authorized by another by-law of the Municipality.

7. Section 8 is amended by:

(a) striking out the words “the Inspector or” after the words “license by” and before the words “the Engineer” in subsection 1;

- (b) striking out the words “Inspector or” after the words “refusal by” and before the word “Engineer” in the second line of subsection 4;
 - (c) striking out the words “Inspector or” after the words “direct the” and before the word “Engineer” in the third line of subsection 4;
 - (d) striking out the punctuation and words “,as applicable,” after the word “Engineer” and before the words “to issue” in subsection 4;
 - (e) striking out the words “Inspector or” after the words “directs the” and before the word “Engineer” in subsection 5; and
 - (f) striking out the punctuation and words “,as applicable,” after the word “Engineer’ and before the words “to issue” in subsection 5.
8. Section 9 is amended by:
- (a) striking out the words “the Inspector or” after the words “owner by” and before the words “the Engineer” in subsection 1; and
 - (b) striking out the words “Inspector or” after the word “the” and before the word “Engineer” in subsection 2.
9. Section 9A is amended by:
- (a) striking out the word “Inspector” after the word “the” and before the words “or another employee”; and
 - (b) adding the word “Engineer” after the word “the” and before the words “or another employee”.
10. Section 9B is amended by striking out the comma and word “,Inspector” after the words “the Engineer” and before the words “or another employee”.

Done and passed by Council this day of , 2018.

Mayor

Municipal Clerk