

Item No. 11.1.12
Halifax Regional Council
June 24, 2014

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 
Richard Butts, Chief Administrative Officer

Original Signed by Director

Kathleen Llewellyn-Thomas, A/Director, Transportation & Public Works

DATE: May 28, 2014

SUBJECT: Encroachment By-law Amendments

ORIGIN

This report originates from staff.

LEGISLATIVE AUTHORITY

- Halifax Regional Municipality Charter, Part VII, Section 188 - Power to make By-laws.
- Halifax Regional Municipality Charter, Part I, Section 10(3) – The Mayor and Clerk or the persons designated by the Council by policy may sign a deed or other document to which the Municipality is a party on behalf of the Municipality.

RECOMMENDATION

It is recommended that Halifax Regional Council:

- 1) approve the proposed amendments to HRM By-law E-200 Respecting Encroachments Upon, Under, or Over a Street as contained in the Amending By-law attached to this report as Attachment B; and
- 2) adopt the proposed amendments to HRM By-law E-200, the Encroachment By-law, as set out in the Amending By-law attached to this report as Attachment B; and
- 3) authorize the Municipality to enter into an agreement with Canada Post Corporation, attached to this report as Attachment “D”, in accordance with the amended By-law E-203, and direct the Mayor and Clerk to execute the agreement on behalf of the Municipality.

BACKGROUND

Canada Post Corporation was established as an Agent of Her Majesty to operate a postal service for the collection, transmission and delivery of mail. To this end, Canada Post Corporation must, from time to time, install, repair and maintain mail receptacles within HRM street right of ways to collect, deliver and store mail.

DISCUSSION

Objects like mail receptacles placed within the street but not owned by the Municipality, are considered encroachments. In the case of encroachments by utilities, Regional Council is able to enter into agreements with the companies through an enabling piece of legislation in the Encroachments By-law found in Section 10 of the Halifax Regional Municipality Charter. The proposed amendment would add Canada Post Corporation to the list of entities with which Council can enter into agreements.

The benefit to entering into the proposed agreement with Canada Post Corporation is to clarify the terms and conditions with respect to the installation, maintenance, replacement, relocation and eventual removal of mail receptacles in HRM street right of ways. This will protect HRM's interests throughout the duration of Canada Post Corporation's encroachment.

Canada Post Corporation has entered into similar agreements with other jurisdictions across Canada. Agreements between Canada Post Corporation and municipalities are so common that the Federation of Canadian Municipalities (FCM) has a template agreement for this purpose. The proposed agreement in Schedule D is based on the FCM template.

As a housekeeping measure, the subsections of Section 10 will be identified by adding the proper numbering to the paragraphs as shown in Attachment A.

FINANCIAL IMPLICATIONS

Agents of Her Majesty are not subject to municipal by-laws, as the HRM Charter does not apply to an Agent of the Crown. Therefore, Council cannot require Canada Post Corporation to pay fees as a part of the proposed agreement, unlike the provisions in other agreements handled by Section 10 of the Encroachments By-law.

Although there are no annual revenues associated with the proposed agreement, it does protect HRM from other costs related to the mail receptacles for the duration of the encroachment.

COMMUNITY ENGAGEMENT

As the only stakeholders affected are HRM and Canada Post Corporation, no community engagement took place.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

Council could choose not to amend the by-law and not authorize staff to enter into the agreement as proposed. This may prevent HRM from recovering costs incurred from Canada Post Corporation related to their operations within the HRM right of ways. This alternative is not recommended.

ATTACHMENTS

Attachment A – Showing Proposed Changes
Attachment B – Amending By-law E-203
Attachment C – Incorporating Proposed Changes
Attachment D – Proposed Mail Receptacle Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Christopher Davis, P.Eng., Supervisor, Right of Way Services, 490-7462

Report Approved by: _____
Taso Koutroulakis, P. Eng., PTOE, Manager, Traffic & Right of Way Services, 490-4816

Report Approved by: _____
John Traves, Director, Legal Services, 490-4219

Report Approved by: _____
Kathleen Llewellyn-Thomas, P.Eng. A/Director, Transportation & Public Works, 490-4855

**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:

10 Notwithstanding the provisions of this by-law, 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 in respect of overhead pedways or underground pedestrian tunnels, if in the opinion of Council, the pedways or tunnels provide a public benefit; 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.

**HALIFAX REGIONAL MUNICIPALITY
BY- LAW E - 203
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 further amended as follows:

1. Section 10 is amended by:
 - (a) numbering the second paragraph starting with the words “waive all or any” as clause b of section 10;
 - (b) adding a semi-colon at the end of clause a and before the newly numbered clause b;
 - (c) adding a semi-colon and the word “and” at the end of the newly numbered clause b;
 - (d) numbering the third paragraph starting with the words “entering into an agreement” as clause c of section 10; and
 - (e) adding the words and comma “, or Canada Post Corporation” after the word “Commission” and before the word “, permitting” in the newly number clause c;

**HALIFAX REGIONAL MUNICIPALITY
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- (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 in respect of overhead pedways or underground pedestrian tunnels, if in the opinion of Council, the pedways or tunnels provide a public benefit; 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.

Attachment D
(Proposed Mail Receptacle Agreement)

FEDERATION OF CANADIAN MUNICIPALITIES
Generic Legal Agreement

THIS AGREEMENT made in triplicate this _____ day of _____ 20__ .

BETWEEN

HALIFAX REGIONAL MUNICIPALITY
(Hereinafter called the "Municipality")

OF THE FIRST PART;

AND

CANADA POST CORPORATION
(Hereinafter called "Canada Post")

OF THE SECOND PART;

WHEREAS pursuant to the *Canada Post Corporation Act*, R.S.C. 1985, c. C-10, Canada Post was established as Agent of Her Majesty to, inter alia, establish and operate a postal service for the collection, transmission and delivery of mail and to provide such products and services as are, in the opinion of Canada Post, necessary or incidental to such postal service;

AND WHEREAS the Mail Receptacles Regulations, made pursuant to the *Canada Post Corporation Act* with the approval of the Governor in Council, authorize Canada Post to install, erect or relocate, or cause to be installed, erected or relocated in any public roadway, any receptacle or device to be used for the collection, delivery or storage of mail;

AND WHEREAS Canada Post desires to install, erect and relocate, when necessary, such receptacles or devices, commonly referred to as "Community Mailboxes", at specific convenient locations on the Streets within the Municipality, title to which is vested in the Municipality;

AND WHEREAS the Parties hereto desire to enter into an Agreement governing Community Mailbox site selection, liability, maintenance, repair, replacement, removal and relocation;

AND WHEREAS on the ____ day of _____, 2014, the Council of the Municipality directed the Municipality to enter into this Agreement and further directed the Mayor and Municipal Clerk to execute this Agreement on behalf of the Municipality;

NOW THEREFORE THIS AGREEMENT WINESSETH that the Municipality and Canada Post, each in consideration of the execution of this Agreement by the other, mutually agree as follows:

1. In this Agreement:

- (a) Core Area means that portion of the Halifax Regional Municipality for which the Municipality has assumed responsibility for maintenance of public streets and is more particularly described in Agreement No. HRM -01 between the Halifax Regional Municipality and the Minister of Transportation & Public Works which became effective on June 24, 1996;
- (b) "Council" shall mean the Council of the Halifax Regional Municipality;
- (c) "Municipal Official" shall mean the Engineer for the Halifax Regional Municipality and includes a person acting under the supervision and direction of the Engineer;
- (d) "Municipality" shall mean the Halifax Regional Municipality;
- (e) "Street" means all public streets, roads, lanes, sidewalks, thoroughfares, bridges and squares, and all curbs, gutters, culverts and retaining walls in connection therewith in those areas of the Halifax Regional Municipality located in the Core Area and, without restricting the generality of the foregoing, includes the full right of way width;

2. Subject to the terms and conditions herein contained, Canada Post shall:

- (a) install, erect and relocate, when it deems necessary, Community Mailboxes only at specific locations on roadways within the Municipality, the suitability of which sites having been established in accordance with Canada Post's location criteria and subsequently reviewed and approved by the Municipal Official (which review will be expeditious and which approval shall not unreasonably be withheld) in accordance with the details which are attached hereto as Schedule "A", which Schedule shall form part of the Agreement;
 - (b) at its expense, satisfactorily maintain such Community Mailboxes, including concrete slabs and access pads, landscaping and Community Mailbox sites and including, without limitation, general upkeep and litter control on a regular basis;
 - (c) provide, at its own expense, for snow and ice clearing of the areas adjacent to the Community Mailboxes to provide access thereto during the winter for the public; provided, however, that no snow shall be placed on any traveled portion of the roadway or sidewalk by Canada Post or its contractor;
 - (d) indemnify and save harmless the Municipality from and against all claims for injury or damage by whomsoever made, brought or prosecuted, in any manner based upon, arising out of or in any way attributable to the construction, installation, maintenance or use of the Community Mailboxes, except those arising out of the negligence of the Municipality;
 - (e) assume all loss, injury or damage and risk of loss, injury or damage to any works of the Municipality which may be in, on, over or under the roadway, at the location of the Community Mailboxes, arising out of the construction, maintenance or repair of the said Community Mailboxes, except for that arising out of the negligence of the Municipality.
3. Should the Municipal Official not approve the suitability of any site for the installation, erection or relocation of Community Mailboxes or should the Municipal Official, in future, desire that any Community Mailbox erected or installed by Canada Post upon a roadway pursuant to the terms of this Agreement, be relocated, the Municipal Official shall

immediately so notify Canada Post in writing and such notice shall set forth the reasons for such disapproval or desire for relocation. Forthwith upon receipt of such notice, Canada Post and the Municipal Official shall work together in good faith to expeditiously resolve the Municipality's concerns and objectives in this regard and, if required, select an alternative location meeting the approval of the Parties as herein provided. Upon removal of any Community Mailbox from the roadway, Canada Post shall satisfactorily restore the affected portion of the roadway to a standard equivalent to the condition of the roadways in its vicinity, and upon failure of Canada Post to restore the affected portion of the roadway, the Municipality, upon advance notice in writing to Canada Post, may do so at the expense of Canada Post which undertakes and agrees to pay to the Municipality such expenses (including supervisory and clerical work) on demand.

4. Canada Post may at any time, at its sole discretion and for any reason, give notice in writing to the Municipal Official of its intention to remove any or all of the Community Mailboxes from the roadways. Upon removal of any or all Community Mailboxes from the roadways, Canada Post shall satisfactorily restore the affected portion of the roadways to a standard equivalent to the condition of the roadways in its vicinity, and upon failure of Canada Post to restore the affected portion of the roadways, the Municipality, upon advance notice in writing to Canada Post, may do so at the expense of Canada Post which undertakes and agrees to pay to the Municipality such expenses (including supervisory and clerical work) on demand.
5. Canada Post acknowledges and agrees that the Municipality is the owner of and has jurisdiction over the Streets within the Municipality affected by this Agreement and that the Municipality reserves the right to use the Street at or on which a Community Mailbox is located for the purposes of constructing and maintaining therein sewers, water mains, electric light and power conduits and cables, telephone conduits, gas lines and all other services and appliances, whether existing or placed therein in the future, and whether under its control or the control of a public utility or other government authority.
6. If, in the event of an emergency, it becomes necessary for Canada Post to do work on, across or along any Streets without consultation with the Municipal Official, then Canada Post shall, as soon as reasonably possible, provide the Municipal Official with details of the emergency and the work done in response thereto. In such emergency situations, Canada Post shall expeditiously restore the Street to a condition as near as reasonably possible to the condition it was prior to the start of any such work. Upon failure of Canada Post to so restore the Street, then the Municipality may do so and charge the cost of doing so back to Canada Post. Restoration includes but is not limited to any required repair to the Street concerned by reason of any settlement of the original restoration work by Canada Post.
7. If, in the event of an emergency, it becomes necessary for the Municipality to work at any location of a Community Mailbox without the permission of Canada Post, the Municipality shall, as soon as reasonably possible provide Canada Post with details of the emergency and the work done in response thereto. In such situations the Municipality shall temporarily relocate and anchor any such Community Mailbox in as close proximity to its original site as reasonably possible, having regard to the temporary nature of the relocation to facilitate its continued use in a reasonable and safe manner. The Municipality shall expeditiously restore the Community Mailbox location to a condition as near as reasonably possible to the condition prior to the start of any such work.
8. Canada Post shall, at its own cost and expense, cause any and all liens or privileges registered pursuant to applicable laws relating to construction liens or privileges on

municipal property for labour, services or material alleged to have been furnished or to have been charged by or for Canada Post or anyone on its behalf on the roadways or any improvements or facilities therein or thereon, to be paid, satisfied, released, cancelled and vacated within thirty (30) days after the Municipality shall have sent to Canada Post written notice by prepaid post of any claim for such lien or privilege. Provided, however, that in the event of a bona fide dispute by Canada Post of the validity or correctness of any claim for any such lien or privilege, Canada Post shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge such lien or privilege, or providing such other security in respect of such claim as will result in the discharge of such lien or privilege. In respect to such liens or privileges, Canada Post in addition hereby covenants and agrees to indemnify and keep indemnified the Municipality of all liability or judgments arising out of any liens or privileges registered as a result of the construction of a Community Mailbox and its related facilities by Canada Post, its contractors, subcontractors, material suppliers and workers.

9. Any notice required to be given to the Municipality hereunder shall be sufficiently given personally or delivered or sent by prepaid priority courier addressed to:

HALIFAX REGIONAL MUNICIPALITY
 Director, Transportation and Public Works
 Alderney Gate, 40 Alderney Drive, Dartmouth, NS B2Y 2N5

and any such notice, if mailed, shall be deemed to have been received by the Municipality on the third business day after the date on which it shall have been so mailed.

Any notice required to be given to Canada Post hereunder shall be sufficiently given personally or delivered or sent by prepaid courier addressed to:

CANADA POST CORPORATION

and any such notice, if mailed, shall be deemed to have been received by Canada Post on the third business day after the date on which it shall have been so mailed.

10. This Agreement incorporates all the terms and conditions governing the installation, erection and relocation of Community Mailboxes on Streets within the Municipality and there is no representation or collateral agreement affecting this Agreement other than as expressed herein in writing.
11. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party.
12. This Agreement shall be binding upon the Parties hereto, their successors and assigns.

IN WITNESS WHEREOF the Parties have caused their respective corporate seals to be hereto affixed as attested by the hands of their respective proper officers in that behalf the day of the year first above written.

HALIFAX REGIONAL MUNICIPALITY

Witness Signature

Per:

Witness Name

Witness Signature

Per:

Witness Name

CANADA POST CORPORATION

Witness Signature

Per:

Witness Name

SCHEDULE "A"

**STANDARDS AND GUIDELINES
FOR THE INSTALLATION OF COMMUNITY MAILBOXES**

Unless otherwise approved by the Municipal Official, the positioning of the Community Mailboxes shall be subject to the following:

1. Community Mailboxes shall not be located in such a manner as to:
 - a. Impede the passage of pedestrians;
 - b. Impede the movement of vehicle traffic on the travelled portion of the Street; or
 - c. Impede any municipal maintenance operation.
2. Community Mailboxes shall be located a minimum of:
 - a. 30 meters from any traffic signals or intersection of any collector or arterial street;
 - b. 7 meters from any intersection of a local street with any other local street; and
 - c. 3 meters from any existing driveway;

unless otherwise approved by the Municipal Official.

3. Should the Municipal Official desire that any Community Mailbox erected or installed by Canada Post be relocated, because a complaint is received or because it does not comply with the conditions set out in this Agreement, the Municipal Official shall immediately so notify Canada Post in writing and such notice shall set forth the reasons for such disapproval or desire for relocation. Forthwith upon receipt of such notice, Canada Post and the Municipal Official shall work together in good faith to expeditiously resolve the Municipality's concerns and objectives in this regard and, if required, select an alternative location meeting the approval of the Parties as herein provided. .

4. No Community Mailbox shall be fastened to any municipal sign, utility pole, bus shelter or fire hydrant.

5. Community Mailboxes must be placed a minimum of 0.45 meters from the face of curb on any local street, or 0.6 meters from the face of curb on any collector or arterial street unless otherwise approved by the Municipal Official.

6. Any contractor installing a Community Mailbox on behalf of Canada Post shall purchase and maintain commercial general liability insurance in the amount of not less than \$2,000,000.00 in a form and with an insurer acceptable to the Municipality and with Halifax Regional Municipality named as an additional insured with respect to any claim arising out of the installation of the Community Mailbox. Evidence of such insurance shall be provided to the Municipality at the time of approval by the Municipal Official.