



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

Item No. 15.1.8
Halifax Regional Council
March 5, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: January 23, 2024

SUBJECT: Encroachment Agreement – Brunswick & Sackville Street Plaza (Parks Canada)

ORIGIN

Requested by Mike Kilfoil, on behalf of Parks Canada, for an encroachment within the proposed Brunswick & Sackville Street Plaza in Halifax.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter. SNS 2008, c. 39, subsection 324(2) provides:

324(2) 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, respecting Encroachments Upon, Under or Over a Street, subsections 3 and 4 provide:

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.

4B An encroachment license shall not be issued unless the encroachment is authorized by Council...

RECOMMENDATION

It is recommended that Halifax Regional Council:

Approve the attached Encroachment License Agreement (subject to non-substantive amendments, if any) for the information signs encroaching upon the street right of way.

BACKGROUND

In January 2023 Regional Council directed staff to proceed with the recommended design option for the Brunswick Street Functional Plan. The recommended design includes streetscaping and placemaking features that replace the existing channelized right turn lane from Brunswick Street onto Sackville Street with a large pedestrian plaza. HRM is collaborating with Parks Canada to replace the stairs at this location and improve access to the walking path leading up Citadel Hill.

As a result of this collaboration, Parks Canada has identified an opportunity to present interpretive content at a location with particular significance in the history of Kijipuktuk and Halifax. Parks Canada's mandate is as follows:

On behalf of the people of Canada, we protect and present nationally significant examples of Canada's natural and cultural heritage, and foster public understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations.

The intersection of Brunswick Street and Sackville Street is literally a crossroads in the story of the city and Parks Canada intends to present this information to citizens and visitors to help them gain a deeper understanding of our shared history. The sign panels will describe Royal Artillery Park / Royal Engineers' Park, this intersection during the Victorian era, and the iconic yet entirely misunderstood signal masts atop the hill.

The encroaching infrastructure does not fall under categories that may be authorized by the Engineer as described in the *Encroachment By-Law*¹, therefore approval is being sought through Regional Council.

DISCUSSION

Parks Canada wishes to install three interpretive sign panels within the Brunswick & Sackville Street Plaza. The sign panels and mounting posts (owned and maintained by Parks Canada) will be integrated into the proposed planters (owned and maintained by HRM). As a result, the encroachment is not expected to restrict pedestrian movements or snow clearing efforts.

Each sign panel has an area of 1.0 square metres for a total encroachment of 3.0 square metres. The applicant would typically pay a one-time application fee of \$125 and an annual rental fee of \$30, as described in the *Encroachment By-Law* and *Administrative Order Number 15 respecting License, Permit and Processing Fees*².

The intent is to install these signs as part of the plaza construction project. As outlined in their application letter (Attachment 1), Parks Canada also intends to replace these signs periodically, as event schedules and budgets permit, in order to tell different stories. Replacing the signs is expected to have a minimal impact on the public as no excavation or closures are anticipated to be required.

¹ See [Encroachment By-Law \(E-200\)](#)

² See [Administrative Order Number 15](#)

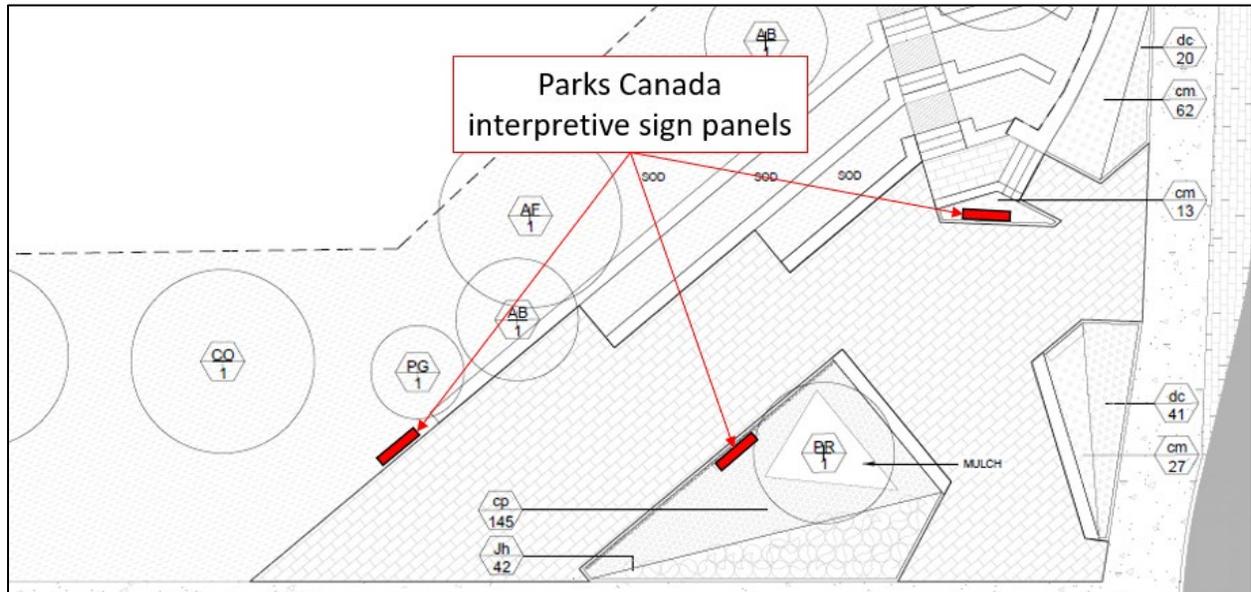


Figure 1: Location of the encroachment within Brunswick & Sackville Street Plaza.

FINANCIAL IMPLICATIONS

If Regional Council decided to approve the encroachment, then the applicant will be required to pay a one-time license fee of \$125 plus an annual rental fee of \$30, as described in the *Encroachment By-Law* and *Administrative Order Number 15 respecting License, Permit and Processing Fees*³. The 5-year estimated financial implications can be summarized as follows:

Fiscal Year	2023/24	2024/25	2025/26	2026/27	2027/28
Operating – Cost Centre R112	\$155	\$30	\$30	\$30	\$30

Per the encroachment license (Attachment 2), both HRM and the Licensee are able to terminate the agreement and in doing so no further revenue would be realized.

Where the applicant is acting on behalf of the Crown, they may choose to not pay the fees associated with municipal by-laws and therefore no licensing or rental fees would be received.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate low, and to reach this conclusion consideration was given to financial, environmental, operational impacts as well as alignment with strategic initiatives.

COMMUNITY ENGAGEMENT

Community engagement, as described in the *HRM Community Engagement Strategy*⁴, is not applicable to this process.

³ See [Administrative Order Number 15](#)

⁴ See [HRM Community Engagement Strategy](#)

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose not to approve the attached Encroachment License Agreement.

ATTACHMENTS

1. Letter from Parks Canada
2. Council Approved Encroachment License (New Construction)

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Ben Daisley, P.Eng., Right of Way Engineer, Public Works, 902.471.9684

Parks Canada Agency
Halifax Citadel National Historic Site
PO Box 9080, Station A
Halifax, Nova Scotia
Canada B3K 5M7

December 12, 2023

To Whom It May Concern,

This letter is to address the interpretive signage to be installed in the proposed plaza at Brunswick and Sackville Streets, in Halifax Nova Scotia.

Parks Canada Agency (PCA) has entered into an agreement with the Halifax Regional Municipality (HRM) to work together on the design and installation of a plaza to be constructed at the corner of Sackville and Brunswick streets.

The Halifax Defence Complex (HDC) is the PCA unit responsible for implementing the Parks' mandate within the Halifax region. Our mandate states that:

On behalf of the people of Canada, we protect and present nationally significant examples of Canada's natural and cultural heritage, and foster public understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations.

This plaza represents a great opportunity for Parks Canada to present interpretive content to meet this mandate as it is a location with particular significance in the history of Kjiptuk and Halifax. This corner is literally a crossroads in the story of the city and by presenting this information its citizens and visitors will gain a deeper understanding of our shared history.

The Mi'kmaw term for Citadel Hill is *Kuowaqe'jk* meaning "Big Pine Hill" and refers to the drumlin which was covered in primordial Acadian Forest prior to arrival of British in 1749. With the establishment of Halifax in 1749, much of this forest was cleared and one of the original five log forts protecting the settlement was erected adjacent to this location in what is now RA Park. The log palisade connecting this fort to the first Citadel ran through this corner.

During the Napoleonic Wars, Royal Artillery Park and Royal Engineers' Park were established on this corner. These two installations are responsible for much of the development and design of the burgeoning city in that the military construction which shaped Halifax originated from these two headquarters. The current site of Cambridge Suites was the location of the South Barracks, an extensive installation housing the Royal Engineers who built many of the batteries and fortifications around the city.

The corner also boasts the first free public high school in Halifax, the Halifax County Academy (competed in 1878, now part of the NSCAD campus) which was also the first home of the Dalhousie University Law School.

Parks Canada intends to create three panels to present the stories associated with this corner. The first panels will describe RA/RE Park, a description of the corner during the Victorian era, and a panel which describes the iconic yet entirely misunderstood signal masts atop the hill. The intention is to replace the panels periodically as events (and budget) permit.

As part of the agreement between Parks Canada Agency and the Halifax Regional Municipality (HRM), it is the intention of Park Canada Agency to design, fabricate, and maintain the interpretive panels to be installed. Parks Canada also agrees to take ownership and be responsible for the maintenance of the bespoke frames these signs will be attached to once they are installed.

Parks Canada will work with HRM to create an encroachment agreement confirming this relationship with the intention of expanding and amending the agreement to include similar projects in the future.

If you have any questions please contact Mike Kilfoil ([REDACTED])

Regards,
Mike Kilfoil
PM 2 – Halifax Defence Complex
Parks Canada Agency

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

BETWEEN:

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

and

PARKS CANADA AGENCY, a body corporate
(the "Licensee")

Recitals

A. **Whereas** the Licensee manages the National Historic Site at **Citadel Hill (PID 00034033)** and wishes to construct **information signs** (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 **March 5, 2024**, the 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 the parties agree as follows:

License

1. HRM hereby grants this License to the Licensee for the Encroachment, giving the Licensee, its servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of **Brunswick Street and Sackville Street in Halifax** identified in Schedule "A" to construct and maintain the Encroachment, on the terms and conditions of this Agreement.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation and Replacement

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 or replace 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 or replacement 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) [REMOVED]

(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) [REMOVED]

(5) [REMOVED]

(6) [REMOVED]

Record Drawings

5. [REMOVED]

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, the environment 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 fifteen (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 fifteen (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. As Parks Canada Agency does not carry insurance, Halifax Regional Municipality requires a Letter of Commitment at time of signing this Agreement. The Letter of Commitment will state that Parks Canada Agency accepts all responsibility for the Encroachment and will indemnify Halifax Regional Municipality in accordance with Clause 12(1).

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 **3.0 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 (60) 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 (60) 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 of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer") for the restoration of the street.

(3) If the Licensee does not, within the sixty (60) 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
Executive Director of Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5**

and

**Parks Canada Agency
Halifax Citadel National Historic Site
P.O. Box 9080, Station A
Halifax, N.S. B3K 5M7**

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:

PARKS CANADA AGENCY

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A"

Description:

- The encroachment consists of three sign panels mounted on posts (highlighted in red in the image below) integrated into the HRM-owned planters.
- Each sign panel measures 1.700m long by 0.838m wide. They are installed on an angle for viewing. The actual area of the encroachment in plan view is 1.700m by 0.59m, resulting in an area of 1.0sqm per sign, or 3.0sqm in total for all three signs.

