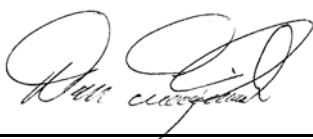


Item No. 3

Halifax Regional Council
May 13, 2008
Committee of the Whole
May 27, 2008
June 10, 2008

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer

DATE: April 28, 2008

SUBJECT: By-Law Number O-109 Respecting Open Air Burning

ORIGIN

At the January 24, 2006 Committee of the Whole the By-Law Rationalization Group referred By-Law N-300 Nuisances to Regional Council. Regional Council referred Part 3 Nuisances from Smoke back to staff for a report addressing items raised during the meeting. The items raised, also resulted in staff's review of By-Law Number O-103 Respecting Open Air Burning.

RECOMMENDATION

It is recommended that Regional Council:

1. Approve in principle By-Law O-109 Respecting Open Air Burning and set a date for public hearings;
2. Approve the Amended Administrative Order 33;
3. Repeal By-Law O-103 Respecting Open Air Burning;

BACKGROUND

During the development of By-Law N-300 Respecting Nuisances, section Part 3 Nuisances from Smoke was included to deal with smoke from any source. Councillors and staff receive numerous complaints each year regarding smoke emissions from wood burning appliances. The majority of these complaints are related to outdoor wood burning appliances commonly referred to as “chimineas, patio warmers or backyard burners” which have gained tremendous popularity and are permitted under By-Law O-103 Respecting Open Air Burning. Complaints associated with wood burning appliances installed inside the home are also received from residents of high density residential areas, particularly those areas with diminished lot clearances.

DISCUSSION

To address the issues raised by Council, staff reviewed By-Law O-103 as this By-Law deals with open air burning and outdoor wood burning appliances. Upon review, staff felt that the two By-Laws were duplicating matters of dealing with smoke and that it would be best have it contained in one By-Law, By-Law O-103 Respecting Open Air Burning.

- 1) Staff were to closely look at any device that would put smoke into the atmosphere and perhaps examine an exemption for wood stoves and barbeques and focus on outdoor wood burning devices.

As a result, staff have reviewed and have rewritten By-Law O-103 to place tighter restrictions on the use of outdoor wood burning appliances in high density areas to address all aspects of the use of these appliances, including fire risk. Previously commercial wood burning appliances ie Wood Doctors were exempt from By-Law O-103, the rewrite of the by-law now includes these appliances and places restrictions on the location of the installation and also addresses fuel quality.

To address the exception of wood stoves, staff recommend that we partner with Clean Nova Scotia and Wood Energy Technical Training (WETT) to educate citizens on proper fuel selection, storage, and burning methods. To address the concern of smoke from barbeques, staff reviewed complaints and found this was not an area for concern and does not require restrictions on these appliances.

- 2) Staff to examine beach pits and open campfires as part of the By-Law.

Beach pits or camp fires located on oceanfront beaches are regulated under the Beaches Act and enforcement is the responsibility of the Province. Campfires in Municipal Parks that may have beaches are covered under By-Law P-600. There have been few complaints received by Halifax Regional Fire regarding campfires on beaches and additional regulations are not warranted at this time. Campfires are still covered in the proposed rewrite of By-law O-103 Respecting Open Air Burning.

- 3) Staff review Condos and Apartment buildings having wood burning devices.

A review has been conducted and there are relatively few such installations in HRM. Those in existence are high-efficiency zero clearance fire places. Due to lack of storage areas for fuel wood, typically the occupants use artificial fireplace logs which produced little or no smoke.

- 4) Staff were requested to review the impacts to the lumber industry within the boundaries of HRM if tighter restrictions were placed on wood burning appliances.

Staff have reviewed and have discovered that there is little information available to determine the impact tighter regulations would have to vendors and suppliers. It is suspected however that the recommendations in the revised By-Law would have minimal impact, if any, on this industry, as the changes focus on fire safety and not the elimination of wood burning appliances.

As a result of By-Law O-103 being rewritten, staff have also reviewed Administrative Order No. 33 and have revised. The changes to the Administrative Order provide clearer identification of the Burn and No Burn Zones and provides staff with the ability to be consistent and fair in its application.

The re-write of By-Law O-103 will address concerns raised by citizens and councillors regarding outdoor or backyard wood burning appliances. Placing acceptable minimum distances between the appliance installation and the nearest adjacent dwelling will eliminate many of these appliances from the higher density areas of HRM, while their use would still be acceptable in most rural and some suburban / urban areas. The new proposal also increases the safe permissible 'open air burning areas, providing that the requirements of the by-law can be met.

BUDGET IMPLICATIONS

N/A

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

- 1) Explore creation of a new by-law allowing only Environmental Protection Agency (EPA) certified appliances to be sold and installed in the Municipality and existing appliances not

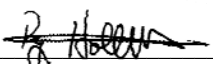
EPA be traded out upon sale of the home.

ATTACHMENTS

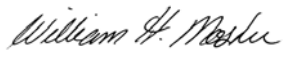
1. Proposed By-Law Number O-109 Respecting Open Air Burning
2. Amended Administrative Order 33

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: Larry Williams, Assistant Deputy Chief Director, HRFE 490-5611
Craig MacDonald, Divisional Captain, HRFE 490-4193

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

Financial Approval by: 
Catherine Sanderson, Senior Manager, Financial Services, 490-1562


Report Approved by: Bill Mosher, Chief Director, HRFE 490-5614

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

Be It Enacted by the Halifax Regional Council that By-Law 0-109 Respecting Open Air Burning is hereby enacted:

Title

1. This by-law shall be known as By-Law Number **0-109** and may be cited as the “Open Air Burning By-law.”

Definitions

2. In this By-Law:
 - (a) **“domestic waste”** means leaf and yard waste including, but not limited to, grass clippings, twigs, and house and garden plants; box board including, but not limited to, cereal, shoe, tissue and detergent; waste material resulting from construction or demolition activities including, but not limited to, saw dust, wood shavings, planking, siding, wood beams, plastic, rubber and other similar items;
 - (b) **“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, contains no leaves, needles or other such material or thing that will produce or promote the development of excessive smoke;
 - (c) **“Fire Chief”** means the Chief Director of Halifax Regional Fire and Emergency Service, the Captain, the Lieutenant, or Chief Officer of a Fire Department or Fire Company, Fire Prevention Officer or other person(s) designated by the Fire Chief in and for the Fire Protection District in which the fire is proposed to be ignited or has been ignited;
 - (d) **“Fire Protection District”** means the area of the Municipality which a fire department or a fire company serves and for which it is responsible;
 - (e) **“grate”** means a metal rack supported on a non-combustible enclosure;
 - (f) **“Municipality”** means the Halifax Regional Municipality;
 - (g) **“No Burn Zone”** means the areas designated as such by Administrative Order Number 33;
 - (h) **“open air”** means not within a structure;

(i) **“outdoor wood burning appliance”** means an appliance manufactured to be used in the open air to burn wood;

(j) **“permit”** means a municipal burning 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, but is not limited to:

i) the owner of the property upon which the burning takes place;

ii) the occupier, of the property upon which the burning takes place;

iii) the person who has the owner’s consent to conduct the burning; and

iv) the person who has care and control of the burning.

(l) **“responding officer”** means a member of Halifax Regional Fire and Emergency Service, a member of a fire service of another Nova Scotia municipality which has entered into a formal Mutual Aid agreement with the Municipality, a peace officer, or an officer of the Nova Scotia Department of Natural Resources; and

(m) **“suitably equipped”** means being in possession of tools or equipment including, but not limited to, brooms, rakes, back tanks, shovels, hoses and an adequate water supply, which shall be used to contain or prevent the spread of a fire ignited in the open air.

Application

3. (1) This by-law shall apply to all areas of the Municipality.

(2) This by-law shall not apply to persons travelling or camping in the woods or forested areas for recreational purposes, or camp fires in public or private camp grounds.

Permits

4. Except as otherwise provided in this by-law, any person who conducts open air burning in the Municipality shall first obtain a Municipal burning permit

Exemptions

5. (1) Notwithstanding Section 4, a permit is not required for burning in Fire Protection Districts, which are outside the No Burn Zone in accordance with Administrative Order Number 33.

(2) Fires for religious or ceremonial purposes are permitted in the No Burn Zone,

provided that a permit is obtained.

Special Permission

6. (1) In the case of a natural disaster or similar condition, the Chief Director of Halifax Regional Fire and Emergency Service may give permission for the issuance of permits for the open air burning of trees, wood, shrubs or brush.

(2) The Chief Director of Halifax Regional Fire and Emergency Service may give permission for the open air burning of trees, wood, shrubs, bushes and brush or fields that have been determined to have an infestation of insects or disease that pose a risk of damaging the natural resources of the Municipality. In such cases, documentation from the Federal or Provincial authority confirming the infestation and action to be taken, shall be provided to the Chief Director.

(3) Any such permits may be issued at the discretion of the Fire Chief, based on the provincial forest fire index or any hazardous conditions that may cause a fire safety issue, in accordance with sections 10 and 11 of this by-law, and shall be subject to any terms and conditions imposed by the Fire Chief.

Outdoor Wood Burning Appliances

7. (1) A permit is not required for the use of an outdoor wood burning appliance.

(2) Notwithstanding subsection (1), no person shall use an outdoor wood burning appliance, except as follows:
 - (a) Manufacturer's instructions shall be followed;
 - (b) Outdoor wood burning appliances shall not be placed on wooden decks or combustible platforms;
 - (c) Dry seasoned firewood shall be used;
 - (d) Clearances of 4.75 metres (15 feet) shall be maintained from all structures and from property lines;
 - (e) Outdoor wood burning appliances shall not be used within 30 metres (100ft.) of the nearest dwelling on an adjacent property;
 - (f) Only one outdoor wood burning appliance shall be used on a property at a time; and
 - (g) Listed/certified boilers used for heating buildings shall observe clearances of 91.44 metres (300ft.) from the nearest dwelling on an adjacent property.

Camp Fires

8. (1) A permit is not required for a camp fire.
- (2) Notwithstanding subsection (1), no person shall have a camp fire, except as follows:
 - (i) All camp fires shall be outside the No Burn Zone;
 - (ii) All camp fires shall be contained, using non-combustible material, which will prevent the accidental spreading of the fire;
 - (iii) Camp fires shall not exceed 600mm (24 inches) in width and shall not be piled higher than 460mm (18 inches) in height;
 - (iv) Only dry seasoned firewood shall be used;
 - (v) Clearances of 4.75 metres (15 feet) shall be maintained from all structures and from property lines;
 - (vi) Clearances of 30 metres (100 feet) shall be maintained between camp fires and the nearest dwelling on an adjacent property; and
 - (vii) Only one campfire shall be burning on a property at a time.

Authority

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

Permit Application

10. (1) 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 whether to issue a permit, the Fire Chief may take into consideration:
 - (i) The number of permits issued on a particular day;
 - (ii) The wind velocity;
 - (iii) The prevalent weather conditions;
 - (iv) Whether the applicant is suitably equipped to ensure the fire is maintained under control;
 - (v) The proposed method of burning;
 - (vi) Whether the applicant owns or is the occupant of the land upon which the

burning is intended to occur or, if not, has consent of the owner of the land on which the burning will occur;

(vii) Whether the applicant is nineteen (19) years of age or older and ensures that the at least one other person, of nineteen (19) years of age or older, suitably equipped to control the fire while the fire is burning or smoldering; and

(viii) 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 hazard to persons or property or where the conditions of the permit have not been met.

(5) The holder of the permit shall ensure that the permit is available for inspection at the scene of the fire.

Burning Restrictions

(1) Unless special permission is granted by the Chief Director, any open air burning, other than that pursuant to section 7 of this by-law, shall take place outside the No Burn Zone.

(2) No person shall burn rubber tires, oil, plastic, petroleum products, like materials or other domestic waste.

(3) All material to be burned shall be piled and placed at least 15 metres (50 feet) from structures on the property, and from property lines.

(4) No burning shall take place within 38 metres (125 feet) of the nearest dwelling on an adjacent property or within 23 metres (75 feet) of the nearest accessory building on an adjacent property.

(5) No fire shall be ignited when the wind velocity may jeopardize the ability to control 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) Halifax Regional Fire and Emergency Service shall be immediately notified by calling 911, if the fire is or appears to be getting out of control.

(8) The person in charge of a fire shall ensure that the fire is not left unattended and that all smoldering 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.

(10) At least two people nineteen (19) years of age or older must be present while burning is being conducted .

(11) No burning shall commence before 17:00 hours, and the fire must be extinguished by 22:00 hours the same day during the fire season, as established by the Department of Natural Resources. Burning may be conducted between the hours of 08:00 and 22:00 hours when such burning is conducted outside the burning season.

(12) 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 order the fire to be extinguished.

(13) 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.

Commercial Burning

12. Contractors that conduct open air burning in areas outside the No Burn Zone of the Municipality for land clearing for development, for insect infestation, or for disease control must obtain a permit in accordance with this by-law and, in support of the application, 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, or other instrument, posted pursuant to this clause shall be used to pay expenses arising under subsection 11.(13), or any damages associated with the fire getting beyond the control of the contractor; provided however, that the bond, or other instrument, shall not absolve the contractor from liability for damage or expense resulting from the fire.

Penalty

13. (1) No person shall cause or conduct any open air burning in the Municipality, except in accordance with the provisions of this by-law.
- (2) Any person who fails to comply with any permit issued hereunder or any condition of such a permit, or any other provision of this by-law shall be liable to a penalty of not less than two hundred dollars (\$200.00) and not more than ten thousand dollars (\$10,000.00) or in default of payment, to imprisonment for a period not exceeding sixty (60) days.
- (3) 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.

(4) 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.

(5) 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.

(6) 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.

Repeal

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

Done and passed in Council this day of

Mayor

Municipal Clerk

I, _____, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the Halifax Regional Council held on _____, 200

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

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

Burning Permits- Fire Protection Districts where not required

- 2.(a) A municipal burning permit is not required in the following Fire Protection Districts providing all requirements of By-law O-109, with the exception of Section 9 are met:

Cooks Brook	Three Harbours/Port Dufferin	Upper Musquodoboit
Dutch Settlement	Mushaboom	Sheet Harbour
Meagher's Grant	Musquodoboit Harbour	Tangier
Middle Musquodoboit	Ostrea Lake	Oyster Pond
Moser River	Mooseland	

2. (b) A municipal burning permit is not required in the following communities within Fire Protection Districts providing all requirements of By-law O-109, with the exception of Section 9 are met:

Big Lake	Black Point	Blind Bay
Boutilier's Point	East Dover	French Village
Glen Haven	Glen Margaret	Goodwood
Hackett's 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	Terrance Bay
Upper Tantallon	West Dover	White's Lake
Beaverbank/Kinsac	Bayside	Brookside
Lower Prospect	Hubley	Big Lake
McGrath's Cove	Otter Lake	

No Burn Zone

3. The No Burn Zone Shall be comprised of the following Communities and Areas:
- (a) All those lands that fall within the boundaries of the former Cities of Halifax and Dartmouth.
 - (b) All those lands that fall within the boundaries of the former Town of Bedford.
 - (c) All areas of the communities of Lower Sackville and Middle Sackville.
 - (d) Cole Harbour to the Ross Rd., including Salmon River Drive, and all streets off Salmon River Drive.
 - (e) Westphal from the intersection of Forest Hills Parkway and 107 By-pass, and Highway 107 to Salmon River.
 - (f) Eastern Passage to the Cow Bay River.

Done and passed in Council this day of , 2008.

_____ 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 _____, 200__.

_____ Municipal Clerk

Notice of Motion:	May 6, 2003
<u>Approved:</u>	<u>May 13, 2003</u>
Amendment #1	

Notice of Motion:	April 20, 2004
<u>Approved:</u>	<u>April 27, 2004</u>
Amendment #3	

Notice of Motion:	May 25, 2004
<u>Approved:</u>	<u>June 8, 2004</u>
Amendment #4	

Notice of Motion:	
<u>Approved:</u>	<u></u>