

**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”.

**Interpretation**

2 In this bylaw:

- (a) “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- (e) Repealed;
- (f) “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 Municipality unless an encroachment license has been issued by the Municipality.

### **Approval Required**

- 4 Repealed

- 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

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 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 bylawor 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)(ii).
- (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 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 Engineer, as applicable, or direct the Engineer to issue such license upon such terms and conditions that the Appeals Committee determines may be appropriate.
- (5) If the Appeals Committee directs the Engineer 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 Engineer.

- (2) If any owner fails to remove the encroachment within such 30 day period, the 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 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 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

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Mayor

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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

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

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Amendment # 1 (V-101)  
Subsection (3) of Section 9

Notice of Motion: August 19, 2003  
First Reading: August 26, 2003  
“Notice 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

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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

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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

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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

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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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Amendment # 6 (A-501)	
Notice of Motion:	June 14, 2016
First Reading:	June 21, 2016
Notice of Public Hearing Publication:	July 2, 2016
Second Reading:	July 19, 2016
Approval by Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	July 23, 2016
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Amendment # 7 (E-204)	
Notice of Motion:	May 9, 2017
First Reading:	May 23, 2017
Notice of Public Hearing Publication:	May 27, 2017
Second Reading:	June 13, 2017
Approval by Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	June 17, 2017
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Amendment # 8 (E-205)	
Notice of Motion:	April 10, 2018
First Reading:	April 24, 2018
Notice of Public Hearing Publication:	April 28, 2018
Second Reading:	May 22, 2018
Approval by Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	June 2, 2018