


HALIFAX

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

Item No. 14.1.2
Halifax Regional Council
December 6, 2016

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: November 15, 2016

SUBJECT: Request for Permanent Encroachment at 6061 University Avenue, Halifax

ORIGIN

Application for a permanent encroachment on Henry Street to install a protective barrier around a utility pole for the purpose of protection of conduits attached to the pole.

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 attached Encroachment License Agreement, subject to non-substantive amendments, if any, allowing Dalhousie University to install the proposed protective barrier around an existing utility pole.

BACKGROUND

It has been brought to the attention of Dalhousie University that the ducts containing the main power feed for the majority of the Dalhousie Studley Campus do not have the proper protective barrier. The ducts containing primary power are at risk of being damaged by a vehicle as they are not encased in concrete and the ducts face the normal flow of vehicular traffic.

DISCUSSION

For the installation of new utility poles with underground power, any duct containing primary power should be installed on the face of the pole that does not face the flow of vehicular traffic. New ducts would also be encased in concrete for protection.

There is an existing utility pole on Henry Street, at the northwest corner of 6061 University Avenue (The Weldon Law Building), which supplies primary power for Dalhousie University. The ducts on this pole do not have the protection consistent with current standards for conduit containing a primary power feed. The Applicant would like to mitigate the risk of losing power by installing a protective barrier to reduce risk of damage to the existing ducts.

The Applicant and Nova Scotia Power identified that due to the age of the ducts, it would be best not to excavate the area around the pole. Excavation would be required to install the standard protective concrete. Excavation would risk damaging the existing ducts. The Applicant is proposing to install a non-standard protective barrier around the existing pole which is capable of protecting the ducts without the need to excavate near the pole. Nova Scotia Power has approved the design for the non-standard pole protection.

The proposed design is a concrete box that will be filled with sand. The outer box will be approximately 1.5 meters by 1.5 meters by 1.2 meters tall. The edge of the barrier would be approximately 0.9 meters from the face of curb on Henry Street and extend to the edge of sidewalk. This encroachment would not restrict sidewalk use.

The total encroachment area will be approximately 2.25 square meters.

FINANCIAL IMPLICATIONS

As per By-Law E-200, The Applicant would be required to pay a one-time encroachment license fee of \$95.00 and an annual rental fee of \$22.50 based on the area of the encroachment (as prescribed by Administrative Order 15, the current rental fee is \$1.00 per 0.1 square meters).

RISK CONSIDERATION

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

COMMUNITY ENGAGEMENT

Community engagement was not deemed necessary in this process as there is no long-term impact to the community.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

Council could choose not to approve the proposed encroachment. This would prevent the Applicant from mitigating their risks of losing power to the majority of the Studley Campus in the event that the utility pole was struck by a vehicle. This alternative is not recommended.

ATTACHMENTS

Attachment A - Draft Encroachment License Agreement with Plans Showing Proposed Encroachment

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasp/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

Report Approved by: _____
Taso Koutroulakis, P.Eng., P.TOE, Manager of Traffic Management, 902.490.4816

Financial Approval by: _____
Amanda Whitewood, Director of Finance and Information Technology/CFO, 902.490.6308

Report Approved by: _____
Bruce Zvaniga, P.Eng., Director of Transportation and Public Works, 902.490.4855

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

BETWEEN:

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

and

DALHOUSIE UNIVERSITY, a body corporate and politic
existing under the laws of the Province of Nova Scotia
(the "Licensee")

Recitals

- A. **Whereas** the Licensee owns property at 6061 University Avenue, Halifax and wishes to construct a protective concrete barrier around an existing utility pole (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 _____, 20____, the HRM agreed to give 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. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of _____ Henry Street, Halifax, identified in Schedule "A" to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

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 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 shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the street.
- (2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.
- (3) 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").
- (4) For the purposes of the construction of the Encroachment, the Licensee agrees:
 - (a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;
 - (b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;
 - (c) that the Encroachment will be done in accordance with the approved plans; and
 - (d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.
- (5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.
- (6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. 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 or the public at large.

7. 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.

8. 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 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.

9. 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.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 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.

Street Maintenance

11. 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

12. (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

13. 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

14. 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 2.25 square metres.

15. 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

16. 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

17. (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 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty 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 8 and 9;
- (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 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 for the restoration of the street.

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

18. 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
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Dalhousie University Vice President of Finance and Administration,
6299 South Street _____
PO Box 15000 _____
Halifax, Nova Scotia B3H 4R2 _____

19. 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.

20. 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.

21. 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.

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

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

24. 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:

INSERT NAME OF ENCROACHER HERE

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

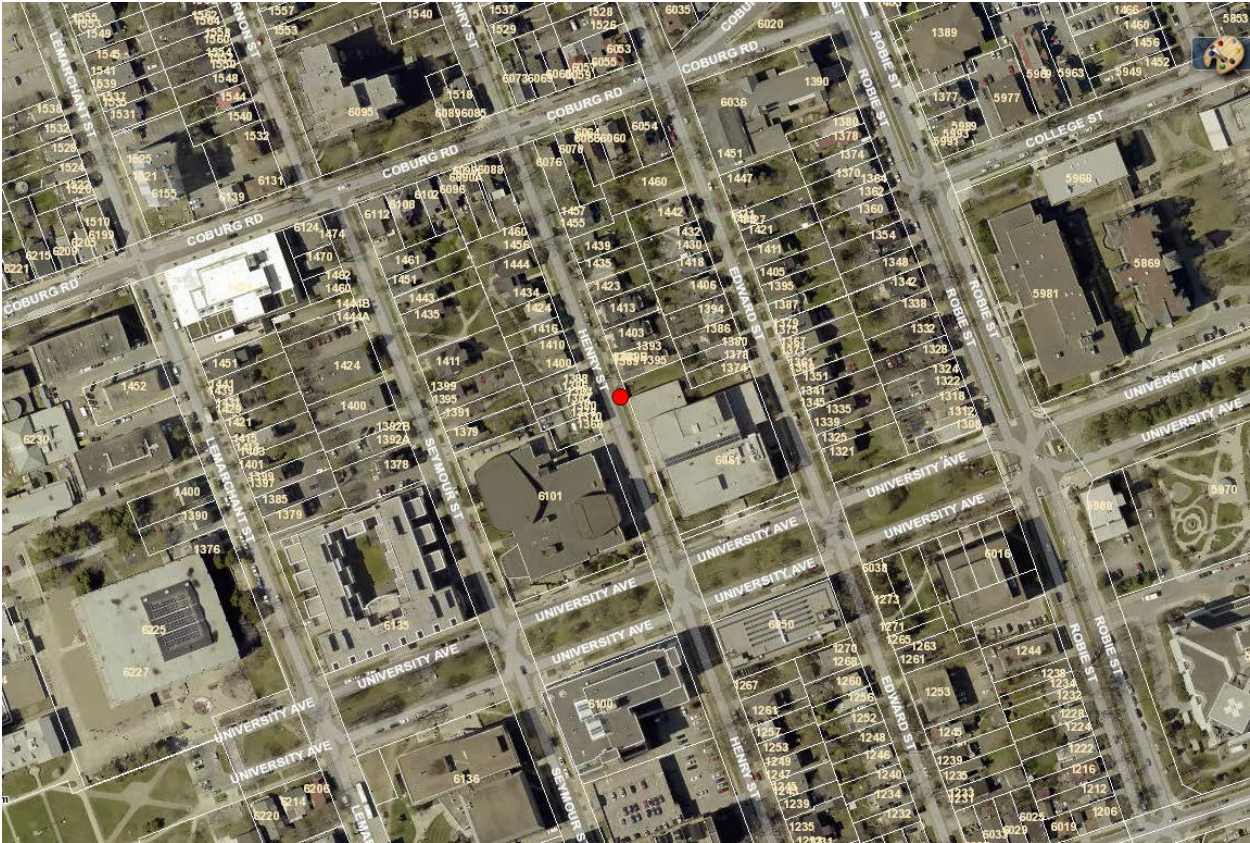
Witness

Mayor

Witness

Municipal Clerk

Attachment A - Draft Encroachment License Agreement with Plans Showing Proposed Encroachment



2. Location of existing pole indicated by red marker



3. Existing utility pole on Henry Street, Halifax (6061 University Avenue)



4. Existing utility pole on Henry Street, Halifax (6061 University Avenue)