

REVISED
Sept 28/10



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

Item No. 11.1.3 (i)
Halifax Regional Council
September 28, 2010
October 19, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by

Mike Labrecque, Acting Chief Administrative Officer

DATE: September 21, 2010

SUBJECT: Proposed By-Law O-109, Respecting Open Air Burning

SUPPLEMENTARY REPORT

ORIGIN

At the September 14, 2010 Halifax Regional Council meeting, Council passed an amendment put forth by Councillor Streach that the list of communities, currently in the By-Law, be carried over in the proposed By-Law and that the Department of Natural Resources permit requirements, remain in place. A number of questions were raised by Councillors regarding the proposed By-Law O-109, Respecting Open Air Burning with staff being ask to respond to the questions.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Approve in principle By-Law O-109, Respecting Open Air Burning, as outlined in Attachment 1 of the September 28, 2010 Supplementary Report, and set a date for a public hearing;
2. Approve in principle amendments to Administrative Order 33, Respecting Open Air Burning as outlined in Attachment 2 of the September 28, 2010 Supplementary Report;
3. Subsequent to the approval of By-Law O-109, repeal By-Law O-103, respecting Open Air Burning.

BACKGROUND

During the development of By-Law N-300 Respecting Nuisances, Regional Council referred Part 3 - Nuisances from Smoke back to staff for a report to deal with smoke from any source. Councillors and Halifax Regional Fire and Emergency Staff receive numerous complaints regarding smoke emissions from outdoor solid fuel burning appliances. The majority of these complaints are related to outdoor wood burning appliances, commonly referred to as “chimineas, patio warmers or backyard burners”. These types of appliances have gained tremendous popularity and are permitted under By-Law O-103 Respecting Open Air Burning. The majority of the ‘911 calls’ are a result of smoke from these appliances bothering a neighbour, and under the current Open Air Burning By-Law, Fire and Emergency are required to order the fire extinguished, even if the set up meets all ‘fire safety’ requirements. In addition to the complaints received resulting from outdoor burning, Fire and Emergency also receive smoke complaints concerning indoor wood burning appliances (wood stoves), and the majority of these cases are from high density residential neighbourhoods.

DISCUSSION

In response to the number of requests for clarifications that were made by Councillors; those requests and the corresponding responses are listed below.

1. Clarify the time lines for NO BURN PERIOD – the NO BURN period would commence on April 15th to October 15th inclusive and that the end of the NO BURN period would be October 16th to April 14th. (Councillor Fisher)

Response: HRFE’s timelines would mirror the provincial requirements. The provincial requirements are posted on the Department of Natural Resources Website: “The fire season runs from April 15 to October 15, all dates inclusive”, which would in turn mean that the HRM burning restrictions would be from April 15 to October 15. Within the “Permit Required Zone” permits would be issued if the land owner meets the fire safety requirements outlined in proposed By-Law O-109 from October 16 until April 14.

2. Have a minimum setback requirement for outdoor wood appliances “wood doctors” with the minimum setback of 100’ or the manufacturer’s setback whichever is greater. (Councillor Smith)

Response: The manufacturer recommended setbacks range 5’ to 500’. Research has found a number of varying recommendations concerning setbacks. They relate specifically to the size of the wood boiler, sometimes referred to as “wood doctors”. Research also indicated that the risk from fire, if installed correctly, is minimal. Wood boiler construction consists of a firebox surrounded by a water jacket, a weatherproof cabinet and a short smokestack. The water is heated by the firebox and then is circulated to the home. These appliances provide an alternate and in some case a primary source of heat. In locations where they are permitted, provincial and state building by-laws impose distances from the wood boiler to adjacent dwellings and/or property lines because of the

excessive wood smoke. From our perspective, locations of these heating devices should be outlined in building codes, building permits and/or nuisance by-laws and not in an “Open Air Burning By-Law”, with a specific focus on fire safety.

3. Leave the penalty amount for those who do not comply with the permit requirements to the Solicitor rather than debate by Council. (Councillor Rankin)

Response: Legal Services has provided wording to reflect the penalty amounts of burning with and without burning permits which has been incorporated in the proposed By-Law O-109 – Section 12 – Penalty.

4. Consider that the smoke issue (from chimineas/wood doctors etc.) be included in the Nuisance By-Law since Halifax Regional Fire and Emergency does not have the expertise to assess air quality nor medical (respiratory) conditions irritated by smoke. (Councillor Karsten)

Response: Halifax Regional Fire and Emergency agrees with Councillor Karsten’s recommendation. Our ability to monitor air quality is specific to inside structures where we periodically test the air for CO levels and other gas by-products of combustion. Outside air quality falls under the Nova Scotia Department of Environment who has Ambient Air Monitoring Stations in HRM; they are listed on their website at <http://www.gov.ns.ca/nse/air/docs/AirMonitoringNetworkMap.pdf>. A quote from their website states “Our department strives to monitor and protect our outdoor air quality through regulations and programs to reduce pollutants that lead to issues like smog, acid rain, climate change and the thinning ozone layer. Poor air quality can affect health, lead to increased health care costs and also affect natural resources.” Halifax Regional Fire and Emergency would require additional expensive equipment, specialized training, and an increase to the existing staff complement to continue to respond to “smoke nuisance calls”. These calls require each situation to be assessed where smoke from an outdoor source was being attributed to allegedly causing a medical condition to worsen.

5. Include open air solid burning appliances in this By-Law (such as Wood Doctors). Consider implementing regulations that the distance be greater from an open air burning appliance to a building as this may limit their use to the larger rural lots. (Councillor Karsten)

Response: Halifax Regional Fire and Emergency’s response to this question would reflect the information contained in the response to question 2 with our suggestion that these heating devices should be outlined in building codes, building permits and/or the nuisance by-law rather than an “Open Air Burning By-Law”.

6. Allow burning to occur during April to October with the HRM fire stations handing out the permits to provide some control of those fires to alleviate increase in illegal dumping of brush/land clearing material. (Councillor Dalrymple)

Response: Burning will continue in the current “No Permit Zone”, between April 15 to October 15 with the required Department of Natural Resources burning permit. Only brush and dry seasoned fire wood can be burned under the HRM By-Law and DNR regulations. Under no conditions are garbage and construction debris permitted to be burned.

7. Possibly two separate (Council’s) By-Laws – one for urban areas, one for rural areas. (Councillor Uteck)

Response: Halifax Regional Fire and Emergency strongly recommends against this approach. It has the potential to be very problematic to determine what is urban and rural under this by-law. It might literally be determined that one street may fall under both rural and urban.

8. Requiring Municipal permits for fire would provide a revenue source and would help keep track/control of the fires. (Councillor Hendsbee)

Response: Any related costs would be at the discretion of Council to impose. Currently we do not charge for an HRM Burning Permit. To provide a brief example of how many are issued, one station in the past has issued as many as 50 open air burning permits on one day. A volunteer had to staff the station in order to issue permits. It is for this reason if HRM permits are to be implemented for a cost, it should be done in such a way where the user could download the permit and pay on-line. This practice would avoid having either career or volunteer firefighters tied up issuing permits and also prevent the concerns associated with having to secure and track cash.

9. Have more restrictive language be included in by-Law to give it more “teeth” for urban areas. Enable rural areas to apply for permits between April and October. (Councillor Rankin)

Response: Halifax Regional Fire and Emergency believe that the proposed by-law does have the necessary language to have a positive impact in the prevention of wild land fires, as well as providing allowances for residents to safely burn brush on their properties. When 911 receive a call or complaint regarding open air burning, the by-law does provide the authority to the responding fire officer to order the fire extinguished.

10. Limit the use of open air wood burning appliances in urban/suburban areas. (Deputy Mayor Johns)

Response: The current and proposed by-law only permits one appliance per property.

BUDGET IMPLICATIONS

N/A

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

ALTERNATIVES

ATTACHMENTS

1. Proposed By-Law 0-109
2. Proposed Administrative Order 33
3. Appendix A – List of Proposed Housekeeping Amendments to By-Law O-109 and Administrative Order 33 Respecting Open Air Burning

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: Roy Hollett, Deputy Chief Director, HRFE, 490-5036

Report Approved by: _____
Roy Hollett, Deputy Chief Director, HRFE, 490-5036

Report Approved by: _____
William Mosher, Chief Director, HRFE, 490-4239

Halifax Regional Municipality
BY-LAW NUMBER O-109
Respecting Open Air Burning

BE IT ENACTED by the Halifax Regional Council that By-Law O-109 Respecting Open Air Burning is hereby enacted:

Title

1. This by-law shall be known as By-Law Number **O-109** and may be cited as the “Open Air Burning By-law.”

Definitions

2. In this By-Law:
 - (a) **“brush”** includes trees, wood, shrubs, bushes or branches;
 - (b) **“domestic waste”** includes:
 - (i) leaf and yard waste including grass and grass clippings, twigs, and house and garden plants;
 - (ii) box board including cereal, shoe, tissue and detergent boxes;
 - (ii) construction or demolition material, including saw dust, wood shavings, planking, siding, wood beams, plastic and rubber.
 - (c) **“dry seasoned fire wood”** means wood that has not been chemically treated, stained or painted, and has been stored in a manner to deter dampness;
 - (d) **“Fire Chief”** means the Chief Director of Halifax Regional Fire and Emergency or other person(s) designated by the Fire Chief;
 - (e) **“Municipality”** means the Halifax Regional Municipality;
 - (f) **“Permit Zone”** means the areas designated as such by Administrative Order Number 33;
 - (g) **“No Permit Zone”** means the areas designated as such by Administrative Order Number 33;
 - (h) **“open air”** includes not within a structure or outdoor wood burning

appliance;

- (i) **“outdoor wood burning appliance”** means an appliance manufactured to be used in the open air to burn wood, equipped with a spark arrester;
- (j) **“permit”** means a permit for burning in the open air issued by the Fire Chief under authority of this by-law;
- (k) **“person in charge of a fire”** includes the owner of the property upon which the burning is to take place, or the person who has the owner’s consent to conduct the burning, and the person who is conducting or directing the burning.
- (l) **“spark arrester”** means a device fitted to an outdoor wood burning appliance to prevent the release of sparks into the atmosphere or surrounding area; and
- (m) **“suitably equipped”** means being in possession of tools or equipment including, but not limited to, rakes, back tanks, shovels, hoses and an adequate water supply, sufficient to contain or prevent the spread of a fire ignited in the open air.

Application of By-Law

- 3. This by-law shall apply throughout the Municipality.

Permit Requirements

- 4.
 - (1) No person shall light or be in charge of an open air burning fire, or be the owner of a property on which an open air fire occurred, without first obtaining a permit except as otherwise provided in this by-law.
 - (2) A HRM Burning permit is not required for burning in the “No Permit District”, as prescribed by Administrative Order 33. A Department of Natural Resources Burning Permit will be required during April 15th to October 15th in accordance with Provincial Regulations.
 - (3) No permit is required for a campfire in a public or private campground.
 - (4) Fires for religious or ceremonial purposes are allowed in the Permit Zone, between April 15 and October 15 and shall require a burning permit, subject to any terms and conditions imposed by the Fire Chief.

- (5) The Fire Chief may issue a permit for the open air burning of brush to deal with any natural disasters, agricultural reasons or similar conditions or to deal with an infestation of insects or disease that pose a risk of damaging the natural resources of Halifax Regional Municipality in accordance with sections 5, 6, and 9 of this by-law and shall be subject to any terms and conditions imposed by the Fire Chief.
- (6) In cases of insect or disease infestations, documentation from the Federal or Provincial authority confirming the infestation and action to be taken, shall be provided to the Fire Chief, prior to the issuance of a permit.
- (7) The Fire Chief may specify the hours of the day and the number of days during which burning may be permitted.

Permit Application

- 5.
 - (1) Pursuant to section 4, where a permit is required under this by-law, an application shall be made to the Fire Chief.
 - (2) Where the Fire Chief determines the proposed burning would pose a fire hazard to persons or property, or where there is a failure to meet the requirements of the by-law, the Fire Chief shall refuse to issue a permit.
 - (3) In making a determination under section 5(2), the Fire Chief may take into consideration:
 - (i) whether the applicant owns or is the occupant of the land upon which the burning is intended to occur or has written consent, produced prior to the issuance of the permit, of the owner of the land on which the burning will occur;
 - (ii) the prevalent weather conditions;
 - (iii) whether the applicant is suitably equipped to ensure the fire is maintained under control;
 - (iv) whether the applicant is able to comply with the instructions set out in section 6; and
 - (v) any other matter the Fire Chief determines relevant.
 - (4) A permit may be revoked by the Fire Chief at any time where it is determined the proposed burning will pose a fire hazard to persons or property or where the conditions of the permit have not been met.

Burning Restrictions

6.
 - (1) Open air burning shall only occur during the period of October 16th until April 14th in the "Permit Required Zone" in accordance with Administrative Order No. 33.
 - (2) At least two people nineteen (19) years of age or older must be present while burning is being conducted and in possession of a Municipal Burning Permit.
 - (3) Open air burning shall not take place within 23 metres (75 feet) of any dwelling or accessory building.
 - (4) No person shall burn rubber tires, oil, plastic, petroleum products or domestic waste
 - (5) No fire shall be ignited when the wind velocity may jeopardize the ability to control and contain the fire.
 - (6) Where two (2) or more piles are to be burned on a single site, only one pile shall be burned at a time. The size of the pile shall be at the discretion of the individual in charge of the burning, but shall in no way impair the ability of the individual to control the fire.
 - (7) A person in charge of the burning shall have the means to call 911 from the site.
 - (8) The person in charge of a fire shall ensure that the fire is not left unattended and that all smouldering embers are completely extinguished prior to leaving the site after burning is completed.
 - (9) No person shall ignite, allow or cause to be ignited, a fire of any kind in the open air without being suitably equipped to contain or extinguish the fire, and shall remain in attendance while the fire is burning or smoldering.
 - (10) Where the Fire Chief determines that a fire poses a fire hazard to persons or property, or where there is a failure to meet the requirements of this by-law, the Fire Chief shall require the fire to be extinguished.
 - (11) The person in charge of a fire may be required to pay all expenses incurred in controlling or extinguishing any fire which may get beyond control, is in danger of doing so, or extends to the lands of others.

Outdoor Wood Burning Appliances

7. Outdoor wood burning appliances may be used throughout the Municipality, subject to the following:
 - (a) manufacturer's instructions are followed;
 - (b) outdoor wood burning appliances are not placed on wooden decks or combustible platforms;
 - (c) the appliance is equipped with a spark arrester with no opening larger than 9.65 mm (3/8");
 - (d) only dry seasoned firewood is used;
 - (e) clearances of 4.75 metres (15 feet) are maintained from a dwelling or accessory building and;
 - (f) only one outdoor wood burning appliance is used on a property at a time.

Camp Fires

8. Campfires are permitted in the "No Permit Zone" throughout the year, but the following provisions shall apply:
 - (a) all campfires shall be contained, using non-combustible material, which will prevent the accidental spreading of the fire;
 - (b) campfires shall not exceed 600 mm (24 inches) in width at the largest point and shall not be piled higher than 460 mm (18 inches) in height;
 - (c) only dry seasoned firewood shall be used;
 - (d) clearances of 4.75 metres (15 feet) shall be maintained from a dwelling or accessory building; and
 - (e) only one campfire may be permitted on a property at a time.

Authority

9. (1) The Fire Chief shall have the authority to extinguish or order extinguished any fire which poses a fire hazard to persons or property, or does not meet the provisions of this by-law.
- (2) No person shall refuse to extinguish a fire pursuant to an order of the responding officer.

Commercial Burning

10. Contractors that conduct open air burning in the municipality on land being cleared for development or for insect infestation or disease control must obtain a permit therefor, and in addition to any other requirements of this by-law, shall post a bond, irrevocable letter of credit or certified cheque in a form suitable to the Fire Chief from a bonding company or financial institution acceptable to the Fire Chief in the amount of ten thousand dollars (\$10,000.00). A bond posted pursuant to this clause shall be used to pay expenses arising under section 6 (11) of this by-law or any damages associated with the fire getting beyond the control of the contractor; provided however, that the bond shall not absolve the contractor from any liability from the fire.

Fees

11. The fees for burning permits shall be established by Administrative Order Number 15.

Penalty

12. (1) Any person who fails to comply with a permit issued hereunder or any other provision of this by-law shall be liable to a penalty of not less than two hundred and fifty dollars (\$250.00) and not more than ten thousand dollars (\$10,000).
- (2) In addition to any fine or imprisonment imposed, the Court or Judge may order the person convicted to pay all expenses incurred in correcting the contravention of the by-law or any damages associated with such contravention.
- (3) Where any person is in contravention of any provision of this by-law, the Fire Chief may direct in writing that the contravention be remedied in the manner and within the time specified.

- (4) Upon the failure of the person to comply with such notice, the Fire Chief may order the remedy, and recover the cost of such work from the property owner.
- (5) The Municipality's cost to remedy the contravention pursuant to any provision of the by-law shall constitute a lien against the property owner which shall be applied and enforced in the same manner as for rates and taxes under the *Assessment Act* or the Halifax Regional Municipality Charter.

Repeal

- 13. Halifax Regional Municipality By-Law O-103, respecting Open Air Burning, is hereby repealed.

Done and passed in Council this day of day of , 2010.

Mayor

Municipal Clerk

Halifax Regional Municipality
Administrative Order Number 33
Respecting Open Air Burning

BE IT RESOLVED as a policy of the Council of the Halifax Regional Municipality pursuant to the *Municipal Government Act* as follows:

SHORT TITLE

1. The administrative order may be cited as Administrative Order Number 33, Respecting Open Air Burning.

PERMIT REQUIRED ZONE

2. A municipal burning permit is required in locations that are fully serviced with both municipal water and sewer, providing all requirements of By-law O-109 are met, with the exception of Section 10.

NO PERMIT REQUIRED ZONE

3. The No Permit Required Zones include all locations that are not serviced with municipal water or sewer, and providing all requirements of By-law O-109 are met, with the exception of Section 10.

Cooks Brook	Dutch Settlement	Meagher's Grant
Mushaboom	Musquodoboit Harbour	Middle Musquodoboit
Moser River	Mooseland	Ostrea Lake
Oyster Pond	Tangier	Sheet Harbour
ThreeHarbours/Port Dufferin		Upper Musquodoboit
Big Lake	Black Point	Blind Bay
Boutilliers Point	East Dover	French Village
Glen Haven	Glen Margaret	Goodwood
Hacketts Cove	Hatchet Lake	Head of St. Margaret's Bay
Hubbards	Indian Harbour	Ingramport
Lewis Lake	Lower Tantallon	Peggy's Cove
Prospect	Prospect Bay	Queensland
Seabright	Shad Bay	Terence Bay
Upper Tantallon	West Dover	White's Lake

Bayside
Hubley
Otter Lake

Beaver Bank/Kinsac
Lower Prospect
Big Lake

Brookside
McGrath's Cove

Done and passed in Council this day of , 2010

Mayor

Municipal Clerk

I, _____, Municipal Clerk of the Halifax Regional Municipality,
hereby certify that the above-noted Administrative Order was passed at a meeting of
Halifax Regional Council held on _____, _____ 2010.

Municipal Clerk

Notice of Motion:
Approved:
Amendment #1

May 6, 2003
May 13, 2003

Notice of Motion:
Approved:
Amendment #2

April 20, 2004
April 27, 2004

Notice of Motion:
Approved:
Amendment #3

May 25, 2004
June 8, 2004

Notice of Motion:
Approved:

September 27, 2010

Attachment 3

Appendix “A”

List of Proposed Housekeeping Amendments to By-Law O-109
and
Administrative Order 33 Respecting Open Air Burning

By-Law 0-109

1. Title - change to O-109
2. Definitions:
Addition of new definitions: brush, dry seasoned fire wood, permit zone, and spark arrester.
Deleted definitions: Fire Protection District and grate
Reworded definition for Fire Chief
Renamed definition for No Burn Zone to Permit Zone
Reformatted the order and lettering of the definitions section.
3. Application of B-Law - removed subsection (b)
4. Changed title to Permit Requirements
Subsection (e) moved to Section 6
Subsection (f) moved to Section 10
Changed the alpha letters to numbers
Addition of (7)
Section rewritten to make it easier for reading.
5. Moved “Permit Application to Section 5
Removed (e) and (f) as well as c(i) and (v).
6. Moved Section 6 - Exemptions to Section 8.
Moved Section 12 Burning Restrictions to Section 6.
7. Moved to Outdoor Wood Burning Appliances to Section 7
Removed (e) and (g) and added new (c).
8. Moved Authority Section 7 to Section 9
9. Re-titled Section 8 to Camp Fires
Rewrote and renumbered the section - removing a(v), (vii), (b) and c.
10. Rewrote - Section 9 Authority.
11. Removed Section 8 Special Burning
Removed Section 10 Blueberry Fields and replace with Commercial Burning.

Removed Section 13 Requirements
Removed Section 13A Extraordinary Exemption

12. Moved Section 14 Penalty to Section 12 Penalty.
Rewrite of (1), (2), removed 3 and renumbered the remaining section.
13. Removed Section 15 - Compliance with Other Acts.
14. Moved Section 16 Repeal to Section 13 Repeal.

The reorganization and rewording to the By-law was undertaken to allow for a better flow of the document and to make it easier to read.

Administrative Order 33 - Respecting Open Air Burning

1. No Change.
2. Title Change to Permit Required Zone and section rewritten.
3. Deleted Camp Fires and Wood Burning Grills.
Replaced section with “No Permit Required Zones”.
4. Deleted No Burn Zone and Map.

The rewriting of the Administrative Order was undertaken to provide better clarification of the “Permit Required Zone” and “No Permit Required Zone” areas of HRM.