

KWETXWI'LEM AWETA' ÈIELES SLEWÓYELH

Shxw'ōwhámél First Nation

Trespass Law, 2019

(a law to prohibit illegal trespass on Shxw'ōwhámél Lands)

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WHEREAS:

- A. We, the Shxw'ōwhámél First Nation ("**Shxw'ōwhámél**"), being a member of the Tiyt Tribe, have and maintain Indigenous Title, Rights and interests to our lands and resources within S'ólh T'émèxw, our Stó:lō Territory;
- B. Our Indigenous Title, Rights and interests are expressed in our Halq'eméylem language as: "*S'ólh T'émèxw te ikw'el'ó. Xólhmet te mékw'stám it kwelát*", meaning "This is our land. We have to take care of everything that belongs to us";
- C. *Tómiyeqw* – meaning, at all times we have a responsibility to our past seven generations and seven generations into the future;
- D. We have a unique relationship with our *Sxexó:mes*, including our lands and resources, which is expressed in our *Sxwōxwiyá:m*, *Sqwélqwel* and *Shxwelí*, which together help define our Indigenous Title, Rights and interests;
- E. We have 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*;
- F. We have taken back our unextinguished right to control and manage our Shxw'ōwhámél Lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and have enacted the *Shxw'ōwhámél First Nation Land Code*, verified on October 23, 2014 (the "**Land Code**");
- G. Pursuant to the Land Code, our Si:yá:m Council is authorized to pass various laws relating to lands, including laws relating to the protection, management, occupation and use thereof, as well as laws relating to public nuisance; and
- H. By enacting this law, Si:yá:m Council is seeking to prohibit unauthorized access, presence and use of Shxw'ōwhámél Lands.

NOW THEREFORE BE IT RESOLVED THAT this *kwetxwi'lem aweta' èieles Slewóyelh*, the *Shxw'ōwhámél First Nation Trespass Law, 2018* (the "**Law**") is hereby enacted as a law of the Shxw'ōwhámél First Nation.

PART 1 – NAME

- 1.1 Short Title. This Law may be cited as the *Shxw'ōwhámél Trespass Law*.

PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Law is to prohibit unauthorized access, presence and use of Shxw'ōwhámél Lands.
- 2.2 Application. The provisions of this Law apply to all Shxw'ōwhámél Lands.
- 2.3 Other Laws. This Law is intended to work in conjunction with other applicable laws and policies of Shxw'ōwhámél.

- 2.4 **Authority.** The Lands Department is responsible for implementing this Law and will have all powers necessary to give effect to this Law. From time to time, the Lands Department may contract with enforcement services to enforce this Law. The Lands Department may also, from time to time, refer to Council for guidance and advice on the implementation of this Law. The Lands Department may also delegate any part of its authority under this Law to other Persons.
- 2.5 **Non-Derogation.** No provision of this Law, or any communication, negotiations or engagements carried out pursuant to it, does, or may be deemed to, prejudice, limit, abrogate or derogate from any of Shxw'ōwhámél's Title, Rights or interests.

PART 3 – DEFINITIONS

- 3.1 **Land Code Definitions.** Capitalized words not defined in this Law have the same definitions as in the Land Code.

- 3.2 **Definitions.** For the purpose of this Law, the following definitions apply:

"Council" means the appointed Si:yá:m Council of the Shxw'ōwhámél First Nation Leadership Governing Body, as defined in *Shxw'ōwhámél First Nation Governance Policy*, ratified on January 24, 2018;

"Enforcement Officer" has the meaning provided to that term in the *Shxw'ōwhámél Enforcement Law*;

"Lands Department" means the Lands Department of Shxw'ōwhámél;

"Member" means a member of Shxw'ōwhámél;

"Natural Resource" includes

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c);

"Occupier" means any of the following:

- (a) a person who is in physical possession of premises;
- (b) a person who has responsibility for and control over the conditions of premises or the activities carried on there, or control over persons allowed to enter the premises, even if there is more than one Occupier of the same premises; and/or
- (c) Shxw'ōwhámél if the premises comprise or are located on Community Lands;

"Person" includes an individual, society, corporation, partnership or party, whether acting by themselves or by an agent or employee, and the successors, permitted

assigns and personal or other legal representatives of such Person to whom the context legally applies;

"Prohibited Activity" has the meaning provided to that term in section 5.1;

"Public Place" includes, but is not limited to, any highway, boulevard, park or other real property owned, held or administered by Shxw'ōwhámél;

"Qwi:qwelstóm", the Halq'eméylem word to describe "justice", is an underlying principle of Stó:lō forms of mediation and dispute resolution whose goal is "to make things right";

"Shxw'ōwhámél" means Shxw'ōwhámél First Nation;

"Shxw'ōwhámél Lands" has the meaning provided to that term in the Land Code; and

"Trespass" has the meaning provided to that term in section 4.1.

3.3 General Interpretation.

- (a) Our *Slewóyelh*, our traditional laws, apply to the interpretation of this Law.
- (b) Unless otherwise expressly provided, the structures, organizations, bodies, principles and procedures established or used in this Law will be guided, interpreted and carried out in accordance with the culture, traditions and customs of Shxw'ōwhámél, including *Qwi:qwelstóm*.
- (c) The headings of parts and section of 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.
- (d) A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.
- (e) The words "include", "includes" and "including" are to be read as if they are followed by the phrase "without limitation".
- (f) Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.

PART 4 – TRESPASS

4.1 General. A Person commits trespass on Shxw'ōwhámél Lands if the Person does any of the following:

- (a) enters Shxw'ōwhámél Lands without permission, unless such Person is a Member or authorized by Shxw'ōwhámél to be on Shxw'ōwhámél Lands to carry out specific activities;
- (b) enters any premises on Shxw'ōwhámél Lands without the Occupier's permission; or

- (c) engages in an activity on or in a premise after the Person has had notice from the Occupier of the premises that the activity is prohibited,

each a "**Trespass**".

- 4.2 Presumption. A Person, other than a Member, found on Shxw'ōwhámél Lands carrying out any Trespass is presumed to not have the consent of Shxw'ōwhámél until evidence acceptable to Shxw'ōwhámél is shown to the contrary.

PART 5 – PROHIBITED ACTIVITIES

- 5.1 Prohibited Activities. Any Person, other than a Member, who conducts any of the following on Shxw'ōwhámél Lands without prior written approval from the Lands Department is carrying out prohibited activities on Shxw'ōwhámél Lands:
- (a) hunting, fishing or trapping unless prior written approval from Shxw'ōwhámél has been attained;
 - (b) removal of, or damage to, any Natural Resource(s);
 - (c) hawking or peddling of wares or merchandise;
 - (d) loitering;
 - (e) soliciting financial assistance or door-to-door sales of any products, including religious canvassing unless prior approval from Shxw'ōwhámél has been attained; and/or
 - (f) activity contrary to the *Criminal Code* (Canada) or a Shxw'ōwhámél law,
- each a "**Prohibited Activity**".

- 5.2 Presumption. A Person, other than a Member, found on Shxw'ōwhámél Lands carrying out any Prohibited Activity is presumed to not have the consent of the Lands Department until written evidence is shown to the contrary.

PART 6 – COMMUNITY LANDS

- 6.1 Use of Community Lands. Council may make a resolution setting out the rules and regulations for the use of any premises on Community Lands, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, health clinics, roadways, sidewalks and other similar premises.
- 6.2 Violations. Council may, from time to time, pass a resolution providing:
- (a) that a Person who breaches any rules or regulations enacted under section 6.1, or who is otherwise charged under this Law, is banned from entering onto or remaining on any or all Community Lands for such period of time set out in the resolution; and
 - (b) the process for seeking a pardon, which pardon may be sought and obtained by way of application of Qwi:qwelstóm.

6.3 General Use of Lands. Council may, from time to time, by resolution:

- (a) prohibit entry or activity on premises located on Community Lands, provided that written notice (including by posting of signs) is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises; and/or
- (b) regulate the hours or seasons in which certain premises located on Community Lands may be used for specific purposes, impose limits on the activities to be engaged in such premises and/or impose a requirement for a permit to engage in such activities or purposes.

PART 7 – ENFORCEMENT AND OFFENCES

7.1 General. No Person shall obstruct, interfere with or hinder Council, an Enforcement Officer, or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.

7.2 Orders.

- (a) An Enforcement Officer may order any Person to leave Shxw'ōwhámél Lands who is carrying out Prohibited Activities and/or Trespass and arrange for the removal of any and all personal belongings associated with the Person.
- (b) If a Person who has been ordered to leave Shxw'ōwhámél Lands fails or refuses to do so, the Enforcement Officer may take such measures as may be necessary to remove that person from Shxw'ōwhámél Lands.
- (c) An order made pursuant to this Law will have immediate effect.

7.3 Offence. Every Person who:

- (a) violates or causes or allows any of the provisions of this Law to be violated;
- (b) fails to comply with any of the provisions of this Law, or any other applicable law; or
- (c) neglects or refrains from doing anything required under the provisions of this Law,

shall be deemed to have committed an offence under this Law and shall be liable to a fine or imprisonment, or to both a fine of imprisonment, not exceeding the maximum allowed under the *Shxw'ōwhámél Enforcement Law*, and each day such violation is caused or allowed to continue constitutes a separate offence.

7.4 Tickets.

- (a) An Enforcement Officer may issue a ticket for any offence under this Law.
- (b) Any Person issued a ticket under this Law will be required to pay the amount set from time to time for that ticket by regulation adopted by Council.

- (c) A Person wishing to appeal a ticket issued under this Law may apply in writing to the Lands Department.
- (d) The Lands Department may, after considering a Person's application to appeal a ticket and acting reasonably, waive the ticket, reduce the fine, or enforce the ticket.
- (e) After consideration of an application to appeal the ticket, the Lands Department will notify the applicant in writing of its decision, which decision will be final and binding.

7.5 Qwi:qwelstóm. Notwithstanding sections 7.3 and 7.4, Shxw'ōwhámél may, as directed from time to time by Council, refer the offence to Qwi:qwelstóm to determine an appropriate enforcement mechanism for a Person that commits an offence under this Law and who is willing to participate in the Qwi:qwelstóm alternative dispute process.

PART 8 – IMMUNITY

- 8.1 No Damages. No action for damages lies or may be instituted against present or past Council, an Enforcement Officer, or members, employees, representatives or agents of either Shxw'ōwhámél or Council:
- (a) for anything said or done or omitted to be said or done by that Person in the actual or required performance of the Person's duty or exercise of their authority; or
 - (b) for any alleged neglect or default in the actual or required performance of the Person's duty or exercise of their authority.
- 8.2 No Defence. Section 8.1 does not provide a defence if:
- (a) the Person in relation to the conduct that is the subject matter of the action, has been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 8.3 No Liability. None of Shxw'ōwhámél, present or past Council, or members, employees, representatives or agents of any of Shxw'ōwhámél or Council are liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Shxw'ōwhámél law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Shxw'ōwhámél law.
- 8.4 Limitation Period. Subject to sections 8.1 and 8.3, any actions against Shxw'ōwhámél (including Council and its employees) for the unlawful doing of anything that:
- (a) is purported to have been done under the powers conferred by this Law or any Shxw'ōwhámél law; and
 - (b) might have been lawfully done if acting in the manner established by law,
- must be commenced within six (6) months after the cause of action first arose.

- 8.5 Required Notice. Shxw'ōwhámél is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Shxw'ōwhámél within two (2) months from the date on which the damage was sustained. In case of the death of a Person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the court of appeal, believes:
- (a) there was reasonable excuse; and
 - (b) Shxw'ōwhámél has not been prejudiced in its defence by the failure or insufficiency.

PART 9 – AMENDMENT

- 9.1 General. Subject to sections 9.4 and 9.5, this Law may only be amended in the manner provided in the Land Code.
- 9.2 Initial Review. One (1) year after the coming into force of this Law, Shxw'ōwhámél will review its implementation and consider whether any amendments are required to ensure that it achieves its purpose, as outlined in section 2.1.
- 9.3 Regular Reviews. Shxw'ōwhámél will review and, if appropriate, amend this Law in accordance with section 9.1 every five (5) years, or whenever Council determines, in its sole discretion, that this Law should be reviewed and, if appropriate, amended.
- 9.4 Amendments to Schedules. The Lands Department may, from time to time, propose an amendment to a Schedule to this Law, which amendment will become effective on approval by Council.
- 9.5 Minor Amendments. Council may, from time to time, pass a resolution authorizing minor amendments to this Law for any of the following purposes:
- (a) to correct typographical or grammatical errors;
 - (b) to reference relevant, new or amended Shxw'ōwhámél law(s);
 - (c) to change the applicable entity(ies) having authority over the implementation of this Law;
 - (d) to align with an order by a court; and
 - (e) to clarify this Law where there is no reasonable dispute about the intention underlying the original provision.

PART 10 – GENERAL PROVISIONS

- 10.1 Compliance with other Laws. Where any other law or legal requirement may apply to any matter covered by this Law, compliance with this Law will not relieve the Person from also complying with the provisions of such other applicable law or legal requirement.

10.2 Severability. In the event that all or any part of any section of this Law are found by a court of competent jurisdiction to be invalid, such section shall be severable, and the remaining portions and sections of this Law shall remain in full force and effect.

10.3 Coming into Force. This Law will come into force and effect on the date that it is duly passed by Shxw'ōwhámél in accordance with the process outlined in the Land Code.

BE IT KNOWN that this Law is entitled the *Shxw'ōwhámél First Nation Trespass Law*, 2019 is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on April 15, 2019.

Irene Smith

Norma Stetson

Dianne Rite

Chris Casimiri

Quorum consists of __ Council members.

LP

RECEIVED APR 18 2019

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