

HALIFAX

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Item No. 14.1.6
Halifax Regional Council
November 28, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: August 31, 2017

SUBJECT: Open Air Burning – Options for By-law Enforcement and No-Burn Areas

ORIGIN

The following two motions were put and passed by Regional Council on June 14, 2016:

THAT Halifax Regional Council request a staff report on options for how enforcement of the Open Air Burning By-law can be implemented in an effective manner in the Halifax Regional Municipality.

THAT Halifax Regional Council request a staff report from Legal Services with respect to open air burning and persons with medical reasons for smoke sensitivity having a no burn area around their home.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, 2008, c. 39,

188 (1) The Council may make by-laws, for municipal purposes, respecting
(a) the health, well being, safety and protection of persons;

.....

(d) nuisances, activities and things that, in the opinion of the Council, may be or may cause nuisances, including noise, weeds, burning, odours, fumes and vibrations

By-law O-109, Respecting Open Air Burning

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Maintain status quo by continuing to have Halifax Regional Fire and Emergency enforce the Open Air Burning By-law; and,
2. Not create a No-Burn Registry under the Open Air Burning By-law.

BACKGROUND

On June 14, 2016, staff provided a report to Council with respect to open air burning. As reported at the time, from April through October 2015 Halifax Regional Fire & Emergency (HRFE) responded to over 515 calls related to open air fires. In many cases, these calls were made by neighbours who considered the fire a nuisance and wanted it extinguished. Having responded to the scene of the alleged illegal burning, HRFE confirmed the requirements of the Open Air Burning By-law were met and the owner at the scene of the burning was not required to extinguish the fire.

When a resident reports a potential fire to 9-1-1, HRFE are required to initiate a response to investigate. Depending on the information provided to the 9-1-1 Call Taker and what is passed along to the HRFE Captain, the response can be a Code 1 (emergency lights and siren) or Code 3 (no warning devices activated). The majority of open air burning calls to 9-1-1 are for reported illegal burning complaints, specifically related to burning occurring outside the stated hours of approved burning, residents not knowing the provincial and municipal burning regulations, complaints about the smoke from a neighbour's outdoor burning bothering surrounding neighbours, burning unapproved materials (construction debris), and neighbour disputes. When these types of 9-1-1 calls, reporting outdoor burning, occur it unnecessarily removes the fire crew from being in a position to respond to higher level emergencies, increases response times as crews will be dispatched from further fire stations, and as well, puts the Fire Officer in a position of having to mediate disputes between neighbours.

HRFE recommended that open air burning be prohibited in high density residential neighbourhoods. This would eliminate the majority of calls from neighbours who consider the fires to be a nuisance. Council did not approve the open air burning prohibition and instead asked staff to provide options for enforcement, and implementing a no-burn zone for people who, for medical reasons, suffer from smoke sensitivities.

DISCUSSION

Option for Enforcement of the Open Air Burning By-law

Enforcement by HRFE vs. Municipal Compliance

It has been suggested that enforcement of the Open Air Burning By-law could be carried out by Compliance Officers. However, there are a number of reasons why enforcement of this By-law should remain with HRFE. The reasons identified by HRFE and Municipal Compliance are:

(a) Training, Expertise and Equipment

HRFE is trained to respond and investigate fire complaints. When arriving at the scene of a call they will determine if the fire falls within the requirements of the By-law. They will also determine if additional resources are required to deal with the matter. HRFE has the equipment to put out a fire, if it is necessary.

Compliance Officers may not have all the training and expertise required to assess complaints under the By-law and do not have the equipment to put out a fire if required. If, on arrival at the scene, it was determined the fire had to be put out the Compliance Officer would end up having to call in HRFE. This could result in a potentially serious delay in HRFE response to the fire.

(b) Staffing and Costs

There are currently 20 Compliance Officers employed by the Municipality, all of whom are based in the core. The Compliance Officers work between the hours of 8:00 a.m. to 8:00 p.m. Monday through Sunday.

The majority of calls to 9-1-1 regarding open air burning happen in the evenings or on weekends.

For Municipal Compliance to respond to these calls would require an increase in the number of Compliance Officers and locate them throughout the Municipality to allow for timely response to a call. Municipal Compliance has not undertaken any study as to what this scenario would cost.

In contrast, HRFE has 52 Fire Stations spread throughout the Municipality, staffed by full-time or volunteer firefighters 24/7. There is no additional cost to HRFE if Fire & Emergency to respond to the open air burning calls.

(c) Safety

When HRFE responds to a call for open air burning, they arrive with a crew of 4 firefighters. These firefighters have the training to assess the situation to determine if the fire is legal or if other action is required, from requiring the owner to extinguish the fire to elevating the level of the call (i.e. Code 3 to a Code 1). Even if the fire is determined to be legal and the 9-1-1 complaint was not warranted, owners are rarely hostile towards the fire crew.

In addition to the issues with training, expertise and equipment noted above, Compliance Officers work by themselves and may be called to an open burn complaint where the owner may be hostile about the complaint. Response to open air burning calls would require a crew in the event the fire needs to be extinguished. This may create an unsafe work environment for the Compliance Officer working alone. There is also the risk that the fire requires HRFE and any delay in responding could put property and lives at risk.

For the reasons noted above, staff recommend enforcement of the Open Air Burning By-law remain with HRFE.

Creation of a No-Burn Registry

Council requested staff investigate the creation of a registry for “no-burn zones” around the homes of person who suffer smoke sensitivity due to medical reasons. HRM had a registry that existed under the Pesticides By-law (P-800), allowing property owners to register their property based on sensitivity to the chemicals in pesticides. The registry ran from April 1, 2001 to March 31, 2003.

There are a number of issues to consider when contemplating implementing the proposed No-Burn Registry. Some of the issues identified are:

- (a) Determining the criteria that will allow a property to be registered;
- (b) What, if any, fee should be charged to register a property;
- (c) Determining how the no-burn zone will be monitored and enforced; and
- (d) Managing the expectations of persons whose property is on the Registry.

(a) Determining the criteria that will allow a property to be registered

As noted previously, HRM had a registry under the Pesticides By-law which provides a framework as to how a No-Burn Registry might work. A person wishing to have a property registered would complete an application requiring information regarding the property to be registered, such as; name of applicant, civic address of the property, contact information, and letters from two physicians identifying a named person at the property whose is adversely affected by open air burning.

After registration in the No-Burn Registry and notification to the surrounding property owners, no open air burning shall be allowed within 250 metres (820 feet) of the boundary of the registered property. The 250 metre (820 feet) distance from the boundary of a registered property was selected recognizing the fact smoke will drift.

(b) Fee for Registering a Property under a No-Burn Registry

Determining what, if any, fee should be charged for registering a property under a No-Burn Registry is not straightforward. On the one hand, charging a fee to register a property would prevent abuse of the Registry, while on the other hand it should not be cost prohibitive. Other factors to consider include determining if additional resources will be required to administer the Registry, if it can be administered with existing resources, or whether fees should cover the costs.

The only comparator available is the cost required to run the registry under the Pesticides By-law. The Pesticides registry was estimated to cost \$150,000 annually. That included the creation of an educational program, the implementation of the registry and the cost to enforce it.

(c) Monitoring and Enforcing a No-Burn Zone

Enforcement of the no-burn zone would be complaint driven. The mechanism for response to complaints would have to be determined. As noted previously in this report, the majority of calls with respect to open air burning complaints occur after hours. This would mean the owner of the registered property would have to call 9-1-1 if the fire is after hours in order for HRM to respond and determine if the offending property is inside or outside a no-burn zone. HRFE and Municipal Compliance would need to determine how enforcement and follow-up would occur.

(d) Managing Expectations of the Registry

If HRM decides to put a No-Burn Registry in place, it should be accompanied by a comprehensive educational campaign for both those wishing to register their properties and those property owners who are within a no-burn zone. The creation of a no-burn zone may not prevent smoke from entering the property of a home on the Registry. Weather conditions may be such that smoke from open air burning outside the 250 metre (820 feet) zone would enter the property. In addition, the Registry would only apply to open air burning, not smoke coming from indoor appliances.

Staff do not recommend creating a No-Burn Registry for HRM. The Municipality does not have the resources to monitor no-burn zones, which means any enforcement will be complaint driven. With the majority of outdoor burning happening in the evenings or on weekends, the bulk of enforcement would fall to HRFE, further stretching resources. A No-Burn Registry may also create the expectation of those who register their property that smoke will no longer be an issue. This may not be the case as conditions may cause smoke to drift from a property outside the no-burn zone. The Registry would also not apply to smoke coming from indoor appliances, which again may not meet the expectations of those who suffer from smoke sensitivity.

In the alternative, if Council directs staff to create a No-Burn Registry then further discussion will be necessary to determine the administration and enforcement aspects of the Registry, community engagement and detailed costing.

FINANCIAL IMPLICATIONS

Enforcement of the Open Air Burning By-law: There are no financial implications if the status quo, where HRFE responds to calls under the Open Air Burning By-law, is maintained. If it is determined that Municipal Compliance will respond to calls under the Open Air Burning By-law then there will be expenses related to: hiring new Compliance Officers; training of all Compliance Officers to investigate fire complaints; and, providing new safety equipment to Compliance Officers.

No Burn Registry: There will likely be staffing requirements to deal with the licensing and enforcement of the No-Burn Registry. Under the Pesticides By-law (P-800), staff estimated annual costs of \$150,000 for the creation of an education program to implement the registry and to enforce it.

RISK CONSIDERATION

There are no risks associated with this report if Regional Council maintains status quo.

If either of the alternatives are chosen, the risks are as outlined below:

1. Municipal Compliance takes over enforcement of the Open Air Burning By-law:

Risk	Likelihood	Impact	Risk Level	Mitigation
Response to call for illegal Open Air Burning would not be within HRFE response time standards	4 – likely	4 – major	Very High	Post Compliance Officers throughout the Municipality. This will result in increased costs for staffing, training and equipment.
Open Air Burning could get out of control and start a wildfire	5 – almost certain	4 - major	Very High	Have HRFE respond with Compliance Officers to fire calls.
After hours calls may not get a response until the following business day	5 – almost certain	4 - major	Very High	Have Compliance Officers available 24/7 to deal with calls related to open air burning. Alternatively, calls received after hours to be routed to 9-1-1.
Compliance Officer must call HRFE to deal with fire	3 – possible	4 - major	High	None. The only mitigation is to have HRFE responsible for enforcement of the Open Air Burning By-law.

2. Creation of a No-Burn Registry:

Risk	Likelihood	Impact	Risk Level	Mitigation
Applicant wants to register but not provide required information	3 – possible	1 – insignificant	Low	The applicant has the choice. Without the required info, HRM could not enforce a no-burn zone.
Smoke drifts into the property from outside the no-burn zone	3 – possible	2 – minor	Moderate	Increase the size of the no-burn zone
Owner of affected property complains	4 – likely	2 – minor	High	None. While the owner of the affected property will be unable to conduct open air burning, the person on the registered property will not experience adverse health consequences

COMMUNITY ENGAGEMENT

None

ENVIRONMENTAL IMPLICATIONS

Implications not identified

ALTERNATIVES

1. Move enforcement of the Open Air Burning By-law from Halifax Regional Fire & Emergency to Compliance Officers. This is not recommended for the reasons outlined in this report.
2. Direct staff to draft amendments to the Open Air Burning By-law to create a No-Burn Registry and to conduct a thorough analysis of the costs and staff required to implement a No-Burn Registry.
3. Prohibit open air burning and the use of outdoor solid fuel burning appliances on residential properties where they are serviced with municipal water and waste water systems. This would allow open air burning only in areas where larger lots are prevalent and houses located further apart so as to minimize the effects of drifting smoke.

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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