

# HALIFAX

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

**Item No. 14.1.3**  
**Halifax Regional Council**  
**May 23, 2017**  
**June 13, 2017**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by 

**SUBMITTED BY:** Bruce Zvaniga, A/Chief Administrative Officer

**DATE:** March 30, 2017

**SUBJECT:** Amendments to By-Law E-200 (Encroachment By-law) for the Purpose of Facilitating Accessibility

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## **ORIGIN**

January 10, 2017 meeting of Halifax Regional PUT and PASSED:

THAT Halifax Regional Council direct staff to draft amendments to By-Law E-200, the Encroachment By-law, for Regional Council's consideration, to allow for the waiver of any or all encroachment fees for the portion of a new encroachment which is constructed to facilitate barrier free access to an existing residential or commercial property, or where an existing encroachment is being enlarged or modified to facilitate barrier free access to either residential or commercial properties.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter*, 2008, c. 39, subsection 324(2) states that "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, *the Encroachment By-law*

## **RECOMMENDATION**

It is recommended that Halifax Regional Council adopt By-Law E-204, the purpose of which is to amend By-Law E-200, the Encroachment By-law, as set out in Attachment B to this report.

**BACKGROUND**

In the fall of 2014, Regional Council identified having Halifax as a leader in building an inclusive and accessible community as a Council priority outcome. This includes promoting a community in which everyone can participate fully in life, regardless of age or ability.

Structures placed in the right of way that are not owned by the Municipality are considered encroachments in accordance with By-Law E-200. If a property owner wants to improve accessibility by installing a ramp in the right of way, they must make application to HRM for an encroachment license. Encroachment licenses are subject to application fees and annual rental fees.

**DISCUSSION**

Encroachment fees are based on the area of the encroachment. By charging annual fees, the Municipality is not encouraging those who wish to make their commercial or residential property more accessible if the only way to do so is to enlarge an existing encroachment.

Clause 10(b) of By-Law E-200, Respecting Encroachments Upon, Under, or Over a Street, gives Council the authority to waive all or a portion of the fees otherwise payable in respect of overhead pedways or underground pedestrian tunnels if Council is of the opinion the pedways or tunnels provide a public benefit.

To promote the Council priority outcome, it is proposed that clause 10(b) be amended to give Council the authority to waive fees associated with enlarging existing encroachments to install barrier free access to residential and commercial properties to improve accessibility. The recommendation also allows Council to waive fees for new encroachments. This is intended to allow Council the ability to consider situations where the existing access does not encroach, but where the addition of a ramp for barrier free access would cause a new encroachment. This would only apply to existing buildings. New buildings should be designed with barrier free access without encroaching on to the right of way.

The application and the review processes for encroachments in the right of way would not change with the proposed amendment. When staff brings forward a recommendation to Regional Council for an encroachment in the right of way, the report would include a recommendation to waive the fees associated with the encroachment if it is for the purpose of barrier free access.

**FINANCIAL IMPLICATIONS**

The one time application fee for an encroachment license varies depending on the size of the encroachment:

Area of Encroachment	License Fee
Up to 1.5 m <sup>2</sup>	\$60.00
1.5 m <sup>2</sup> to 2.5 m <sup>2</sup>	\$95.00
Over 2.5 m <sup>2</sup>	\$125.00

The annual rental fee for a permanent encroachment is \$1.00 per 0.1 m<sup>2</sup> of the encroachment, with a minimum fee of \$10.00.

The following is an example encroachment fee calculation for a ramp:

Assumed size of ramp: 1m wide x 10m long

Assumed size of landing: 1.5m wide x 1.5m long

Area of Encroachment = (1m x 10m) + (1.5m x 1.5m) = 12.25 m<sup>2</sup>

One Time License Application Fee = \$125.00

Annual rental fee =  $12.25 \text{ m}^2 \times (\$1.00/0.1 \text{ m}^2) = \$122.50$  per year

This example assumes that the entire ramp and landing are located on the right of way.

The financial implications for waiving permanent encroachment fees will depend on the number of encroachment applications received, and the size of the proposed encroachments.

As the annual number of encroachment license applications would not likely exceed 5 per year, the financial implications would be minimal and estimated at a maximum of \$1,000 which can be absorbed within TPW's existing operating budget

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this Report. The risks considered rate Low.

### **COMMUNITY ENGAGEMENT**

The proposed amendments align with Regional Councils priority to ensure that "*Halifax is a leader in building an inclusive and accessible community where everyone can participate fully in life, including persons with disabilities and seniors.*" As this is a Regional Council priority, no community engagement took place.

### **ENVIRONMENTAL IMPLICATIONS**

Implications not identified.

### **ALTERNATIVES**

Halifax Regional Council could choose to not adopt By-Law E-204. This alternative is not recommended for the reasons detailed in this report.

### **ATTACHMENTS**

1. Attachment A – Showing Proposed Changes to By-Law E-200
2. Attachment B – Amending By-Law E-204
3. Attachment C – Incorporating Proposed Changes into By-Law E-200

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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: Jeff Nephew, P.Eng., Right of Way Engineering Assistant, 902.490.6245

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**Attachment A  
(Showing Proposed Changes)**

**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**

2 In this bylaw:

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

### **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 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.

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.

### **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, 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.

**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 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 Regulations, 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.

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Vi Carmichael, Municipal Clerk

BY-LAW E-200

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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

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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

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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

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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

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

**HALIFAX REGIONAL MUNICIPALITY  
BY-LAW E-204  
RESPECTING THE AMENDMENT OF BY-LAW E-200  
RESPECTING ENCROACHMENTS UPON,  
UNDER OR OVER A STREET**

**BE IT ENACTED** by the Council of Halifax Regional Municipality that subsection 10(b) of By-law E-200, *Respecting Encroachments Upon, Under or Over a Street*, is amended as follows:

1. adding the words “for an encroachment” after the word “by-law” and before the word “in” in the second line;
2. adding a colon after the word “of” in the second line;
3. lettering the sub clause starting after the newly inserted colon and before the word “overhead” as sub clause (i);
4. striking out the semicolon after the word “benefit”;
5. adding the a comma and the word “or” after the word “benefit”; and
6. adding the following sub clause after the newly lettered sub clause (i):
  - (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 Regulations, such as a ramp, passenger elevators, inclined moving walkways or a passenger elevating device;

Done and passed by Council this \_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
MUNICIPAL CLERK

I, Kevin Arjoon, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above noted by-law was passed at a meeting of the Halifax Regional Council held on \_\_\_\_\_, 2017

\_\_\_\_\_  
Kevin Arjoon  
Municipal Clerk

**Attachment C  
(Incorporating Proposed Changes)**

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

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

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**Number and Short Title**

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**Definitions**

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

### **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 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:

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  - (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.

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.

### **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, 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.

**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 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 Regulations, 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.

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Vi Carmichael, Municipal Clerk

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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

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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

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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