

BY-LAW NO. 2010.02
of the Soda Creek Indian Band.
A By-law for Open Air Fires

WHEREAS the Council of Soda Creek Indian Band desires to make a by-law governing Open Air Fires, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of Soda Creek Indian Band is empowered to make such by-law pursuant to paragraphs 81(1)(d), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Soda Creek Indian Band to provide for the control of Open Air Fires on the Soda Creek and Deep Creek reserves;

NOW THEREFORE the Council of Soda Creek Indian Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Open Air Fires By-law".

Interpretation

2. In this Bylaw:

“**Barbeque**” shall mean a portable or fixed device including a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices designed for personal warmth, fire pits or camp fires.

“**Open Air Fire**” shall mean the ignition and incineration by fire of combustibles for the purpose of burning grass, clean wood and other combustibles materials and includes fires in barrels, drums, incinerators and pits, a cooking fire, campfire or that related to barbeque cooking and heating appliances.

APPLICATION

3. This Bylaw applies to all Open Air Fires on Soda Creek Indian Band Reserves, except for fires in Barbecues.
4. No one shall have an Open Air Fire except in accordance with this Bylaw.

FIRES THAT DO NOT REQUIRE A PERMIT

5. A member of the Soda Creek Indian Band may have an Open Air Fire on his or her residential property, provided the fire:
 - (a) is not subject to a Fire Ban under paragraph 13 of this Bylaw;
 - (b) is no larger than two metres in diameter and one meters high;
 - (c) is contained within a non-combustible container or pit specifically designed for Open Air Fires;
 - (d) is under close control and supervision by a responsible person at all times;
 - (e) is at least 150 metres away from any neighbouring homes;
 - (f) does not interfere with the ability of neighbours to enjoy their properties or conduct their business without disruption;
 - (g) does not disrupt adjacent roadways;
 - (h) does not include any materials prohibited under paragraph 12;
 - (i) is completely extinguished after use; and
 - (j) is otherwise safe.

FIRES THAT REQUIRE A PERMIT

6. All Open Air Fires other than fires in Barbecues or fires permitted under paragraph 5 require a permit issued under this Bylaw.

PERMITTING PROCESS

7. A Soda Creek Indian Band member may apply to the Band Manager for an Open Air Fire permit.
8. In deciding whether to issue an application for an Open Air Fire permit, the Band Manager shall consider:
 - (a) the location, size and duration of the proposed fire;
 - (b) the time of year and time of day of the proposed fire;
 - (c) the anticipated weather conditions;
 - (d) the equipment available to control the fire; and

- (e) any proposed safety and supervision measures for the fire.
- 9. The Band Manager may attach to an Open Air Fire permit such conditions and limitations as Band Manager deems necessary to ensure health, safety and consideration of others.
- 10. An Open Air Fire permit shall be in Form FP1.
- 11. Band Council may, by resolution, establish a fee for Open Air Fire permits. Until such a resolution is passed, there shall be no fee for an Open Air Fire permit.

PROHIBITED MATERIALS

- 12. No one shall burn any of the following materials in an Open Air Fire:
 - (a) animal cadavers or manure;
 - (b) biomedical waste as defined in the 'Guidelines for the Management of Biomedical Waste in Canada', (Canadian Council of Ministers of the Environment, 1992);
 - (c) carpets;
 - (d) domestic garbage;
 - (e) electrical wire;
 - (f) hazardous materials as defined in the *Transportation of Dangerous Goods Regulations – Transportation of Dangerous Goods Act (Canada)*;
 - (g) petroleum products;
 - (h) plastics;
 - (i) pressure treated lumber or railway ties;
 - (j) refuse or other wastes from commercial, industrial or municipal operations;
 - (k) resins and glues;
 - (l) rubber;
 - (m) roofing Shingles;
 - (n) styrofoam; or
 - (o) tarpaper.

FIRE BANS

- 13. At certain times of the year and as conditions warrant, the Band Manager may issue a ban on open air burning in some or all areas on Soda Creek Indian Band reserves.
- 14. When issuing a ban on open air burning, the Band Manager shall post a notice of the ban, including the location and duration of the ban, at the Band Office, and shall

take other reasonable steps to ensure that Band members residing on reserve are notified of the ban.

REQUEST TO EXTINGUISH A FIRE

15. Notwithstanding any other provision of this Bylaw, the Band Manager or a person designated by the Band Manager may request a person to immediately extinguish an Open Air Fire to address a reasonable concern about safety, health or nuisance.

16. Upon request under the preceding paragraph, a person shall immediately extinguish the Open Air Fire.

LIABILITY OF PERSON IN CHARGE OF FIRE

17. A person is liable for any expenses, damages or loss by the Soda Creek Indian Band for fighting and extinguishing a fire that he or she has started, or a fire under his or her supervision.

OFFENCES

18. A person commits an offence who:

(a) Lights or allows to be lit an Open Air Fire that does not comply with this Bylaw;

(b) fails or refuses to extinguish an Open Air Fire when requested to do so under paragraphs 15 and 16 of this Bylaw.

19. A person is liable:

(a) for a first offence, to a fine of \$100; and

(b) for subsequent offences, to a fine of \$1,000.

20. The Band Manager may prohibit a person who has committed an offence under this Bylaw from having an Open Air Fire, including a fire under paragraph 5 of this Bylaw, for a period of up to two years.

21. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

22. This by-law comes into force 40 days after the date of mailing to the Minister of Indian Affairs and Northern Development as required pursuant to section 82 of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Soda Creek Indian Band this 16th day of March, 2010.

Voting in favour of the by-law are the following members of the Council:

(Member of the Council)

(Member of the Council)

(Member of the Council)

(Member of the Council)

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is _____ members.

Number of members of the Council present at the meeting: _____.

I, _____ Chief of the Soda Creek Indian Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the District/Regional/ Hull office (as the case may be) pursuant to subsection 82(1) of the *Indian Act*, this 16th day of March, 2010.

(Witness)

(Chief/Councillor)