FORT BELKNAP INDIAN COMMUNITY
OPEN BURN ORDINANCE

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FORT BELKNAP ENVIRONMENTAL DEPARTMENT

OPEN BURN ORDINANCE

Section 101: Purpose
The purpose of this ordinance is to protect the reservation residents, the public, and the environment from exposure to unhealthy levels of air pollution. This rule establishes a specific program for managing open outdoor burning on the Fort Belknap Indian Reservation or other areas where the tribes have inherent or delegated authority, to control emissions of particulate matter and other noxious fumes to the atmosphere.

Section 102: Authority
This ordinance is hereby adopted pursuant to authority vested in the Fort Belknap Community Council (FBCC) under the Tribal Constitution and Corporate Charter of the Fort Belknap Indian Community, "Article V- Powers of the Council; Section 1. Enumerated Powers. The Council of the Fort Belknap Community shall be subject to popular referendum as provided hereafter: (a) to negotiate with the Federal, State, and local governments on behalf of the Community and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Fort Belknap Community, (f) to manage the economic affairs of the Community and to appropriate available funds for public purposes, (i) to establish ordinances, subject to review by the Secretary of the Interior, governing law enforcement on the reservation, (o) to regulate the domestic relations of members of the community…" section 5 part (e) of the Charter to engage in any business that will further the economic well-being of the members of the Community or to undertake any activity of any nature whatsoever, not inconsistent with law or with any
Provisions of this Charter; as written in the Constitution and By-Laws of the Fort Belknap Community Council of the Fort Belknap Indian Reservation, Article I, part (b), to establish and enforce such rules as may be necessary to safeguard Indian property for the use of present and future generations, and Article V, section 1 part (i) to establish Ordinances, subject to review by the Secretary of the Interior governing law enforcement on the reservation, and to set up courts for the trial and punishment of offenders against such ordinances, in cases that do not fall within the jurisdiction of the Federal Court.

Section 103: Applicability
This rule applies to any person who conducts open burning on lands within the Fort Belknap Indian Reservation, notwithstanding land patent, whether fee or trust, or other areas where the tribes have inherent or delegated authority for air pollution control.

Section 104: Jurisdiction
The Fort Belknap Indian Community Council has inherent sovereignty to exercise civil authority and jurisdiction under this Ordinance over the conduct of Tribal members and all other persons on all lands within the exterior boundaries of the Reservation to

maintain the environment, natural resources, public health, safety, welfare, political integrity, and economic well-being of the Gros-Ventre and Assiniboine Tribes. Because any violation of this Ordinance or any rules or regulations adopted hereunder will demonstrable and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Gros-Ventre and Assiniboine Tribes, this Ordinance, and any rules and regulations adopted hereunder, shall apply to:

(1) All Persons and entities within the exterior boundaries of the Fort Belknap Indian Reservation,
without exception, including but not limited to, all tribal members, and all other persons on the Reservation, including any Indians who are members of other Indian Tribes, all non-Indians, and any other Person as defined under this Ordinance; and

(2) All places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust land, not withstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person.

Section 105: Definitions
(1) "Air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive(including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air.

(2) "Air pollution episode" means ambient air pollution levels are at or near unhealthy levels due to meteorological conditions that are not adequate to prevent high ambient concentrations of air pollutants as determined by the Environmental Protection Agency or the Fort Belknap Indian Community Council.

(3) "Air pollution source" (or source) means any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.

(4) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following:
(a) scheduling of burning during periods and
seasons of good ventilation;
(b) applying dispersion forecasts;
(c) utilizing predictive modeling results
performed by and available from the
department to minimize smoke impacts;

(d) limiting the amount of burning to be performed during any one time;
(e) using ignition and burning techniques which minimize smoke production;
(f) selecting fuel preparation methods that will minimize dirt and moisture content;

(5) "Emission" means a direct or indirect release into the atmosphere of any air pollutant, or air pollutants released into the atmosphere.

(6) "Environmental Department" means the Fort Belknap Indian Community (Gros-Ventre and Assiniboine) Environmental Department of the Fort Belknap Indian Reservation.

(7) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the tribal natural resources department menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(8) "Forestry or silvicultural burning" means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

(9) "Fuel" means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

(10) "Garbage" means food wastes.

(11) "Non-Attainment area" a geographic area in which the level of a criteria pollutant is higher than the level allowed by the Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants, thus, an area can be both attainment and non-attainment at the same time.

(12) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of detonation of unexploded ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(13) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual

agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(14) "Particulate matter" means any airborne finely divided solid or liquid material, other than uncombined water. Particulate matter includes, but is not limited to, PM10 and PM2.5.

(15) "Prescribed burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:
(a) improve wildlife habitat; (b) improve range conditions; (c) promote forest regeneration;
(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;
(e) control forest pests and diseases; or
(f) promote any other accepted silvicultural practices.

(16) "Salvage operation" means any operation conducted in whole or in part to salvage or
(g) promoting fuel configurations which create an adequate air to fuel ratio;
(h) prioritizing burns as to air quality impact and assigning control techniques accordingly;
(i) promoting alternative treatments and uses
of materials to be burned;
(j) selecting sites that will minimize smoke
impacts.

(17) "Trade wastes" means solid, liquid or gaseous material resulting from construction or operation of any business, trade, industry or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by prescribed forest and range open burning or fireworks as described in the Rule for Control of Open Outdoor Burning.

(18) "Refuse" means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

(19) "Solid fuel" means wood, refuse, refuse derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

(20) "Timber Harvest" means a series of forest practices designed to reduce or remove the standing timber on a defined land area.

(21) "Wood" or "Woody" means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sander dust, wood

chips, scraps, slabs, millings, shavings, ends, lumber, and processed pellets made from wood or other forest residues.

Section 106: Open Burning
(1) Open burning shall be defined as the kindling, maintenance, or permitting of an outdoor fire within the exterior boundaries of the Fort Belknap Indian Reservation or on lands under its jurisdiction.

(2) To maintain high levels of air quality on the Fort Belknap Indian Reservation it is the policy of the Gros Ventre and Assiniboine Tribes to minimize the use of open burning disposal practices and eliminate open burning where alternative disposal methods are feasible. The tribes' policy is to encourage the fostering of alternate technologies or methods of disposing wastes that are reasonably economical and less harmful to the people and the environment.

(3) The Gros Ventre and Assiniboine Tribes reserve the right to restrict, regulate, refuse, revoke or postpone outdoor burning because of adverse fire conditions, severe wind, or to prevent restriction of visibility, excessive air pollution or a nuisance, and to protect ambient air quality standards.

(4) Compliance with these regulations does not exempt or excuse any person from complying with other applicable tribal laws or from liability for damages or injuries that may result from open outdoor burning.

(5) Permits issued by the Fort Belknap Environmental Department shall be required for all open burning except for those types of open burning listed in subsection 107.1.

Section 107: Allowable Open Burning
The purpose of this section is to protect the public health and welfare of Fort Belknap residents from direct fire damage and from air contaminants resulting from open burning.

(1) The rules of this section shall not apply to the following, provided that no materials which may emit dense smoke or noxious odors as prohibited in section 108 are burned:

(a) Fires set for traditional, religious or ceremonial occasions and recreational or subsistence purposes for which fire is appropriate including fires for

(1) Sweat lodge use
(2) Sun Dance lodges
(3) Native American church use
(4) Use by tribal fishermen and hunters for purposes of warmth in connection with the exercise of hunting and fishing rights so long as such fires are no larger than are easily maintained without the use of fire control equipment, and are fueled by dry wood only, and are completely extinguished before abandoned

(b) The operation of any non-commercial barbecue or cooking equipment used for the curing, cooking, drying, or preparing foods, or medicine for human consumption

(c) Open fires used to dispose domestic household paper products providing the following conditions are met:

(i)No house-to-house solid waste collection service is available

(ii) The material is burned on the property where the waste was generated in an enclosed container with a screened opening to arrest sparks that may cause the unintentional setting of fires, and the smoke is not allowed to create a public nuisance.

(d) Fires no larger than 4 feet in diameter and 3 feet in height consisting of leaves, clippings, pruning, and other household yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee

(e) One open fire each year to dispose fireworks and associated packaging materials.

Section 108: Outdoor Fires – Prohibited Types

(1) It shall be unlawful for any person to cause or allow any outdoor fire:

(a) During any stage of an air pollution episode or period of impaired air quality

(b) Containing dead animals, asphalt, petroleum products, tires, composition roofing, tar, tar paper, lumber or timbers treated with preservatives, trade wastes other than dry, untreated vegetable material, insulated wire, construction debris, pathogenic wastes, hazardous wastes, paints, rubber products, plastics, or any substance other than natural vegetation which normally emits toxic substances, dense smoke or obnoxious odors

(c) Fires in any area where federal or tribal ambient air quality standards have created a non-attainment area, for pollutants emitted by outdoor burning, including but not limited to carbon monoxide and particulate matter unless the fire has been approved by permit and

(d)Fires in receptacles not designed specifically for burning waste, e.g., fires are not permitted in solid waste dumpsters or other garbage collection devices or in piles outside a solid waste receptacle

(e) Fires in any area which the FBIC has determined not to issue burn permits for outdoor burning

(f) Fires for prescribed burning, to prevent a hazard, for instruction of public officials, and tribal employees in the methods of forest fire fighting, and silvicultural burning used to improve forest lands, and silvicultural burning used to improve or maintain fire-dependent ecosystems for rare plants or animals [are allowed by permit, see section 109], unless written approval has been issued by the Fort Belknap Environmental Department/Forestry Department and provided the following conditions are met:

(i) A qualified agency or tribal employee is in charge

(ii) An approved burn plan which provides adequate consideration for controlling smoke is applied

(iii) The prescribed burn meets all permit and/or plan conditions and terms which control smoke.

Section 109: Outdoor Fires – Permit Required
(1) Fires for instructing employees on the methods and techniques of fire suppression (except when actively fighting forest wild fires)

(2) Fires associated with activities for controlling diseases, insects, weed abatement, disposal of residual vegetation (CRP), pruning or associated woody material, or development of physiological conditions conducive to increased crop yield

(3) Fires consisting of residue such as trees, stumps, shrubbery or other natural vegetation arising from land clearing or construction projects

(4) Fires for silvicultural purposes, prescribed forest management fires and training, such fires may be exempt from if approved by the Fort Belknap Environmental Department

(5) Open burning for the disposal of diseased animals or other material by order of a public health official.

Section 110: Additional Restrictions for Outdoor Burning
(1) All non-permitted, outdoor burning conducted pursuant to this regulation shall be conducted between the hours of sunrise and sunset. No fire shall be ignited, fed, or kindled before 2 hours after sunrise and no later than 2 hours before sunset. For the purpose of this provision, a fire shall be deemed to be out and extinguished when there is not a visible flame or glowing embers coming from the fire.

(2) If a fire creates a nuisance from smoke or flying ash, it must be extinguished. A nuisance exists when emissions from any open fire causes physical discomfort or health problems to people residing in the vicinity of the burning or physical damage to property.

(3) A person with equipment capable of extinguishing the fire or keeping a fire from spreading must attend the fire at all times.

(4) No fires shall be within 50 feet of any structures, directly under power lines, or within 100 feet of a forested area, unless the fires is for sivilcultural purposes and a permit had been issued pursuant to section 108.

(5) If a fire department is called to a fire the person or responsible party must have a burn permit on site. If there is no one attending the fire and the fire department has reason to believe the fire may spread and cause damage, the fire department has the discretion to extinguish the fire.

(6) For the purpose of this regulation, approval must be obtained from the Fort Belknap Environmental Department for any and all fires requiring a permit, regardless of land patent, whether on fee land or trust land.

(7) All fires must have a manageable, visible flame length, and the material burned must not have moisture content such that a visible flame can not be maintained.

(8) The permittee must not allow particulate matter to drift beyond the source property in a quantity to interfere with the use or enjoyment of nearby property(ies).

(9) Burning shall only be allowed during periods of calm to light winds.

(10) It is unlawful to use accelerants such as diesel fuel, or gasoline to propel or maintain a fire, except by a qualified federal or tribal employee in an official capacity on behalf of their respective employers, and for the purpose of igniting or maintaining a prescribed or suviculutural burn.

Section 111: Throwing Away Burning Materials – Preventing Unwanted Fires
It shall be unlawful for any person to

(1) Throw away any lighted or burning tobacco, cigarettes, matches, or other lighted materials

(2) Kindle or start a fire on land owned or controlled by him/her, or who permits or allows other persons to do so when such a fire is prohibited by this ordinance.

(3) Any person who undertakes an activity that produces material that may be prone to internal combustion shall take all necessary precautions to ensure that the materials cannot ignite spontaneously. Activities of particular concern include, but are not limited to, disposal of hay and construction and storage of silage pits.

Section 112: Violations
(1) Any violation of the Fort Belknap open burning regulations shall constitute a civil violation subject to a civil penalty of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00) and all governmental and administrative costs incurred, including legal fees and expenses related to the Fort Belknap Indian Council's response to such violations. The Tribal Council shall assess triple damage costs for repeated acts of violation.