

FOND DU LAC ORDINANCE #05/93

OPEN BURNING RESTRICTIONS AND PERMITTING REQUIREMENTS

Adopted by Resolution #1114/93 of the Fond du Lac Reservation Business Committee on May 4, 1993.

Amended by Resolution #1009/14 of the Fond du Lac Reservation Business Committee on January 15, 2014.

Amended by Resolution #1173/18 of the Fond du Lac Reservation Business Committee on July 3, 2018.

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OPEN BURNING RESTRICTIONS AND PERMITTING REQUIREMENTS

100. DEFINITIONS

- 001 **Band.** “Band” shall mean the Fond du Lac Band of Lake Superior Chippewa.
- 002 **Division.** “Division” means the Fond du Lac Resource Management Division.
- 003 **Director.** “Director” means the director of the Fond du Lac Resource Management Division.
- 004 **Forest officer.** “Forest officer” means an employee in the Forestry Department of the Fond du Lac Resource Management Division.
- 005 **Hazardous waste.** “Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
- A. Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
 - B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- The term “hazardous waste” includes any waste designated as “hazardous waste” by the United States Environmental Protection Agency.
- 006 **Open burning.** “Open burning” means burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack or chimney.
- 007 **Owner or operator.** “Owner” or “operator” means a person who owns leases, operates, or supervises an open burning site, or who conducts open burning.
- 008 **Practical.** “Practical” means technically feasible, available within the general area where the material to be burned is located, and available at a cost that is not prohibitive for most users.
- 009 **Recreational fire.** “Recreational fire” is a fire set for recreational, ceremonial, food preparation, or social purposes. The material to be burned must be limited to a pile no larger than three feet in diameter by three feet high. Only unpainted and untreated wood, coal, or charcoal may be burned.

- 010 **Snow cover.** “Snow cover” is defined as continuous snow cover at least three inches deep. For the purposes of burning the snow cover must extend at least ten feet around the material to be burned.
- 011 **Tribal Court.** “Tribal Court” shall mean the Fond du Lac Tribal Court of the Fond du Lac Band of Lake Superior Chippewa..
- 012 **Person.** “Person” shall mean any person, organization, or entity which conducts activities covered by this Ordinance or owns property or possesses an interest in property affected by activities covered by this Ordinance.
- 013 **Reservation.** “Reservation” shall mean the lands within the exterior boundaries of the Fond du Lac Reservation.

110. OPEN BURNING RESTRICTIONS

- 001 **Open burning without a permit.** Open burning without a permit issued by the Division is allowed only when the ground is snow covered or for recreational fires. All other forms of open burning require a permit.
- 002 **Open burning with a permit.** A permit for open burning may be issued by the Division for the following purposes:
- A. Elimination of fire or health hazards that cannot be abated by any other practical means.
 - B. Disposal of vegetative matter for purposes of managing forests, prairies or wildlife habitats.
 - C. Ground thawing for utility repair and construction.
 - D. Disposal of trees, brush, grass, and other vegetative matter in the development and maintenance of land and rights-of-way where chipping, composting, or other alternative methods are not practical.
 - E. Disposal of diseased shade trees, infested nursery stock, or diseased bee hives.
 - F. The disposal of burnable building material such as unpainted or untreated lumber, wood shakes, or other unpainted or untreated wood products generated by construction, where recycling, reuse, chipping or other alternative disposal methods are not practical.
- 003 **Standard conditions.** A permit for open burning may be issued by the Division under the following conditions:
- A. The prevailing wind at the time of burning must be away from nearby residences and buildings.

- B. The burning must be conducted as far away from a road as possible and controlled so that a traffic hazard is not created.
- C. The burning must be at least 50 feet away from any structure and 200 feet away from an adjacent owner's structure.
- D. The burning must not be conducted within 500 feet of an airport or landing strip unless the affected airport or landing strip is notified prior to burning.
- E. The burning must not be conducted during the duration of a Division declared air pollution alert, warning, emergency, or significant harm episode.
- F. The person conducting the open burn shall give notice to the Cloquet Area Fire District and to a Division representative prior to any open burning within Fond du Lac Reservation. The notice must include the time and location of the fire.
- G. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start the burning.
- H. The person conducting the open burning must be present at the burn site from the commencement of burning until the fire is completely extinguished and shall have a copy of the permit at the burning site at all times.
- I. Fires must not be allowed to smolder with no flame present, except when conducted for the purpose of managing forests, prairies, or wildlife habitats.
- J. Fires set or allowed to burn for the purpose of managing forests, prairies, or wildlife habitats must be managed according to a prescribed burn plan approved by the Division.

120. OPEN BURNING PROHIBITIONS

- 001 **Prohibited materials.** No person shall conduct, cause, or permit open burning of oils, rubber products, plastics, chemically treated materials or other materials which produce excessive or noxious smoke such as tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters.
- 002 **Hazardous waste.** No person shall conduct, cause, or permit open burning of hazardous waste.

- 003 **Industrial solid waste.** No person shall conduct, cause, or permit open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment.
- 004 **Demolition debris.** No person shall conduct, cause, or permit open burning of burnable building material generated from demolition of commercial or institutional structures. A farm building is not a commercial structure.
- 005 **Salvage operations.** No person shall conduct, cause, or permit salvage operations by open burning.
- 006 **Motor vehicles.** No person shall conduct, cause, or permit the processing of motor vehicles by open burning.
- 007 **Food and Food Containers.** No person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food.
- 008 **Burning ban.** No person shall conduct, cause, or permit open burning during a burning ban declared by the Division.

130. PERMIT ISSUANCE

- 001 Permits may be issued by designated employees of the Division.

140. PERMIT DENIAL

- 001 The Director may deny a permit application submitted pursuant to this Ordinance if:
 - A. A practical alternative method of disposal of the material is available, such as chipping or composting;
 - B. The burning cannot be conducted according to the conditions established in this Ordinance; or
 - C. A nuisance condition would result from the burning.

150. PERMIT REVOCATION

- 001 A permit is subject to revocation by the Director if:
 - A. A practical method of disposal of the material is found;
 - B. A fire hazard exists or develops during the course of the burning;

- C. The permittee violates this Ordinance;
- D. Any of the conditions of the permit are violated; or
- E. A nuisance condition has resulted from the burning.

160. FIREBREAKS; PREVENTION OF FIRES

- 001 All housing, commercial and industrial developments situated in any wildfire area are hereby authorized to clear off all combustible material and debris and create at least two good and sufficient firebreaks of not less than ten feet in width each, which shall completely encircle such developments at a distance of not less than 330 feet apart, between which backfires may be set or stand made to fight wildfires in cases of emergency.

170. ROADSIDES, CLEARING; FIREBREAKS

- 001 All highways, roads and trails within wildfire areas are declared to be established firebreaks and for that purpose the Division is authorized to clean up all dead and down timber, all underbrush, rotting logs, stumps, tall grass, and all other combustible refuse and debris along each side of these highways, roads, and trails for a distance of 200 feet on each side from the center thereof, all this material is to be burned or disposed of under the supervision of a forest officer in such manner as not to injure the growing timber. All dead and useable timber taken out of these roadsides shall be piled for the immediate removal thereof by the owners of the land from which the same was removed.

180. FIGHTING WILDFIRES, PERFORMANCE OF DUTY, AUTHORITY OF FOND DU LAC FOREST OFFICERS

- 001 Under the direction of the Director, forest officers are charged with preventing and extinguishing wildfires and the performance of such other duties as may be required by the Director. The forest officers shall not be liable in civil action for trespass committed in the discharge of their duties. All authorized reservation forest officers, fire wardens, conservation officers, Minnesota Department of Natural Resources firefighters, Bureau of Indian Affairs firefighters or individuals legally employed as firefighters, may in the performance of their duties of firefighting go onto the property of any person, company, or corporation and in so doing may set back fires, plow trenches, cut timber, for clearing fire lines, dig water holes, remove fence wire to provide access to the fire or carry on all other customary activities necessary for the fighting of wildfires without incurring a liability to anyone, except for damages arising out of willful or gross negligence. Nothing in this Section shall be construed as a waiver of any immunity that an entity or individual possesses as a matter of law.

190. ASSISTING WITH WILDFIRE SUPPRESSION, COMANDEERING PROPERTY

- 001 Any able-bodied person summoned must assist in extinguishing such fire and must make all reasonable efforts to that end, until released by the summoning forest officer. The forest officer shall have power to commandeer, for the time being, equipment, tools, appliances, or other property in the possession of any person either summoned to assist in extinguishing the fire or in the vicinity thereof, and to use, and to require the persons summoned to use, the commandeered property in the fighting and extinguishing of the fire. The owner of any property while in this use by the forest officer shall be compensated with any money available for these expenses under this Ordinance.

200. DISPOSAL OF SLASHINGS AND WOODY DEBRIS

- 001 Where and whenever in the judgment of the Director or any forest officer there is or may be danger of starting and spreading of wildfires from slashings and woody debris from the cutting of timber of any kind for any purpose, or from any accumulation of sawdust, shavings, chips, bark, edgings, slabs or other combustible refuse for the manufacture of lumber or other timber products, the Director or forest officer shall order the person by or for whom the timber products have been or are being cut or manufactured to dispose of such slashings, woody debris, or refuse over the entire area so covered. Where conditions do not permit the burning of the slashings, woody debris, or refuse over the entire area so covered, the Director may require such person to dispose of the same in such a way as to establish a safe fire line around the area requiring such protection, the fire line to be of a width and character satisfactory to the director, or otherwise to dispose of the same so as to eliminate the wildfires hazard therefrom.
- 002 When any person who has been directed by the Director or forest officers to dispose of such slashings, woody debris, or refuse, the person must comply with these directions.
- 003 When any such slashings, woody debris, or refuse are not disposed of or are left unattended for a period exceeding 30 days, contrary to the instructions of the Director or forest officer, the Director, or any forest officer or fire warden, may go upon the premises with as many workers as may be necessary and burn or otherwise dispose of the same and the expense thereof shall be a charged to the responsible party. An itemized statement, verified by the Director or forest officer, of the amount of the costs and expenses incurred in burning or otherwise disposing of these slashings, woody debris, or refuse shall be filed, within 90 days from the time the disposal thereof is completed, with the Tribal Court. The amount of the bill shall be a valid claim that may be collected in a civil action from the person who cut or manufactured the wood, timber, or timber products from which the slashings, woody debris, or refuse were produced. Any moneys so collected shall be paid to the Division and deposited according to Band procedures.

- 004 Any person who cuts or fells trees or bushes of any kind in clearing land for any purpose is hereby prohibited from setting fire to any slashings, brush, roots, or excavated stumps or other combustible material on such land and letting the fire run; but the same must be disposed of pursuant to the rules or directions of the Director.
- 005 Any contractor who enters into a contract for the construction of a public road or other work, which involves the cutting or grubbing of woods, standing timber, or brush, shall properly dispose of such slashings and woody debris without damage to adjoining timber or woods. The foregoing provisions shall not prevent the leaving of such trees along roads as will be useful for ornamental purposes and which will not interfere with travel.
- 006 Every contract made by or on behalf of the Band or a Band enterprise which involves the cutting of any timber on the right of way of a public highway shall provide in terms for compliance with the foregoing provisions, but the failure to include this provision in the contract shall not relieve the contractor from the duty to dispose of these slashings.
- 007 In all cases herein provided for, where timber is not cut in, upon, or adjoining any forest land and no specific directions are given by the Director or a forest officer for the disposal of slashings and woody debris resulting therefrom, all such slashings and woody debris within 200 feet of any adjoining timber land or any public highway, railroad, portage, or lakeshore shall be properly disposed of by the person by or for whom the timber was cut.
- 008 No sawdust, shavings, chips, bark, edgings, slabs, or other combustible refuse that the Director or a forest officer determines to be a wildfire hazard shall be made or deposited upon any public highway or portage, railroad, or lakeshore, or within 100 feet thereof.

210. CAMPFIRES

- 001 **Extinguishment.** Any forest officer, or conservation officer, or peace officer who finds that any person has left a campfire burning shall take measures to extinguish the fire and take action against the person or persons responsible for leaving the campfire burning.
- 002 **Not to be left burning.** Every person who starts or maintains a campfire shall exercise every reasonable precaution to prevent the campfire from spreading and shall before lighting the campfire clear the ground of all combustible material within a radius of five feet from the base of the campfire. The person lighting the campfire shall remain with the campfire at all times and shall before leaving the site completely extinguish the campfire. For purposes of this section, "maintains" means tending or adding substantial fuel to a campfire with the effect of extending the life of the campfire.

220. STARTING FIRES; BURNERS, FAILURE TO REPORT A FIRE.

- 001 Except as provided in subdivision 002, it shall be unlawful to start or have any open fire without a permit issued by the Division.
- 002 No permit is required for the following fires:
- A. A fire started when the ground is snow covered.
 - B. A recreational fire.
 - C. A fire contained in a charcoal grill, camp stove, or other device designed for the purpose of cooking or heating.
 - D. A fire to burn dried vegetative materials (and other materials allowed by Fond du Lac ordinances) in a burner with a design approved by the Director, which has no combustible material within five feet of the base, and that is in use only between the hours of 6:00 p.m. and 8:00 a.m. of the following day.
- 003 The occupant of any property upon which any unauthorized fire is burning, whether the fire was started by the occupant or otherwise, shall promptly report the fire to the nearest forestry office, fire department, or other proper authority.
- 004 If a permit is required for a fire, the permittee shall follow all conditions listed on the permit.

230. FIRE WARDENS

- 001 The Director may appoint local government officials, authorized pollution control agents, fire chiefs, or other responsible persons to be fire wardens in their respective districts.

240. PROHIBITED ACTS

- 001 **Failure to extinguish a fire.** No person shall start and fail to control or extinguish a fire, whether on property that the person owns or on the property of another, that endangers or causes damage to the property of another person or the Band.
- 002 **Failure to control a permit fire.** No person who has a permit shall fail to keep the permitted fire contained within the area described on the burning permit or fail to keep the fire restricted to the materials specifically listed on the burning permit.
- 003 **Careless or negligent acts (starting a fire).** No person shall carelessly or negligently start a fire that endangers or causes damage to the property of another person or the Band.

- 004 **Careless or negligent acts (other).** No person shall participate in an act involving careless or negligent use of motor vehicles, other internal combustion engines, firearms with tracers or combustible wads, fireworks, smoking materials, electric fences, torches, flares, or other burning or smoldering substances whereby a fire is started and is not immediately extinguished before the fire endangers or causes damage to the property of another person or the Band.
- 005 **Internal combustion engines.** No person shall operate a vehicle in a wildfire area when the ground is not snow-covered with an open exhaust cut-out, without a muffler, without a catalytic converter if required, or without a spark arrestor on the exhaust pipe. No person shall operate a tractor, chainsaw, or other internal combustion engine not equipped to prevent fires.
- 006 **Interference with firefighting activities.** No person shall:
- A. Interfere with or obstruct a firefighter while the firefighter is engaged in the performance of official duties.
 - B. Interfere with or obstruct a Division employee while the employee is engaged in the performance of official duties related to firefighting.
 - C. Interfere with or obstruct a Division employee while the employee is engaged in the performance of official duties related to the enforcement of this Ordinance.
- 007 **False alarm.** No person shall give a false alarm or false report of a fire to the Division or to the Cloquet Area Fire District.

250. WILDFIRE PREVENTION

- 001 **Road Closure.** When the Director determines that conditions conducive to wildfire hazards exist in the wildfire areas of the Reservation and that the presence of persons in the wildfire areas tends to cause wildfire hazards, render forest trails impassable by driving thereon during wet seasons and hampers the effective enforcement of Fond du Lac Band timber trespass and conservation laws, the Director may by written order, close any road or trail leading into any land used for any conservation purposes, to all modes of travel except that considered essential, such as residents traveling to and from their homes.
- 002 **Burning Ban.** The Director may also, upon such determination, by written order, suspend the issuance of permits for open fires; revoke or suspend the operation of a permit previously issued; and, to the extent the Director deems necessary, prohibit the building of all or some kinds of open fires in all or any part of a wildfire area regardless of whether a permit is otherwise required. The Director also may, by written order, prohibit smoking except at places of habitation or automobiles or other enclosed vehicles properly equipped with an efficient ash tray.

003 The Director may close any public or private dumping area, by posting such area as closed to dumping, whenever the director deems it necessary for the prevention of wildfires. Thereafter, no person shall deposit refuse of any kind within or adjacent to such closed area or along the road leading thereto. The Director shall establish such minimum standards governing public and private dumping areas as the Director deems necessary for the prevention of wildfires.

260. PENALTIES

001 **Fines.** The following fines shall apply to violations of this Ordinance:

Violation Description	Ordinance Section	Fine
Open burning without a permit	110.001	\$250
Burning prohibited materials	120.001	\$250
Burning hazardous waste	120.002	\$250
Burning industrial waste	120.003	\$250
Burning demolition debris	120.004	\$250
Salvage operations by open burning	120.005	\$250
Processing of motor vehicles by open burning	120.006	\$250
Burning food waste	120.007	\$100
Burning ban violation	120.008	\$100
Failure to assist	190.001	\$100
Failure to dispose of slashings, woody debris, or refuse as directed	200.002	\$100
Improper disposal after clearing	200.004	\$100
Improper disposal by road contractor	200.005	\$100
Improper disposal of slashings and woody debris	200.007	\$100
Improper disposal of combustible refuse	200.008	\$100
Campfire violations	200.001	\$100
Open fire without a permit	220.001	\$250
Failure to report an open fire	220.003	\$100
Fire permit violations	220.004	\$100
Failure to extinguish a fire	240.001	\$250
Failure to control a permit fire	240.002	\$250
Careless or negligent acts (starting a fire)	240.003	\$250
Careless or negligent acts (other)	240.004	\$250
Internal combustion engines	240.005	\$250
Interference with firefighting activities	240.006	\$250
False alarm	240.007	\$100

002 **Court costs.** If there is a plea or judgment of guilty for a violation of this Ordinance, the Tribal Court shall impose court costs of \$25, in addition to the fine imposed. If a single case involves multiple offenses, the Tribal Court shall assess court costs only one time in that case.

003 **Civil liability.** In addition to the penalties prescribed in this Ordinance, any person who violates any provisions of this Ordinance shall be liable for any damages to any and every person suffering loss or injury by reason of such violation, including to governments for all expenses incurred in fighting or preventing the spread of, or extinguishing, any fire caused by, or resulting from, any violation of this Ordinance. Such civil liability shall be established through an action brought under the Civil Code of the Fond du Lac Band of Lake Superior Chippewa, Fond du Lac Ordinance #04/92.

270. FORUM AND PROCEDURES

001 **Jurisdiction of the Fond du Lac Tribal Court.** The Fond du Lac Tribal Court shall exercise exclusive jurisdiction over violations of this Ordinance by enrolled members of the Fond du Lac Band or other enrolled member of the Minnesota Chippewa Tribe. The Tribal Court shall hear all such actions in accordance with the Fond du Lac Civil Code, FDL Ord. #04/92, as amended, except where the specific provisions of this Ordinance require otherwise.

002 **Authorization to issues citations.** The Director, forest officers, Fond du Lac Band conservation officers, and Fond du Lac Band police officers are authorized to issue citations for violations of this Ordinance.

003 **Notice to Appear.** When a Band member or other enrolled member of the Minnesota Chippewa Tribe is cited for any violation of this Ordinance, the officer issuing the citation shall prepare written notice to appear in Fond du Lac Tribal Court. The citation shall have the effect of, and shall serve as, a summons and complaint. The citation must be signed by the officer, and shall include the name of the defendant, the specific offense charged and the date, time and place that he or she is to appear in Court, if known. The officer shall retain the original of the notice and deliver a copy thereof to the person cited.

004 **Failure to Appear.** Any Band member or other enrolled member of the Minnesota Chippewa Tribe who has been duly served in accordance with Section 270.003 of this Chapter and fails to appear before the Tribal Court without just cause shall be subject to a default judgment, provided that he or she is found guilty of the charge upon which he or she was originally cited.

005 **Record Keeping.** Information collected and maintained in the administration of this Ordinance shall be kept on file with the Tribal Court for a period of at least ten (10) years, and shall otherwise be maintained in accordance with the data practices procedures of the Fond du Lac Band. Information collected and maintained in the administration of this Ordinance shall be a matter of public record and shall be available to law enforcement agencies and courts of other jurisdictions.

280. AMENDMENTS; SEVERABILITY

- 001 **Amendments.** The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.
- 002 **Severability.** If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance was duly presented and adopted by Resolution #1114/93 by a vote of 2 for, 0 against, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 4, 1993 in Cloquet, Minnesota; and subsequently amended as follows: by Resolution #1009/14 on January 15, 2014 and by Resolution #1173/18 on July 3, 2018.



Kevin R. Dupuis, Sr.
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer