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## Commentary

**Title:** Control of Open Burning

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Municipalities may find that persons who conduct open burning create problems either because the open burning results in numerous calls reporting a fire or the fire gets away from the individual and requires an emergency response. Municipalities have identified they would like a means to control burning within their jurisdiction.

Municipalities have a number of choices in controlling open burning. Open burning may be controlled by existing regulations or the municipality may pass a bylaw.

Each municipality has a person who is designated as a local assistant (it is usually the local fire chief, but may be the municipal administrator). The local assistant has the power and authority to regulate fire hazards, including open burning by requiring appropriate measures to be taken.

The Fire Prevention Act (FPA) adopts the National Fire Code of Canada (NFC) as provincial regulations. Sentence 2.4.5.1. of the NFC states that open burning is permitted provided "appropriate measures" are taken to limit the spread of the fire. There is an appendix note for sentence 2.4.5.1. that outlines general "appropriate measures".

### **Excerpt from the NFC**

#### **2.4.5.1. Open Air Fires**

*1) Except for fires used for cooking in fireplaces, grills or barbecues, open fires shall not be set unless appropriate measures are taken to limit their spread.*

*A-2.4.5.1.(1) Measures which can be considered to limit fire spread include sufficient clear space between the fire and adjacent buildings, combustibles and woodlands, the size and height of the pile of combustibles to be burned, prevailing meteorological conditions, fire control measures such as hoses and water tanks and, if a receptacle is to be used, the design of the receptacle. In some cases, a permit or license may be required for open-air fires.*

It is recommended that the Fire Chief/Local Assistant and Reeve/Mayor/municipal Council discuss what would be considered appropriate measures for the municipality. Appropriate measures may involve any number of things including:

- Having an appropriate number of persons on site to watch and control the fire (may include hiring the fire department).
- Cutting fire breaks.
- Having equipment on site to cut fire breaks.
- Having appropriate hand tools (shovels, rakes, etc.) on site and available for persons assisting in watching/controlling the fire.
- Having a water tanker on site.
- Some municipalities have required the owner to call the municipal office and advise they are burning.

The Fire Prevention Act and regulations do not specifically allow for a burning ban. However, one of the “appropriate measures” is consideration of weather conditions. A windy, hot day is obviously not a time to be conducting any type of open burning. The municipal acts provide the power for a municipality to pass bylaws. Each municipal act is very similar allowing the passage of a bylaw adopting the NFC and any revisions, variations or modifications that may be specified in the bylaw. Because open burning is a part of the NFC, the bylaw may be written to allow for the banning of open burning during specified periods, a permit system may be imposed (with no permits being issued when a ban is in place) or specification of other measures to control when, where and how open burning is conducted in the municipality.

A municipality may also pass a bylaw under the Prairie and Forest Fires Act (PFFA) to control open burning. The wording of section 7 of the PFFA states a municipality may pass bylaws not inconsistent with the PFFA and lists the authority for the municipality on specific criteria for a bylaw. Essentially, the municipality may pass a bylaw which allows for controls on open fires, requiring specific measures to be taken when burning, permit systems, and other criteria including the charging of fees and penalties for noncompliance.

Advertising information to residents on appropriate measures and any bylaw controlling open burning is a necessary step in controlling open burning.

In many areas of the province, a fire department response results in the municipality billing the owner for this service. This should be advertised to property owners that before they conduct open burning, they should advise the municipality so that when others call to report a fire, it is known that open burning is taking place and an emergency response that may result in a bill will not take place.

Municipalities who chose to control open burning should also consult with the dispatch service for the fire department. Property owners identifying they are conducting open burning should notify the municipality. The municipality should inform the dispatch service of open burning known to be taking place as persons seeing the fire may call the 9-1-1 system and the dispatch service may respond the fire department if they are unaware that permitted open burning is taking place.

When a fire situation occurs, the Fire Chief and Mayor/Reeve or a Councilor could respond to the property to determine if appropriate measures have been taken. If appropriate measures have not been taken, an order can be issued under the bylaw or Section 19 of the FPA to the owner to implement appropriate measures and/or to extinguish the fire.

A fire department has the authority to enter any property to extinguish a fire under section 14 of the FPA. A fire chief could respond to a fire and where they feel the land owner has not taken appropriate measures to ensure the fire does not get out of control and could extinguish the fire to prevent uncontrolled spread of the fire.

For the municipality that is contemplating passing a bylaw, it is strongly recommended they discuss what they want to do with the bylaw, research the various acts to determine the authorities they have to control open burning, gain interpretation and technical aspects from the Office of the Fire Commissioner, Department of Environment, Municipal Advisory Services and consult with a legal professional.