

FOND DU LAC ORDINANCE # 05/93

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 Conservation Division.
- 003 **Director** "Director" means the director of the Fond du Lac Conservation Division.
- 004 **Local Authority.** "Local Authority" means a local fire chief, fire marshal, fire warden, or local government official.
- 005 **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.
- 006 **Owner or operator.** "Owner" or "operator" means a person who owns leases, operates, or supervises an open burning site, or who conducts open burning.
- 007 **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.
- 008 **Recreational fire.** "Recreational fires" are fires 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.
- 009 **Snow Cover.** "Snow cover" is defined as snow 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.
- 010 **Tribal Court.** "Tribal Court" shall mean the Fond du Lac Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.
- 010 **Person.** "Person" shall mean any person, organization of entity which conducts activities covered by this ordinance or owns property or possesses an interest in property affected by activities covered by this ordinance.

011 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 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 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, 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 A permit for open burning may be issued under the following conditions:

- A. The prevailing wind at the time of burning must be away from nearby residences and occupied 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 any structure and 200 feet away from an adjacent owners occupied 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 as outlined Section 116.11 Code of Federal Regulations, title 40, part 51, subpart H; or Code of Federal Regulations, title 40, section 52.1220 (c) (1).

- F. The person conducting the open burn shall give notice to the local authority and to a Fond du Lac Forest Management 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 if a permit is required 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, of wildlife habitats must be managed according to a prescribed burn plan approved by the Bureau of Indian Affairs, Forestry.

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 wastes.** 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 **Garbage.** 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 put into effect by a local authority, FDL Forestry or the Minnesota DNR.

130 PERMIT ISSUANCE

001 Permits may be issued by designated employees of the Fond du Lac Conservation Division and fire wardens.

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 theth 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 form the burning.

160 FIREBREAKS; PREVENTION OF FIRES

001 The Director shall cooperate with the Fond du Lac Housing Authority and Bureau of Indian Affairs Roads branch and with the District Representatives in the construction of firebreaks.

002 All developments housing, commercial and industrial 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 20 rods 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 Fond du Lac Reservation, through the Conservation 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 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 in their respective districts and the performance of such other duties as may be required by the director. They may arrest without warrant any person found violating any provisions of this ordinance, take the person before the Tribal Court, and the person so charged shall be arraigned and given a hearing on the complaint. 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 officer, Minnesota Department of Natural Resources firefighters, Bureau of Indian Affairs fire fighters or individuals legally employed as firefighters, may in the performance of their duties of fire fighting 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.

002 Any forest officer may serve any warrant for the arrest of any person violating any provision of this ordinance.

190 ASSISTING WITH WILDFIRE SUPPRESSION, COMMANDEERING PROPERTY

001 Any able-bodied person so summoned who refuses or neglects or otherwise fails to assist in extinguishing such fire or who fails to make all reasonable efforts to that end, until released by the summoning reservation employee, shall be guilty of a misdemeanor. 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 from any money available for these

expenses under this ordinance.

200 DISPOSAL OF SLASHINGS AND DEBRIS

- 001 Where and whenever in the judgement of the director or any forest officer there is or may be danger of starting and spreading of wildfires from slashings and 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, 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, debris, or refuse fails to comply with these directions the person shall be deemed guilty of a misdemeanor.
- 003 When any such slashings, debris, or refuse are not disposed of or are left unattended for a period of 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 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, debris, or refuse shall be filed, within 90 days from the time the disposal thereof is completed, in the office of the clerk of 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, debris, or refuse were produced. Any moneys so collected shall be paid to the FDL Forest Management and deposited according to departmental 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

commissioner.

- 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 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 any municipality or political subdivision of this state 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 forest officer, for the disposal of slashings and debris resulting there from, all such slashings and debris within 200 feet of any adjoining timber land or any public highway, railroad, portage, or lake shore shall be properly disposed of by the person by or for whom the timber was cut.
- 009 No sawdust, shavings, chips, bark, edgings, slabs, or other combustible refuse that the Director or an agent of the Director determines to be a wildfire hazard shall be made or deposited upon any public highway or portage, railroad, or lake shore, 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 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.

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

001 Except as provided in subdivision 2, it shall be unlawful, to start or have any open fire without the written permission of the Director, a forest officer, or an authorized fire warden.

002 No permit is required for the following fires;

- (a) A fire started when the ground is snow covered.
- (b) A campfire.
- (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 and in burner of a design which has been approved by the Director and with which there is no combustible material within five feet of the base of the burner and is in use only between the hours of 6:00 pm and 8:00 am of the following day, when the ground is not snow covered.

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. Failure to make this report shall be a considered a violation of Section 240.

004 A permit to start a fire to burn vegetative materials and other materials allowed by this Ordinances or derivative regulations may be given by the Director or the Directors's agent or designee and shall be signed by said officer. The permit shall also specifically list the materials that may be burned. The permittee must have the permit on their person and shall produce the permit for inspection when requested to do so by a forest officer, conservation officer, or other peace officer. The permittee shall remain with the fire at all times and before leaving the site shall completely extinguish the fire. A person shall not start or cause a fire to be started on any land that is not owned or under their legal control without the written permission of the owner, lessee, or an agent of the owner or lessee of the land. Violating or exceeding the permit shall constitute a violation of Section 240.

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 PENALTIES

- 001 FAILURE TO EXTINGUISHER A FIRE. A fine of up to \$250 will be imposed to any person who starts and fails to control or extinguish a fire , whether on property that person owns or on the property of another, before the fire endangers or causes damage to the property of another person or the Reservation.
- 002 FAILURE TO CONTROL A PERMIT FIRE. A fine of up to \$250 will be imposed on any person who has a permit and fails to keep the permitted fire contained within the area described on the burning permit or who fails to keep the fire restricted to the materials specifically listed on the burning permit.
- 003 CARELESS OR NEGLIGENT ACTS. A fine of up to \$250 will be imposed on any person who carelessly or negligently starts a fire that endangers or causes damage to the property to the property of another person or the Reservation is guilty of a misdemeanor.
- 004 CARELESS OR NEGLIGENT ACTS. A fine of up to \$250 will be imposed on any person who participates 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 state is guilty of a misdemeanor.
- 005 INTERNAL COMBUSTION ENGINES A fine of up to \$250 will be imposed on any person who operates 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; or any person who operates a tractor, chainsaw, or other internal combustion engine not equipped to prevent fires is guilty of a misdemeanor.
- 006 FAILURE TO REPORT A FIRE. A fine of up to \$250 will be imposed on a person failing to report a fire as outline in Section 220 part 003 of this ordinance.
- 007 Violation of Section 220 part 004 will result in a fine of up to \$250.

240 WILDFIRE PREVENTION; PROHIBITIONS, BANNING; PENALTIES.

- 001 (a.) Road Closure. When the Director shall determine

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 game 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 or in other cases to be determined by the authorized forest officers assigned to guard the area.

(b.) 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; and 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.


002 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.

003 Any violations of this section shall constitute a misdemeanor.

We do hereby certify that the foregoing Ordinance was duly presented and adopted by Resolution # 114/93 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.


Robert B. Peacock, Chairman


Peter J. DeFoe Jr., Sec./Treas.

Fond du Lac Reservation Business Committee

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Chairman
Robert B. Peacock

Secretary/Treasurer
Peter J. Defoe

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
Herman Wise

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

RESOLUTION # 1114/93

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the perpetual home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of Self-Government; and

WHEREAS, the Reservation Business Committee has a responsibility to promote and protect the general health, safety and welfare of the Fond du Lac Band and its members; and

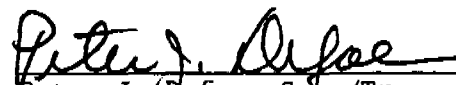
WHEREAS, the Reservation Business Committee has determined it to be necessary and in the best interests of the Fond du Lac Band to promote and protect the general health, safety and welfare of its members, by adopting laws governing open burning within the boundaries of the Fond du Lac Reservation; and

WHEREAS, the Reservation Business Committee has received and reviewed a proposed ordinance entitled "Open Burning Restrictions and Permitting Requirements;"

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt, as the Law of the Fond du Lac Band, FDL Ordinance # 05/93, entitled the "Open Burning Restrictions and Permitting Requirements," which shall govern open burning within the Fond du Lac Reservation, to become effective this day.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 2 for, 0 against, 0 silent, 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.


Robert B. Peacock, Chairman


Peter J. Defoe, Sec./Treas.