



## COWICHAN VALLEY REGIONAL DISTRICT

### BYLAW No. 3716

#### A Bylaw to Control and Regulate Nuisance Smoke Pollution

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**WHEREAS** the Board of the Cowichan Valley Regional District established a service for *Control and Regulation of Air Pollution* under the provision of CVRD Bylaw No. 3258, cited as "CVRD Bylaw No. 3258 – Air Pollution Control Service Establishment Bylaw, 2009", for the control and regulation of pollution, nuisances, unwholesome or noxious materials, odours and disturbances within the electoral areas of the Cowichan Valley Regional District;

**AND WHEREAS** in relation to such matters the Cowichan Valley Regional District may require the owners or occupiers of real property, or their agents, to eliminate or reduce the fouling or contaminating of the atmosphere through the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia; and may prescribe measures and precautions to be taken for the purpose; and may establish limits not to be exceeded for those emissions;

**AND WHEREAS** the Cowichan Valley Regional District wishes to address the concerns of residents whose health and well-being are adversely affected by smoke pollution;

**AND WHEREAS** this bylaw is designated under Section 266.1 of the *Local Government Act* and Section 264 of the *Community Charter* as a bylaw that may be enforced by means of a ticket and fines.

**NOW THEREFORE** the Board of Directors of the Cowichan Valley Regional District enacts as follows:

1. **CITATION**

This bylaw may be cited for all purposes as "**CVRD Bylaw No. 3716 – Smoke Control Regulation Bylaw, 2013**".

2. **DEFINITIONS**

**"Bylaw Enforcement Officer"** means the person designated by the Board to administer and enforce bylaws within the Cowichan Valley Regional District.

**"Campfire"** means a fire used for the purpose of cooking and/or to provide heat and light associated with camping and recreation.

**"Compostable Materials"** means waste products from plants, trees or other vegetation that are naturally biodegradable including grass clippings, leaves, tree needles, garden waste and weeds.

**"Inspector"** means a duly appointed **Bylaw Enforcement Officer**, peace officer or designated member of a fire department.

**"Nuisance"** means the emission into the atmosphere of **Smoke** by any means which disturbs the comfort or convenience of persons in the vicinity.

**"Open Burning"** means the combustion of materials in the open air with or without control of the combustion air and without a stack or chimney to vent the emitted products of combustion to the atmosphere, but shall not include:

- a) The operation of a permanent outdoor barbeque or outdoor portable barbeque intended for and used solely for the preparation of food;
- b) Fires used by fire department authorities for the purposes of education, training and other fire department purposes;
- c) Fires used or recommended by authorities having jurisdiction to manage ecosystems for purposes of silvicultural management, forest fuel management, fire hazard reduction, wildlife enhancement, domestic range improvements and the use of fire as a means of fire control;
- d) Burning done or a fire set in accordance with federal or provincial regulations;
- e) Burning done or a fire set in accordance with all applicable Regional District bylaws including, without limiting, "CVRD Bylaw No. 2020 – Landclearing Management Regulation Bylaw, 2009", as may be amended or replaced from time to time; and/or
- f) **Campfires**.

**"Permitted Burning Materials"** means untreated natural wood, prunings, branches, tree trunks, stumps or other vegetation that do not constitute **Compostable Materials**.

**"Prohibited Burning Materials"** means any chemical or waste material including oil, tar, fertilizer, demolition, renovation or construction waste material and those materials listed in the *Open Burning Smoke Control Regulation*, as may be amended from time to time, enacted pursuant to the *Environmental Management Act* including, without limiting, the following:

- a) Tires
- b) Plastics
- c) Drywall
- d) Demolition Waste
- e) Domestic Waste
- f) Paint
- g) Hazardous Waste
- h) Tar Paper
- i) Treated Lumber
- j) Railway Ties
- k) Manure
- l) Rubber
- m) Asphalt
- n) Asphalt Products
- o) Fuel and Lubricant Containers
- p) Biomedical Waste

**"Regional District"** means the Cowichan Valley Regional District as described in its Letters Patent but excluding all lands located within a First Nation Reserve or lands vested in or under the jurisdiction of the Crown. All references to the Regional District shall include its officers, employees, agents, elected representatives, **Inspectors** or persons acting on its behalf.

**"Smoke"** means the gases, particulate matter and all other products of combustion emitted into the atmosphere when a substance or material is burned including, without limitation, **Smoke**, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia.

### 3. **PARTICIPATING AREAS**

The application of this Bylaw shall be limited to Electoral Areas: A - Mill Bay/Malahat; B - Shawnigan Lake; C - Cobble Hill; D - Cowichan Bay, and E - Cowichan Station/Sahtlam/Glenora, within the Cowichan Valley Regional District, which includes the areas within the boundaries of the Cowichan Bay Improvement District, the Shawnigan Improvement District, and the Mill Bay Fire Protection District.

### 4. **SMOKE CONTROL REGULATIONS**

1. No person shall cause or permit **Smoke** from **Open Burning** except in accordance with this bylaw.
2. No person shall cause or permit **Smoke** from **Open Burning** on land of which the person is not the owner or occupier unless authorized to do so by the owner or occupier and in accordance with this bylaw.
3. No person shall cause or permit **Smoke** from **Open Burning** of:
  - a) **Prohibited burning materials**; or
  - b) **Compostable materials**.
4. No person shall cause or permit **Smoke** from burning by use of an incinerator, burning barrel or similar device.
5. No person shall cause or permit **Smoke** from **Open Burning** except in accordance with the following regulations:
  - a) **Open burning** is permitted from March 15 through April 15 and from October 15 through November 15 only;
  - b) **Open burning** must be located at least 10 metres from all property lines;
  - c) **Open Burning** must be conducted and concluded between 7:00 am and sunset of the same day except for burning permitted under section 4.5(d);

- d) **Open burning** of large **Permitted Burning Materials** such as stumps and other materials over 8 inches (200 mm) in diameter may be maintained for a maximum of 72 hours if the fire is substantially smokeless, however no further **Permitted Burning Materials** shall be added to a fire after 5:00 pm of each day of the fire;
- e) No more than one hand-piled fire per property at any time is permitted;
- f) The size of **Open burning** must not exceed:
  - i) 2 metres in diameter; and
  - ii) 2 metres in height;
- g) All **Open burning** shall be continuously controlled and supervised by a competent person properly equipped with sufficient fire extinguishing equipment and material;
- h) All material burned within **Open Burning** must originate from the property where it is being burned;
- i) Only **Permitted Burning Materials** shall be burned;
- j) **Open Burning** may occur only when the Ventilation Index, as reported by the Meteorological Service of Environment Canada's Ventilation Index, is rated as "good";
- k) All **Open Burning** shall be maintained so as not to constitute a **Nuisance**; and
- l) All **Open Burning** is subject to local fire restrictions in its respective fire district and is subject to cancellation at any time by any authority having jurisdiction.

## 5. CAMPFIRES

- 1. No persons shall cause or permit **Smoke** from a **Campfire** except in accordance with the following regulations:
  - a) Only **Permitted Burning Materials**, including seasoned untreated lumber, shall be used in **Campfires** and firewood must be dry and seasoned;
  - b) **Campfires** shall be continuously controlled and supervised by a competent person equipped with extinguishing equipment and material;
  - c) **Campfires** shall be maintained so as not to constitute a nuisance;
  - d) **Campfires** are subject to local fire restrictions in their respective fire districts and are subject to cancellation at any time by any authority having jurisdiction.

## 6. INSPECTIONS AND ORDERS

- 1. An **Inspector** may order the extinguishment of any fire that is in violation of this bylaw.
- 2. An **Inspector** may enter and inspect any land and/or premises on which burning is being conducted, pursuant to the authority provided under Section 16 of the *Community Charter* or Section 268 of the *Local Government Act*, as applicable, for the purpose of determining compliance with this bylaw.

3. No person shall interfere with or obstruct an **Inspector** in carrying out his duties pursuant to this bylaw.
4. All persons shall comply with all orders of an **Inspector** concerning compliance with the provisions of this bylaw.
5. Where a person does not comply with an **Inspector's** order to extinguish a fire or abate a **Smoke** nuisance which is in violation of this bylaw, the **Inspector** may cause the fire to be extinguished.

#### 7. LIABILITY

1. This bylaw shall not create a duty of the **Regional District**, its officers, employees, **Inspectors** or persons acting on its behalf pursuant to this bylaw concerning enforcement or failure to enforce any matter contained in this bylaw.
2. No act, error, omission or other neglect of the **Regional District** in relation to any matter contained in the bylaw shall give rise to a cause or action or liability to any person.

#### 8. COST RECOVERY

1. A person responsible for **Open Burning** or a **Campfire** shall ensure that no **Nuisance** is caused and shall be responsible for all costs and expenses resulting from extinguishment of the fire as authorized by Section 6.5.
2. Where the person responsible for **Open Burning** or a **Campfire** is the owner of the land or the agent, all costs referred to in this section may be recovered in the same manner as those permitted under: *Local Government Act* Section 803; *Community Charter* Section 258; or another enactment.

#### 9. OFFENCES AND PENALTIES

1. A person who contravenes any of the provisions of this bylaw, or who permits any act or thing to be done in contravention or violation of any of the provisions of this bylaw, commits an offence and is liable to prosecution pursuant to the provisions of the *Offence Act*, and on summary conviction, to a fine and penalty of no more than the maximum permitted by law.
2. Each contravention of this bylaw constitutes a separate offence.
3. This bylaw may be enforced by the issuing of a ticket for contravention, in accordance with "CVRD Bylaw No. 3209 – Ticket Information Authorization Bylaw, 2008"; as amended.

#### 10. SEVERABILITY

If any section of lesser portion of this bylaw is held to be invalid by a Court of competent jurisdiction, such invalidity shall not affect the remaining portions of this bylaw.

**11. FORCE AND EFFECT**

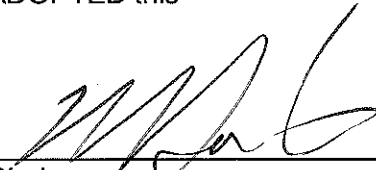
This bylaw shall take effect upon its adoption by the Regional Board.

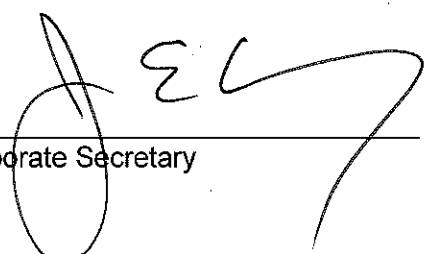
READ A FIRST TIME this 10<sup>th</sup> day of July, 2013.

READ A SECOND TIME this 10<sup>th</sup> day of July, 2013.

READ A THIRD TIME this 10<sup>th</sup> day of July, 2013.

ADOPTED this 10<sup>th</sup> day of July, 2013.

  
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Chairperson

  
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Corporate Secretary