



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

Item No. 15.1.7
Halifax Regional Council
March 5, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: January 23, 2024

SUBJECT: Encroachment Agreement – fence at 8 Lexington Avenue, Dartmouth

ORIGIN

Encroachment Agreement requested by Alexandre Tremblay for an encroachment adjacent to his home at 8 Lexington Avenue in Dartmouth (PID 40468548).

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S 2008, c. 39 subsection 324(2), provides:

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.

By-law E-200, respecting Encroachments Upon, Under or Over a Street, subsections 3 and 4 provides:

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

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,

RECOMMENDATION

It is recommended that Halifax Regional Council:

Not approve the attached Encroachment License Agreement for the fence encroaching upon the street right of way.

BACKGROUND

Staff became aware of an encroaching fence while investigating a customer service request submitted through the 311 Contact Centre in May 2023 (CSR# 2325122). The initial concern was related to the height of the fence exceeding the limit of 6.5 feet described in the *Building By-Law*¹. During that investigation, it was also determined that a section of the fence is encroaching into HRM-owned street right of way without an encroachment license. After discussing the application process and fees associated with an encroachment agreement, the property owner submitted a letter (Attachment 1) requesting HRM to approve their fence.



Figure 1: Image showing the fence adjacent to 8 Lexington Avenue (September 2023)

The encroaching infrastructure does not fall under categories that may be authorized by the Engineer as described in the *Encroachment By-Law*². Therefore, authorization must be granted by Regional Council.

DISCUSSION

Based on available imagery, the fence appears to have been constructed in late 2020. A Right of Way Infrastructure Inspector conducted a site visit in June 2023 and confirmed that the height of the fence is acceptable, but the fence was found to extend beyond the property line and into the street right of way.



Figure 2: Image showing the fence along Saratoga Dr relative to the property line (in red)
The fence extends approximately 3.5 metres beyond the property line and is 20 metres in length. This

¹ See [Building By-Law](#)

² See [Encroachment By-Law](#)

results in an encroachment area of 70 square metres with the fence set back approximately 1.5 metres from the curb. The applicant has indicated in their letter that they were unaware of the rules related to fence installation when they had it constructed.

By constructing a fence within the street right of way the applicant has blocked access to public land and added that land to their own lot. Staff are recommending the removal of the fence from public land.

If Regional Council accepts the recommendation and does not approve the encroachment agreement, then the applicant will be given notice by the Engineer to remove the encroaching infrastructure at their own cost.

FINANCIAL IMPLICATIONS

If Regional Council does not approve the encroachment, as recommended by staff, there are no financial implications for the Municipality.

If the encroachment is approved, the applicant will be required to pay a one-time license fee of \$125 plus an annual rental fee of \$700, as described in the *Encroachment By-Law and Administrative Order Number 15 respecting License, Permit and Processing Fees*³. The 5-year estimated financial implications can be summarized as follows:

Fiscal Year	2023/24	2024/25	2025/26	2026/27	2027/28
Operating – Cost Centre R112	\$825	\$700	\$700	\$700	\$700

Per the encroachment license (Attachment 2), both HRM and the Licensee are able to terminate the agreement and, in doing so, no further revenue would be realized.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate low, and to reach this conclusion consideration was given to financial, environmental, and operational impacts as well as alignment with strategic initiatives.

COMMUNITY ENGAGEMENT

Community engagement, as described in the *HRM Community Engagement Strategy*⁴, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose to approve the attached Encroachment License Agreement (subject to non-substantive amendments, if any) for the fence encroaching upon the street right of way.

³ See [Administrative Order Number 15](#)

⁴ See [HRM Community Engagement Strategy](#)

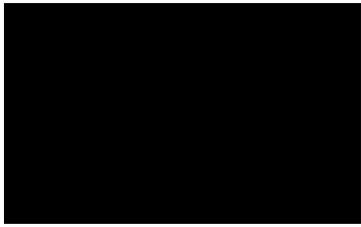
ATTACHMENTS

Attachment 1 - Encroachment Request Letter from Applicant

Attachment 2 - Council Approved Encroachment Agreement (Existing Construction)

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: Matthew Hamer, Right of Way EIT, Public Works, 902.483.0787
 Ben Daisley, P.Eng., Right of Way Engineer, Public Works, 902.471.9684



August 22, 2023

City Council: Harbourview-Burnside-Dartmouth East

Fence Encroachment - 8 Lexington Avenue, Dartmouth on Saratoga Drive

Refs: A. FENCE-2023-08557

Dear city council,

My family and I have been proud residents of 8 Lexington Avenue since September 2019. Upon our arrival, our primary concern was ensuring the safety of our young daughters and maintaining a good relationship with our unique neighbors at 37 Castleton Crescent, despite the warnings we received.

After a few years, and after numerous reminders not to touch their hedge, on my property, I finally informed them of our intention to complete the fence. Their reaction was rather severe - they reported me to the city!

Back in 2019, I was unaware of the city's right of way regulations. In an effort to benefit the neighborhood as a whole, I intentionally left a 5-foot gap from the curb. This allowed dogs to comfortably roam the green grass along the fence and teenagers to gather under the streetlight with their backs against it.

The fence itself, professionally installed by Macdonald Fencing, is a beautiful white PVC panel structure. We've received numerous compliments on its aesthetics, and we've never had any complaints, whether from the Mayor walking by or the heavy machinery operators during snow clearing.

I kindly request permission to maintain the fence in the city's right of way. While I admit my mistake in not initially following the rules, I believe there are no valid

reasons to remove it. It doesn't obstruct any city services, and I must admit, I'd like to assert my stance against our rather unreasonable neighbors.

I hope you can appreciate the touch of humor and sincerity in my request.

Thank you,



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

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

**ALEXANDRE JOSEPH RICHARD MICHEL TREMBLAY &
REBECCA LYNN BOEHM**, of Dartmouth, in the County of
Halifax and Province of Nova Scotia
(the “Licensee”)

Recitals

A. Whereas the Licensee owns property at **8 Lexington Avenue in Dartmouth (PID 40468548)** and there exists a **fence** (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 **March 5, 2024**, the HRM agreed to grant 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. HRM hereby grants this License to the Licensee for the Encroachment, giving the Licensee, its servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of **Saratoga Drive in Dartmouth** identified in Schedule “A” to maintain the Encroachment, on the terms and conditions of this Agreement.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation and Replacement

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 or replace 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 or replacement shall be at the sole expense of the Licensee.

Maintenance

4. 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, the environment or the public at large.

5. 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.

6. 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 fifteen (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.
7. 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.
8.
 - (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 6 and 7 within fifteen (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.
9. The Licensee shall comply with all municipal By-laws, including the Streets By-law, S-300 which requires permits for all works within the municipal street right of way, for the maintenance of the Encroachment and all work which involves the excavation of the street.

Street Maintenance

10. 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

11.
 - (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

12. 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

13. 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 **seventy (70) square metres**.

14. 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

15. 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

16. (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 6 and 7; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty (60) 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 6 and 7;
- (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 (60) 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 of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer") for the restoration of the street.

(3) If the Licensee does not, within the sixty (60) 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

17. 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
Executive Director of Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5**

and

**Alexandre Tremblay & Rebecca Boehm
8 Lexington Avenue
Dartmouth, N.S. B2X 3L9**

18. 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.

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

20. 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.

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

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

23. 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:

**ALEXANDRE JOSEPH RICHARD MICHEL
TREMBLAY**

Witness

REBECCA LYNN BOEHM

Witness

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A"

Details about the encroachment:

- A decorative fence – solid white PVC panel structure.
 - The encroachment encompasses approximately **70 square metres** (3 faces, 3.5m x 20m).
- The existing fence constructed in 2020 was professionally installed by MacDonald Fencing on behalf of the current owners (Alexandre and Rebecca)

