

QIQWI'QELS < QIQ SLEWÓYELH

**Shxw'ōwhámél First Nation
Enforcement Law, 2019**

(a law to provide for the enforcement of Shxw'ōwhámél laws)

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- 2.2 Authority. The Lands Department is responsible for implementing this Law and will have all powers necessary to give effect to this Law.
- 2.3 Application. The provisions of this Law apply to:
- (a) all Shxw'ōwhámél Lands, as defined in the Land Code; and
 - (b) all Applicable Laws, unless there is a conflict between a provision of an Applicable Law and this Law, in which case the more stringent provision will apply.
- 2.4 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 – INTERPRETATION

- 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:

“Applicable Laws” means those laws listed in Schedule “A”;

“Council” means the 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” means a Person designated under section 4.2;

“Enforcement Administrator” means the Person designated by Shxw'ōwhámél to undertake the administrative and related activities outlined in the Law;

“Lands Department” means the Lands Department of Shxw'ōwhámél;

“Member” means a member of Shxw'ōwhámél;

“Offence Act” means the *Offence Act* of British Columbia;

“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;

“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”, and which must be engaged and applied by all Persons interpreting or applying this Law; and

“Shxw'ōwhámél” means Shxw'ōwhámél First Nation.

- 3.3 Interpretation.

- (i) enter land or unoccupied structures; and/or
 - (ii) enter a dwelling with the consent of the occupier or under a court order.
 - (b) Except in emergencies, prior to entering land or an unoccupied structure pursuant to subsection 4.3(a), an Enforcement Officer shall seek to obtain the permission of the owner or occupier.
- 4.4 Inspection. Subject to section 4.3, for the purpose of performing their duties under this Law, an Enforcement Officer may:
- (a) inspect land, property or records;
 - (b) take or make copies of anything, subject to the obligation to only use such copies for the purposes of:
 - (i) ensuring compliance with applicable laws and/or authorizations; and/or
 - (ii) carrying out enforcement activities in accordance with this Law; and
 - (c) make any reasonable inspection, investigation or inquiry that is necessary to determine if a law, regulation, compliance agreement, order, notice or other instrument issued under any Applicable Law has, or is believed to have been, contravened.
- 4.5 Identification. On request and in the course of performing his/her duties, an Enforcement Officer must show his/her identification as an Enforcement Officer.
- 4.6 Authority. The authority of an Enforcement Officer may be:
- (a) limited by Council under his/her terms or conditions of appointment as an Enforcement Officer; and
 - (b) increased if the Enforcement Officer is, under another law or regulation, appointed or designated to enforce the provisions of another law or regulation.

PART 5 – DISPUTE RESOLUTION AND TICKET OFFENCES

- 5.1 Dispute Resolution. Notwithstanding sections 5.2 to 5.13, Shxw'ōwhámél may, as directed from time to time by Council, refer the offence to alternative resolution forums including the following:
- (a) To a Council appointed body, including an elder's committee or justice committee, to consider the appropriate steps to be taken by the offender to correct the harms resulting from their actions. The appointed body may consider mechanisms other than the payment of fines including temporary or permanent banishment, community service obligations or other culturally appropriate remedies. The appointed body will be responsible for preparing and submitting to Council a final report with recommendations for Council to consider.
 - (b) 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

- (a) Unless otherwise set out in a more specific provision of a law, regulation or resolution, the maximum fines set out in Schedule "B" apply.
- (b) A 25% discount will be applied to all fines applies to a first offence of a specific provision where such fine is paid within fourteen (14) days of the date of the applicable ticket. For greater certainty, no discount is available for any subsequent offence of a specific provision.
- (c) In setting the fine for an offence, the Enforcement Officer may take into account any the following:
 - (i) the existence and extent of harm and/or damage caused to Person(s) and/or property;
 - (ii) the financial capacity, age and number of dependents of the offender;
 - (iii) the number and type of offences previously committed by the subject offender, along with the type of enforcement tool applied to such prior offences;
 - (iv) the willingness of the offender to resolve the issue and/or remedy any damage caused by the offence; and
 - (v) such other factors that the Enforcement Officer deems applicable to the subject offence and offender.

5.6 Form and Content of Tickets.

- (a) When a ticket is issued it must contain the following information:
 - (i) particulars of the alleged contravention in sufficient detail that a recipient of the notice is able to identify the alleged offence;
 - (ii) the amount of the fine, the discounted fine, the surcharge and fines for continuing offences;
 - (iii) the method(s) for paying the fine;
 - (iv) how to dispute the alleged contravention;
 - (v) the date and time the ticket is issued;
 - (vi) a means of identifying the Enforcement Officer who issued the ticket;
 - (vii) notice that the Person receiving the ticket may appeal the ticket to a Justice of the Peace, along with the penalty for failing to appear at a scheduled hearing, if any; and
 - (viii) any other information required by Council resolution or applicable laws.
- (b) Tickets will be issued in the prescribed form, where available.

5.7 Laying information and serving ticket.

- (a) A Person who pays a fine in accordance with paragraph 5.8(a)(i) is deemed to have:

- (i) pleaded guilty to the offence to which the Person was charged; and
 - (ii) paid the fine imposed,

and no conviction need be drawn up or entered unless it is required under the law contravened or by a prosecutor.

5.10 Hearing of dispute.

- (a) If notice of dispute is given in accordance with paragraph 5.8(a)(ii), the Enforcement Administrator must refer the ticket to a Justice of the Peace or to the Provincial Court for a hearing.
- (b) If a ticket is referred pursuant to subsection 5.10(a), the Enforcement Administrator must confirm that the Person who was served with the ticket receives a notice of the hearing specifying a time and place for the appearance of the Person before the Justice of the Peace or Provincial Court.
- (c) If a Person appears at the time and place specified in the notice under subsection 5.10(b), section 58 of the Offence Act does not apply to the Person and the applicable justice or court has jurisdiction to hear the dispute without examining the notice of dispute or the notice of the hearing or inquiring into the service of the ticket on the Person.
- (d) Despite section 60 of the Offence Act, but subject to the Supreme Court Civil Rules, a justice hearing the trial on a ticket pursuant to this section 5.10 may:
 - (i) admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the justice considers is relevant to an issue in the trial and is credible and trustworthy, but may not admit anything that is privileged under the laws of evidence; and
 - (ii) adopt procedures that are conducive to justly and expeditiously determining the matter.
- (e) If a Person who is served with a ticket:
 - (i) has appeared before a justice at the time and place specified in the notice under subsection 5.10(b) and pleaded guilty to or been found guilty of the offence with which the Person was charged; or
 - (ii) is deemed under subsection 5.10(f) to have pleaded guilty to the offence with which the Person was charged,

then no conviction need be drawn up or entered unless it is required under the law contravened, by the Person convicted or by a prosecutor.

- (f) Failure to appear at hearing.

- (d) The justice to whom an application is made pursuant to this section 5.12, on being satisfied by affidavit in the prescribed form, with or without hearing from the applicant, that the applicable conditions set out in subsection 5.12(b) or 5.12(c) have been met may:
 - (i) strike out the conviction, if any;
 - (ii) in the case of a Person who did not dispute the charge, allow the Person fourteen (14) days after the date the conviction is struck to dispute the charge in accordance with section 5.8; or
 - (iii) in the case of a Person who failed to appear to dispute the charge, set a new time and place for the appearance of the Person before a justice.
- (e) If a conviction is struck out under paragraph 5.12(d)(i), the justice must give the Person a certificate of the fact in the prescribed form.

5.13 Collections.

- (a) If a person fails to pay a fine or penalty under this Law within thirty (30) days of date of the ticket or notice of penalty, the Enforcement Administrator is authorized, thirty (30) days after having sent a warning letter to the person, to:
 - (i) send any unpaid fine or penalty to a collection agency; or
 - (ii) for fines or penalties owed by Members:
 - (A) to send a request to Council that:
 - (1) up to 100% of moneys be withheld from any membership distributions; and/or
 - (2) up to 25% may be withheld from any honorariums, until the full outstanding debt is paid; and/or
 - (B) carry out any services or punishments directed by Qwi:qwelstóm or a justice of the peace.

PART 6 – JUSTICES OF THE PEACE

6.1 Appointment. Council may appoint:

- (a) by resolution;
- (b) with the advice of the Enforcement Administrator;
- (c) in a manner consistent with this Law and the Land Code; and
- (d) on the consent of the applicable Person,

any justices of the peace that Council deems necessary from time to time to enforce Shxw'ōwhámél laws (each a "**Justice of the Peace**").

- (c) prescribing classes of Persons for the purpose of ticket offences;
- (d) prescribing amounts for the purposes of section 5.5;
- (e) prescribing fees for adjudication, including extra administrative or surcharge fees if a person unsuccessfully disputes a ticket;
- (f) prescribing the form of a certificate of service for the purpose of subsection 5.7(c)(iv);
- (g) prescribing instructions for paying a fine for the purpose of section 5.8; and
- (h) prescribing the form of an affidavit and/or certificate for the purpose of section 5.12.

PART 8 – IMMUNITY

- 8.1 General. No action for damages lies or may be instituted against present or past Council, 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.

10.4 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 Enforcement Law, 2018* is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on April 15, 2019.

Irene Smith

Naomi Stacey

Dannalita

Chris Cosimma

Quorum consists of __ Council members.

SCHEDULE B

FINES

| Section | Offence (Summary) | Max Fine |
|-------------------------------------|--|----------|
| Shxw'ōwhámél Animal Law | | |
| 4 | Number of pets per household | \$1,000 |
| 5 | Animal population control | \$1,000 |
| 6 | Licence requirement | \$1,000 |
| 7.1 | Animal control – prohibited noises | \$1,000 |
| 7.2 | Animal control – specific prohibitions | \$1,000 |
| 7.3 | Animal control – defecation | \$1,000 |
| 7.5 | Animal control – animal in heat | \$1,000 |
| 9.1 | Animal care – diseases | \$1,000 |
| 9.2-9.10 | Animal care – general care | \$1,000 |
| 9.11 | Livestock and poultry | \$1,000 |
| 9.12 | Exotic animals | \$1,000 |
| Shxw'ōwhámél Business Law | | |
| 4.1 | Licence requirement | \$4,000 |
| 4.2 | Prohibited activities | \$4,000 |
| 5.1 | Licence terms and conditions | \$4,000 |
| 10.1 | Transfer prohibitions | \$4,000 |
| Shxw'ōwhámél Cannabis Law | | |
| 4.1 | Public use | \$4,000 |
| 5 | Growth of plants | \$4,000 |
| 6 | Production facility licence terms and conditions | \$4,000 |
| 7.4 | Prohibited retail | \$4,000 |
| 7.9 | Retail facility licence terms and conditions | \$4,000 |
| Shxw'ōwhámél Cultural Law | | |
| 5 | Cultural permit | \$4,000 |
| 6 | Field work | \$4,000 |
| 7 | Misconduct | \$4,000 |
| 8 | Unexpected finds | \$4,000 |
| 9 | Spoleqwith'a (human remains) | \$4,000 |
| 10 | Use of information | \$4,000 |
| 12.5 | Prohibitions re curation of heritage objects | \$4,000 |
| Shxw'ōwhámél Development Law | | |
| 4.1 | Failure to submit Site Plan Package | \$4,000 |

| Section | Offence (Summary) | Max Fine |
|----------------|--------------------------------|-----------------|
| 8.5 | Siting, Size and Dimensions | \$4,000 |
| 8.6 | Subdivisions | \$4,000 |
| 8.7 | Fencing | \$2,500 |
| 8.8 | Accessory buildings | \$4,000 |
| 8.9 | Accessory storage units | \$2,000 |
| 8.10 | Projections into setback areas | \$2,000 |
| 8.11 | Home-based businesses | \$2,000 |
| 8.12 | Secondary suites | \$2,000 |
| 8.13 | Garden suites | \$2,000 |
| 8.14 | Derelict vehicles | \$2,000 |
| 8.15 | Noxious uses | \$4,000 |
| 8.18 | Setbacks from watercourses | \$4,000 |
| 8.19 | Manufactured homes | \$2,000 |
| 8.20 | Mobile homes | \$2,000 |
| 8.21 | Septic systems | \$4,000 |
| 8.22 | Temporary uses | \$2,000 |