

SKOWKALE FIRST NATION

OPEN BURNING LAW

*AUGUST, 2021*



**Approved December 2021  
Decision Sheet # : 2021-2022-029**

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**SYUWÁ:LELH - Stó:lō Laws**

***“S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat”***

***This is Our Land, we have to take care of everything that belongs to us***

***“Xaxastexw te mekw’stam”***

***Respect all Things***

***“Ewe chexw qelqelit te mekw’stam loy qw’ esli hokwex yexw lamexw ku:t”***

***Don’t waste, ruin or destroy everything; only take what you need***

***“T’xwelátse”***

***Do things in a good way; respect each other***

**WHEREAS** the Skowkale First Nation (also known as Skowkale Indian Band, “Skowkale”) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**AND** the Skowkale has taken over control and management of Skowkale Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the Skowkale *Land Code* effective the 1st day of May, 2014;

**AND** under the Skowkale *Land Code*, Skowkale Council is authorized to pass various laws relating to lands including laws relating regulation and use of Skowkale Lands, prevention of nuisance and protection of lands under subsection 3.3 of the Code;

**AND** Council wishes to implement a law to regulate open burning on Skowkale Lands to reduce risks, and protect the well-being of Members and residents, as related to the emission of smoke, sparks, dust, ash, soot, cinders, fumes or other materials that may negatively affect air quality or the atmosphere, while still allowing for cultural practices;

**NOW THEREFORE, THIS SKOWKALE OPEN BURNING LAW IS HEREBY ENACTED A LAW OF SKOWKALE.**

**PART 1. NAME**

1.1 This Law may be cited as the *Skowkale Open Burning Law*.

**PART 2. PURPOSE**

2.1 The purpose of this Law is to regulate open burning on Skowkale Lands to reduce risks, and protect the well-being of Members and residents, as related to the emission of smoke, sparks, dust, ash, soot, cinders, fumes or other materials that may negatively affect air quality or the atmosphere, while still allowing for

cultural practices.

### **PART 3. WHERE THIS LAW APPLIES**

3.1 The provisions of this Law apply to the whole area of the Reserve and Skowkale Lands as defined in the *Skowkale Land Code*.

### **PART 4. DEFINITIONS**

4.1 For the purposes of this Law, terms have the same definitions as in the Land Code unless otherwise specified.

4.2 For the purposes of this Law, the following definitions apply:

“Approved Incinerator” means a noncombustible container placed upon a noncombustible base and fitted with a device or screen to contain sparks and flying debris;

“Building” means any structure used or intended to be used for supporting or sheltering any use or occupancy;

“Burning Permit” means a document issued pursuant to this law authorizing a person to carry on an open burn under the specific conditions as outlined in this law and the permit;

“Burning Season” means the single two-month period of March to April or October to November;

“Campfire” means a fire not exceeding 75cm in diameter and 75cm in height, contained within a fire pit and located on real property designated as a campground;

“Care facility” means a building or part thereof used by persons who require special care or treatment because of cognitive or physical limitations;

“Construction waste” means any material resulting from or produced by construction, renovation or repair of a building or structure;

“Demolition Waste” means any abandoned building or the material resulting from the destruction or tearing down of any building, whether partial or complete;

“Enforcement Officer” means any person or persons appointed by Council, from time to time, to administer and enforce the provisions of Skowkale Laws enacted by Council, and includes any delegate, the City of Chilliwack Fire Chief or their delegate, the RCMP and any peace officer;

“Fire Chief” means the City of Chilliwack Fire Chief or their delegate;

“Fire Department” means the City of Chilliwack Fire Department;

“Fire Department Officer” means Fire Chief, Assistant Fire Chief, company officer, fire prevention officer, training officer, public educator/fire inspector, or paid-on-call officer;

“Highway” means a street, road, lane, bridge, viaduct and any other way open to the use of the public;

“Land Clearing Waste” means natural wood or vegetative waste generated by the clearing of land and originating from the subject property;

“Open Burning” means any fire set outdoors and/or outside of a building;

“Order” means any order, decision, requirement or direction given by the Lands Director, the Fire Chief or designate;

“Peat Soils” means local peat deposits susceptible to underground burning as set out in Schedule “B”, attached hereto;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

“Premises” means a store, office, shop, building, home, warehouse, factory, structure, enclosure, temporary or permanent fruit or vegetable stand, yard or other definite area occupied or capable of being occupied by a Person for the purpose of a Business and includes any area situated within any of the foregoing where a separate class or type of Business is carried on, by a separate operator; and

“Skowkale” or “SFN” means the Skowkale First Nation including the Skowkale Band.

“stream” includes any of the following: a watercourse, whether it usually contains water or not; a pond, lake, river, creek; brook, ditch, slough spring, or wetland;

“ventilation index” means regional air venting information as forecasted daily by Environment Canada or the BC Ministry of Environment and Climate Change Strategy.

## **PART 5. GENERAL PROVISIONS**

- 5.1 The headings of parts and sections in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions.
- 5.2 In the event that all or any part of any section or sections of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.
- 5.3 For the purpose of this Law, any Person who:
- (a) advertises or indicates by any means as being open for Business of any kind,
  - (b) deals in, or buys, sells, barter, rents, or displays any commodity or service or offers by advertisement or otherwise, on behalf of himself or others; to buy, sell, barter or rent any commodity or service,
  - (c) engages in soliciting or promotion of any commodity or service,
  - (d) renders or offers to render professional, personal, contractual, or other service to any person for the purpose of gain or profit,
  - (e) rents out more than two residential suites or units in any one complex, or
  - (f) engages in repairing, restoration or servicing of automobiles, appliances or other commodities not owned or registered in the name of that person or firm, within, or on Skowkale Lands
- shall be deemed to be carrying on a Business.
- 5.4 Paragraph 5.3(b) does not apply to a Skowkale Member who is carrying out trade or barter under an aboriginal right.
- 5.5 For the purpose of this Law, where a Business is carried on in or from more than one home, structure or parcel of land on or within Skowkale Lands, the Business carried on in or from each Premises shall be deemed to be a separate Business.

## **PART 6. PROHIBITIONS**

- 6.1 Unless exempted under Part 8 of this Law, no person shall set out, start or kindle open burning on a parcel of land unless the person holds a valid burning permit issued pursuant to this Law.
- 6.2 Any person wishing to set out, start or kindle open burning shall first make an application to the City for a burning permit and pay the prescribed fee as set out in Schedule "A", attached hereto.
- 6.3 The burning permit holder shall have the burning permit available on site for review by a Fire Department Officer or Law Enforcement Officer.
- 6.4 The burning permit holder is responsible for the control, extinguishment and any damages caused by the fire.
- 6.5 A burning permit is required for the purpose of burning indigenous agricultural vegetative debris to control disease, weeds, crops or stubble produced on real property designated as "Agricultural". The agricultural vegetative debris must have originated from the parcel of land where the open burning is taking place.

#### **PART 7. OPEN BURNING RESTRICTIONS**

- 7.1 A person who carries out open burning must only burn seasoned vegetative debris that originates from the parcel of land on which it is to be burned.
- 7.2 No person shall burn any of the following prohibited materials or use them as an accelerant:
  - (a) oil;
  - (b) rubber;
  - (c) plastics;
  - (d) tires;
  - (e) railway ties or other material containing creosote;
  - (f) wiring;
  - (g) insulation;
  - (h) petroleum products;
  - (i) biomedical waste;
  - (j) fertilizers, herbicides or pesticides;
  - (k) drywall;
  - (l) asphalt or asphalt products;
  - (m) paint or varnish;
  - (n) chemicals;
  - (o) treated or painted wood products;
  - (p) fuel and lubricant containers;
  - (q) domestic waste or garbage;
  - (r) recyclables;
  - (s) construction or demolition waste;
  - (t) land clearing waste;
  - (u) stumps or vegetative debris larger than 50 centimetres in diameter;
  - (v) manure;
  - (w) animal carcasses and waste from animal slaughtering;
  - (x) batteries;
  - (y) carpets;
  - (z) fibreglass and other fibre-reinforced polymers;
  - (aa) automobile, boat or R.V. parts including upholstery;
  - (bb) furniture and appliances;
  - (cc) hazardous waste;
  - (dd) polystyrene foam;
  - (ee) tar paper; or,
  - (ff) any other materials prescribed by Council by Resolution or regulation.
- 7.3 No person shall burn any material in any manner which produces heavy or toxic smoke and/or fly ash that may endanger the health, safety or welfare of persons or animals.

- 7.4 No person shall carry out open burning of a pile exceeding 2 metres in height and 3 metres in diameter.
- 7.5 No person shall carry out open burning of more than one pile at a time on the same property.
- 7.6 A person who carries out open burning must ensure that all reasonable efforts are taken to minimize the amount of smoke emitted by the open burning including, but not limited to, using the following strategies or techniques:
- (a) minimizing any soil content that may be mixed in with the vegetative debris;
  - (b) constructing the pile in a way that maximizes the airflow through the vegetative debris; and,
  - (c) burning only seasoned vegetative debris.
- 7.7 No person shall set out, start, or kindle open burning except during the burning season as specified by the burning permit.
- 7.8 No person shall set out, start, or kindle open burning unless the ventilation index for the day of the burn is “good”.
- 7.9 No person shall set out, start or kindle open burning between the hours of 5:00 pm and 7:00 am daily.
- 7.10 No person shall set out, start or kindle open burning or allow or permit open burning to continue to burn during winds exceeding 25 kilometres per hour.
- 7.11 Despite any other provision in this Law, no person shall continue to carry out open burning if the mixing of air and smoke is causing or is likely to cause the smoke emitted by the open burning to:
- (a) negatively impact the owners or occupiers of properties within Skowkale Lands; or,
  - (b) significantly reduce visibility to a nearby airport or highway.

## **PART 8. EXEMPTIONS**

- 8.1 Despite Part 7, a person may carry burning for legitimate cultural purposes provided:
- (a) the burning takes place in a safe location and preferably a pre-prepared and safe location designated by Council;
  - (b) the person ensures there is an appropriate hose or extinguishment pump nearby;
  - (c) the Chilliwack Fire Department is notified if the burning is to take place outside of open burning season; and
  - (d) the person accepts all risks and liability and indemnifies Skowkale against all claims, damages and losses;

## **PART 9. APPLICATIONS AND BURNING PERMITS**

### *Applications*

- 9.1 Every Person applying for a Burning Permit shall make an initial application to the S.A.Y. Lands Office.
- 9.2 The Lands Manager may issue a Burning Permit to a Person who applies under subsection 9.1 provided that:
- (a) the burning take place during burning seasons consistent with local government burning seasons;
  - (b) the Person only burns organic yard waste or appropriate materials from their own yard;
  - (c) the burning will not take place during a period of provincial fire closures unless the burning is for cultural purposes, permitted and can be carried out in a safe manner;

- (d) the burning complies with the setback and clearance requirements set out in the City of Chilliwack's Open Air Burning Bylaw;
- (e) the burning must minimize risks and not produce heavy or toxic smoke or fly ash, obscure visibility in public areas or on public roads, or unduly disturb or inconvenience the neighbours or other residents or individuals on Skowkale Lands;
- (f) agrees to access by any Skowkale representative, enforcement office or the Fire Department and respect any orders from any of them relating to fire management or extinguishment;
- (g) the applicant agrees to put in place any safety or protective measures required by Skowkale or the Fire Department;
- (h) the applicant provides phone and e-mail contact information for the person managing the fire;
- (i) the applicant agrees to release and indemnify Skowkale from and against any liability; and
- (j) the applicant meets any other requirements set out in Skowkale law, regulations or policy.

#### *Applications*

- 9.3 Each initial application shall be in the form specified by Council or the Lands Manager and shall include, at a minimum:
- (a) The name, address, phone number of the applicant;
  - (b) the address and the legal description of the proposed burning site;
  - (c) a sketch or site plan showing the proposed burning site, setbacks to buildings and trees and access to water for extinguishing; and
  - (d) a signed release and waiver releasing and indemnifying Skowkale against any claims in relation to the burning.

#### *No Liability for Skowkale*

- 9.4 Neither the granting or refusal of a Burning Permit, nor any actions, uses or activities related to a Burning Permit, create any liability on behalf of Skowkale, Skowkale Chief or Council, or Skowkale staff, committees or contractors.

### **PART 10. OFFENCES, PENALTIES AND ENFORCEMENT**

#### *Penalties*

- 10.1 A Person who contravenes this Law or an order made by a Court pursuant to this Law is guilty of an offense and:
- (a) is liable on summary conviction to a fine of not more than \$5,000 for each offense; and
  - (b) is liable to pay fines in any tickets imposed by an Enforcement Officer.
- 10.2 The fine for a ticket under this Law is:
- (a) as prescribed by resolution or regulation; and
  - (b) initially, \$150 for the first offense, and \$200 for the second offense and each time or day that the offense is committed is a new offense.
- 10.3 A fine payable under subsection 10.1 shall be remitted to the Skowkale by the Court, after reasonable Court costs have been deducted.
- 10.4 A ticket fine payable under paragraph 10.2 shall be remitted directly to the Skowkale.

#### *Offenses*

- 10.5 It is an offense to:
- (a) Carry out burning in contravention of Part 7.

#### *Enforcement and Cease and Desist Orders*

- 10.6 In addition to any other applicable penalties under this Law, any violation or offense committed under this Law shall make the Burning Permit invalid.
- 10.7 In addition to any other applicable fine, penalty or remedy, Council, the

- Lands Manager, or a Enforcement Officer has the authority to:
- (a) issue a Cease and Desist Order to order any Person who requires a Burning Permit under this Law but who has not received a Burning Permit or who is burning in contravention of this Law to cease and desist burning;
  - (b) in addition to (a), where burning is being carried out in contravention of this Law:
    - (i) extinguish the fire or order it to be extinguished; or
    - (ii) authorize the Fire Department to extinguish the fire; and/ or
  - (c) issue tickets under this Law or any Skowkale enforcement or ticketing law to any person who has contravened this Law and any such ticket is separate from and in addition to any other fees or penalties set out in this Law.

- 10.8 An order imposed under subsection 10.7:
- (a) may be registered in Court and enforced as a court order; and
  - (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the order receives a Burning Permit under this Law.

**PART 11. GENERAL AND LEGAL**

*Severability*

11.1 If a Court of competent jurisdiction holds any portion of this Law invalid, such invalidity shall not affect the remaining portions of the Law.

*Regulations*

- 11.2 Council may make regulations or pass Council Resolutions as follows:
- (a) prescribing the form and content of permits to be issued under this Law;
  - (b) prescribing fees and penalties;
  - (c) designating inspectors or enforcement officers; or
  - (d) setting in place any other matter required to implement this Law.

**PART 12. COMING INTO FORCE**

*Date Law Comes into Force*

12.1 This Law shall come into force and effect on the date it is passed by Council Resolution.

**BE IT KNOWN that this Law entitled the *Skowkale Open Burning Law* is hereby enacted by a quorum of Council at a duly convened Council of the Skowkale First Nation held on the 14 day of December 2021.**

A quorum is 3

..... <b>(Councillor - )</b>	<b>(Chief Mark Point)</b>	..... <b>(Councillor - )</b>
..... <b>(Councillor - )</b>		..... <b>(Councillor - )</b>