



PO Box 1749
Halifax, Nova Scotia
B3J 3A5, Canada

Item No. 11.1.3
Committee of the Whole
September 14, 2010
Halifax Regional Council
September 28, 2010
October 19, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Wayne Anstey, Acting Chief Administrative Officer

Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: June 3, 2010

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

SUPPLEMENTARY REPORT

ORIGIN

June 10, 2008 a Motion of Council, Committee of the Whole: To approve in principle By-Law O-109.

- 1) The status quo be maintained as per By-Law O-103 with regards to outdoor burning appliances;
- 2) To exempt out the high water mark on a shore line property as a property line;
- 3) Amend 7(g) of By-Law O-109 of Outdoor Wood Burning appliances to reduce the clearance rate of 300ft to 100ft from the nearest dwelling on an adjacent property of listed/certified boilers used for heating buildings.

RECOMMENDATION

It is recommended that Halifax 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, 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 type 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

To address the issues raised by Council, staff reviewed By-Law O-103 as this By-Law deals with both, open air burning and outdoor wood burning appliances. Upon review, staff felt that the By-Law was trying to address two separate issues within one document - Open Air Burning Fire Safety and Respiratory Health Issues from wood smoke.

There are conflicting messages under the current Open Air Burning By-Law, where it permits the use of an outdoor solid fuel burning appliance, if all fire safety steps are followed; however, if the smoke from the appliance is deemed to be causing a health hazard to someone, then Fire and Emergency are notified of an illegal burn. Once on scene, Fire and Emergency are obligated to order the fire extinguished, even if it meets all fire safety requirements. The other concern related to the current Open Air Burning By-Law is that Fire & Emergency crews have no legal authority to address issues related to indoor wood burning appliances (wood stoves), unless it is related to a chimney fire. Halifax Regional Fire and Emergency, Fire Prevention Division does and will continue through various types of media educate all residents of HRM on safe use of both outdoor and indoor wood burning appliances.

- 1) Outdoor Wood Burning Appliances - as requested by Council the status quo has been maintained as written in By-Law O-103. The permitted distances were again reviewed for these outdoor wood burning appliances and it was felt that the current requirements did meet the minimum requirements for fire safety; however, with (1) one addition, which was to include a spark arrester screen to further reduce the risk of burning embers from leaving the appliance.

- 2) The exemption of the high water mark on a shore line property as a property line is not required. A change in the Open Air By-Law has removed property lines as a boundary and replaced with distance requirements of 23 meters (75 feet) from any dwelling or accessory building for open air burning.
- 3) The amendment of 7(g) of the proposed By-Law O-109, Outdoor Wood Burning Appliances to reduce the clearance rate of 300ft to 100ft from the nearest dwelling on an adjacent property of listed/certified boilers used for heating buildings has been removed. These appliances are permitted under Section 7 (a) Outdoor Wood Burning Appliances provided the manufacturers's instructions are followed for the outdoor wood burning appliance being used.

Additionally, staff were ask to consider fire safe guidelines and distances pertaining to open air burning and as a result reviewed the locations within the HRM that open air burning was permitted as prescribed in Administrative Order 33. The Administrative Order determined a "Burn Zone" and a "No Burn Zone".

Staff have determined that the current fire safe distances does meet the intentions for a resident being able to safely burn brush; however, the division of the former "Burn" and "No Burn Zones" were based on fire response districts and not based on fire safety factors. There were situations where open air burning was prohibited in the "No Burn Zone" and when questions were raised by Council and the residents regarding the reasoning for this determination it was not easily answered due to the numerous changes over the years between the No Burn Zone versus the Burn Zone.

To provide a simpler means to address this confusion for both the residents and staff of HRM, staff has taken a different approach to address the burning of brush and have separated HRM into a "Permit Required Zone" and "No Permit Required Zone". The proposed division is based on whether or not the address (property) has municipal services (water and sewer). Water and sewer serviced lots are considered "Permit Required Zone" and un-serviced lots are considered "No Permit Required Zone". These changes will provide staff with the ability to be consistent and fair in its application.

Another proposed change would be to eliminate all open air burning between **April 15th** and **October 15th**; unless otherwise approved by the Chief Director of Fire and Emergency. Residents living in a "No Permit Required Zone" would be able to burn brush between **October 15th** and **April 15th**, without a Municipal Burning Permit, providing that they are able to meet all requirements in the Open Air Burning By-Law. The residents who live in the "Permit Required Zone" would also be able to burn brush between **October 15th** and **April 15th**, if they meet the requirements outlined in the Open Air Burning By-Law; however they will need to acquire a Municipal Burning Permit from the local Fire Station.

The above proposed change to the by-law is a preventative measure in preventing open air fires into becoming uncontrolled wild land fires (forest fires) especially during the spring and summer months. The reduction in risk of a fire spreading by burning dried brush when there is a blanket of snow on the ground is greatly reduced as the dry wood and cold air will allow the fire to burn quickly and produce minimal amount of smoke. The Department of Natural Resources also supports Winter Brush Burning as it is safer and cleaner and has information / brochures of the steps to follow when burning in the winter from November 1 to March 1.

Staff have also reviewed the ability of Halifax Regional Fire and Emergency to order a fire extinguished due to a reported health hazard. The current Open Air Burning By-Law has an article Authority which provides for the responding officer to order a fire extinguished which poses a health or fire hazard. It was determined that Halifax Regional Fire and Emergency does not have the proper air monitoring equipment nor training to be able to properly determine if the smoke particulate is causing a health risk or if another unknown factor was contributing to a persons respiratory problems. It is the responsibility of the Nova Scotia Department of Environment to monitor outdoor air quality.

As a result of this information, staff have incorporated amendments in proposed By-Law O-109 where it focusses on fire safety / fire prevention concerning outdoor wood burning appliances and open air burning. The proposed amended By-law does not refer to the extinguishment of outdoor wood burning appliances due to respiratory health complaints. Staff in carrying out the review of the by-law have also incorporated a number of housekeeping amendments as out-lined in the attached Appendix "A" to allow for a better flow of the by-law and ease of reading.

We do not currently charge for Municipal Burning Permits, however, if a fee were to be implemented this could have a positive impact on the budget. If Council wanted a fee to be charged, further analysis would be done to determine estimated volumes and what an appropriate fee structure would be.

BUDGET IMPLICATIONS

The are no budget implications from the recommendations in this report.

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

Amendments to proposed By-Law O109 were made as per Council's direction. Following final approval of the By-law, a public education process will be undertaken, as well as staff attending Community Council meetings to further disseminate the educational information.

ALTERNATIVES

- 1) To maintain the current Open Air Burning By-Law O-103.
- 2) To adopt specific sections of the proposed amendments to the Open Air Burning By-Law.
- 3) Explore the creation of a new 'Indoor Wood Burning Appliance By-Law', that would only permit newer high efficiency CSA/EPA B415 - Certified Wood Stoves be installed in newly built homes and that they identified as the only type to be sold within HRM.

ATTACHMENTS

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

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: Donald Day, Divisional Chief, Fire Prevention Division, 490-7145
Craig MacDonald, Divisional Captain, Fire Prevention Division, 490-4192

Report Reviewed by: Joshua Judah, Solicitor, Legal Services, 490-4124

Report Approved by: _____
Roy Hollett, Deputy Chief Director, Fire & Emergency, 490-5036

Report Approved by: _____
William H. Mosher, Chief Director, Fire & Emergency, 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; and
 - (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 permit is not required for burning in the “No Permit District”, as prescribed by Administrative Order 33.
 - (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 15th until April 15th.
- (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 any permit issued hereunder or any condition of such a permit, or any other provision of this by-law shall be liable to a fine of not less than two hundred and fifty dollars (\$250.00) 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.
- (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.

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: May 6, 2003
Approved: May 13, 2003

Amendment #1

Notice of Motion: April 20, 2004
Approved: April 27, 2004

Amendment #2

Notice of Motion: May 25, 2004
Approved: June 8, 2004

Amendment #3

Notice of Motion:
Approved:

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.
Increased the fine amounts of not less than \$250 and not more than \$10,000
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.