

HALIFAX

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

Item No. 14.1.7
Halifax Regional Council
July 18, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 5, 2017

SUBJECT: Request for Encroachment – Ocean Breeze Village – Princess Margaret Boulevard, Dartmouth

ORIGIN

Application from Dartmouth Investment Limited for a permanent encroachment.

LEGISLATIVE AUTHORITY

Under HRM By-Law E-200 Respecting Encroachments Upon, Under or Over a Street, Section 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.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the request to allow side mounted pole banner supports and banners to HRM light poles on Princess Margaret Boulevard.

BACKGROUND

Dartmouth Investment Limited has submitted a request to install side mounted pole banners to HRM street light poles along Princess Margaret Boulevard near the entrance to Ocean Breeze Village. The proposed banners will display Ocean Breeze Village branding as a way to promote a sense of community and improve aesthetics in the area.

DISCUSSION

The side mounted banners would be installed on seven HRM owned street lighting poles on Princess Margaret Boulevard north of the MacKay Bridge, along the entrance to Ocean Breeze Village. All housing west of the bridge is part of Ocean Breeze Village. HRM has accepted the design of banner supports and are confident that they will not cause damage to HRM street light poles. The banners will be mounted opposite the curb side of the pole, away from the road, to minimize the risk of being struck by traffic.

FINANCIAL IMPLICATIONS

The applicant is required to pay a one-time license fee of \$60.00, and an annual encroachment fee proportional to the area of the encroachment. The area of the encroachments is negligible. As such, the banner supports would be subject to the minimum charge of \$10/year, as per Administrative Order 15.

RISK CONSIDERATION

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

COMMUNITY ENGAGEMENT

The applicant represents the community and as a result, HRM staff has not conducted an engagement process.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

1. Council could choose not to allow the proposed banners to be mounted to HRM street light poles along Princess Margaret Boulevard. This is not recommended by staff.
2. Council could choose to allow the proposed banners to be mounted to HRM street light poles along Princess Margaret Boulevard for a limited term rather than a permanent encroachment.

ATTACHMENT

1. Encroachment Agreement

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: Harrison McGrath, EIT, Engineering Assistant, 902.490.6853

This **Encroachment License Agreement** made this _____ day of _____, 2017.

BETWEEN:

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

and

DARTMOUTH INVESTMENT LIMITED,
a body corporate
("the "Licensee")

Recitals

- A. **Whereas** the Licensee wishes to construct seven (7) side mounted banner supports and banners (the "Encroachment") within the street right of way, along Princess Margaret Boulevard, Dartmouth, in the Halifax Regional Municipality, Province of Nova Scotia, adjacent to the Licensee's property located at PID 00063727 and PID 41315607, (the "Licensee's Property") such that the Encroachment will encroach upon the HRM street right of way as shown and described in Schedule "A attached hereto;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20___, 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 and other good and valuable consideration, the parties agree as follows:

License

1. Subject to the terms of this Encroachment License Agreement, ("this Agreement"), HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right to enter on and over that portion of Princess Margaret Boulevard, Dartmouth, identified in Schedule "A" to install and maintain the Encroachment.

Ownership

2. The Licensee shall retain ownership of the Encroachment, subject to the terms of this Agreement.

Relocation

3. (a) If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation shall be at the sole expense of the Licensee.

(b) If the Licensee wishes to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and such relocation shall be at the sole expense of the Licensee.

Permits

4. (a) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the construction, installation and maintenance of the Encroachment and all subsequent work with respect to it.

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

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

(i) that the Licensee shall submit plans of the Encroachment for pre-approval by HRM (the "approved plans"); and

(ii) that the Licensor shall install and maintain the Encroachment in accordance with the approved plans.

(d) For the purposes of the construction and installation of the Encroachment, the Licensee agrees to arrange a pre-installation meeting with HRM staff and follow staff's directives.

Maintenance

5. The Licensee shall, at its sole expense, maintain the Encroachment in a safe and good condition and so that it is not unsightly and does not impede or create a safety hazard or danger to traffic, pedestrians or the public at large.

6. If HRM determines in its sole discretion that the Encroachment is unsightly, unsafe, or impedes traffic and pedestrians, HRM may:

(a) notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM in its sole discretion directs; and

(b) if the Licensee does not begin the repair or alteration of the Encroachment within five (5) business days of the HRM giving the Licensee notice to do so, and complete such repairs and alterations to the satisfaction of the HRM within fifteen

(15) business days of the notice, or within such other time period as the HRM directs, HRM may, in its sole discretion cause the remedial work to be done, the costs of which shall be paid for by the Licensee forthwith upon demand.

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 remedy the safety issue or remove the Encroachment and restore the street right-of-way, ("the Work") in any manner the HRM in its sole discretion determines, and, the Licensee shall:

(a) reimburse HRM for the cost and expenses of the Work forthwith upon issuance of the invoice for the Work from the HRM; and,

(b) 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; and,

(c) the Licensee shall pay the HRM's legal fees and disbursements on a solicitor/client basis.

Street Maintenance

8. HRM shall not be responsible for any loss or damage to the Encroachment occurring as a result of street maintenance, snow and ice removal, street cleaning or any other cause whatsoever.

Indemnity

9. (a) 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 and however caused, related to or connected with the grant of the rights set forth in this Agreement or from the existence and operation of the Encroachment.

(b) The Licensee's indemnity set out in Section 9(a) shall survive the termination of this Agreement.

Insurance

10 The Licensee shall purchase and maintain, during the term of this Agreement, Commercial General Liability Insurance in the amount of not less than \$3 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured, to provide coverage with respect to any claim arising out of the installation, maintenance or use of the Encroachment or out of this Agreement. Evidence of such insurance shall be provided to HRM at the time of applying for the license and at each renewal of the said insurance.

Fees

11. The Licensee shall pay HRM for all fees levied pursuant to Encroachment By-law E-200 and Administrative Order 15, as amended. For the calculation of said fees, it is agreed that the space to be occupied by the seven banners and banner supports making up the Encroachment is less than 1 square metre.

12. The fees prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council. Accordingly, the Licensee acknowledges and agrees that the fees for the Encroachment License contemplated by this Agreement may increase accordingly, from time to time.

Occupational Health and Safety Act, SNS 1996, c 7

13. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and Regulations enacted pursuant thereto, to exercise the due diligence required and ensure that the said Act and Regulations are followed by the Licensee's directors, officers, employees, servants, contractors and agents.

Termination

14. (a) Either party may terminate this Agreement, by notice in writing to the other party, at any time upon the following conditions:

The Licensee shall:

- (i) pay to HRM all encroachment fees due;
- (ii) pay to HRM the cost of all Work done and expenses paid by HRM under clauses 3, 6, 7 and 9 of this Agreement;
- (iii) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within thirty (30) calendar days, or within such lesser or other time-period as the HRM may, in its sole discretion, direct; and
- (iv) comply with any other directives that may be given by the Building Inspector for the Municipality or the Engineer.

(b) If the Licensee does not comply with its obligations set out in this Agreement, the HRM shall have the absolute discretion to remove the Encroachment and restore the street right-of-way, and the Licensee shall fully reimburse HRM for all costs and expenses it incurs. To enforce payment the HRM may in addition to all other remedies available at law, lien the Licensee's property for all the costs or expenses incurred by HRM.

(c) The termination of this Licensee's obligations under this Agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this Agreement and has restored the street right of way to the satisfaction of HRM. Provided however, the Licensor's indemnification of HRM set out in Clause 9 of this Agreement shall survive any termination of this Agreement.

Notices

15. Any written notice or communication relating to the administration of this 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 in writing:

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

Dartmouth Investment Limited
1100 Central Parkway West
Mississauga, Ontario, L5C 4E2

16. This Agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee shall be deemed to be the Licensee under this Agreement.

17. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their administrators, successors in title and permitted assigns.

18. 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.

19. This Agreement shall be construed in accordance with the laws of the Province of Nova Scotia.

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

21. The undersigned officers signing this Agreement on behalf of the Licensee declare that they have the authority to bind the corporation.

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

SIGNED, SEALED AND DELIVERED in
The presence of:

DARTMOUTH INVESTMENT LIMITED

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

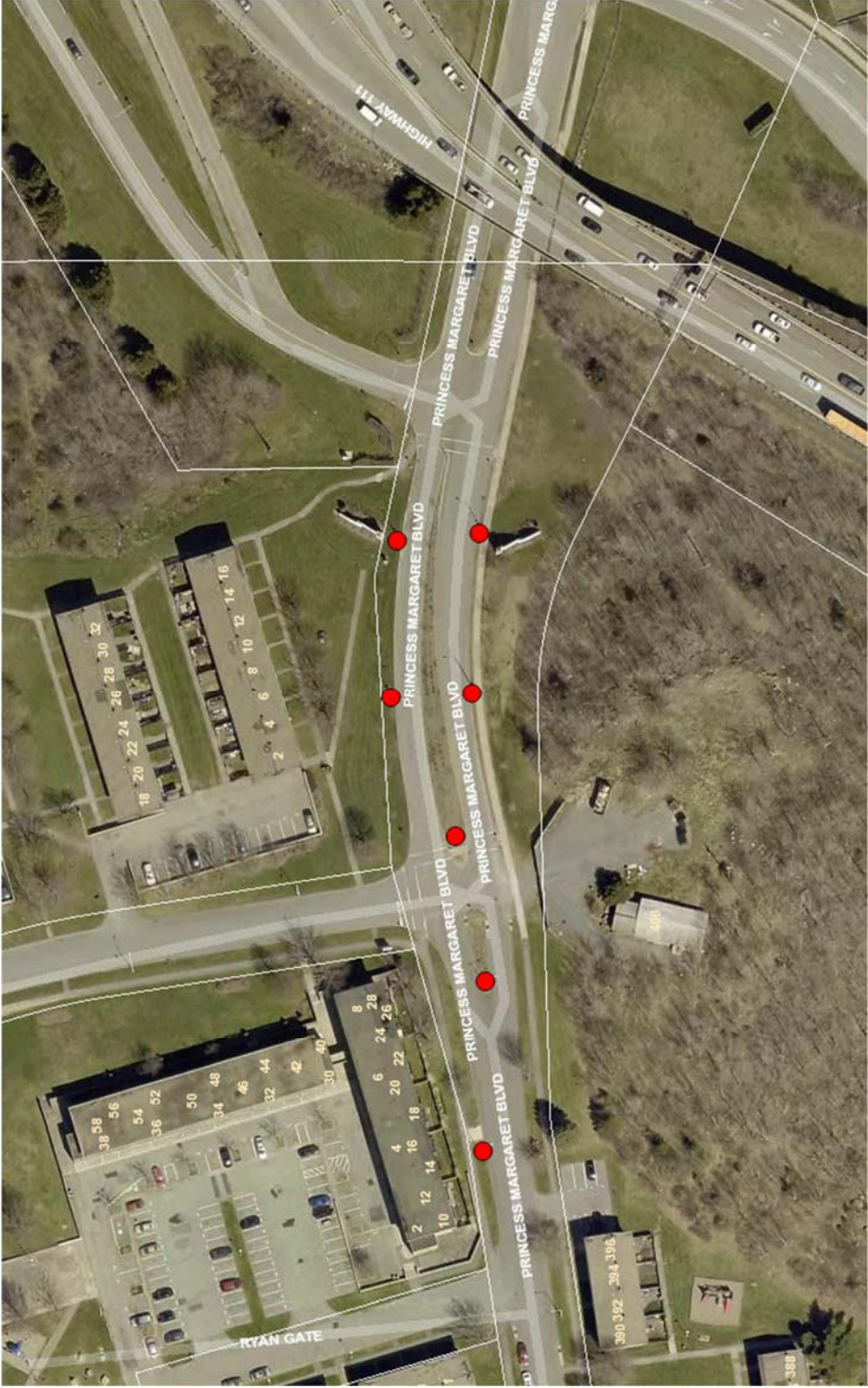
Witness

Mayor

Witness

Municipal Clerk

Schedule "A" – Locations of banner supports along Princess Margaret Blvd, Dartmouth marked with dots



Schedule "B" – Sample of proposed banners

