

LO'P_XWEN, HEYEQW, KWOT_XWEN SLEWÓYELH

**Shxw'ōwhámél First Nation
Noise, Fire and Disturbances Control Law, 2019**

(a law to provide for the control of noise and disturbances within 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, activities thereon, and nuisance; and
- H. Si:yá:m Council has the authority and responsibility to provide for a healthy community environment where people can enjoy the peace, quiet, rest, enjoyment, comfort and convenience of Shxw'ōwhámél Lands,

NOW THEREFORE BE IT RESOLVED THAT this *Lo'p_Xwen, Heyeqw, Kwot_Xwen Slewóyelh*, the *Shxw'ōwhámél First Nation Noise, Fire and Disturbances Control Law, 2019*, (the "**Law**") is hereby enacted as a law of the Shxw'ōwhámél First Nation.

PART 1 – NAME

- 1.1 Short Name. This Law may be cited as the *Shxw'ōwhámél Noise, Fire and Disturbances Law*.

PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Law is to promote a healthy community environment where Members can enjoy the use of their lands, and to regulate the making or causing of noises, sounds, fires and other disturbances that may disturb or tend to disturb the peace, quiet, rest, enjoyment, comfort and/or convenience of Shxw'ōwhámél Lands.
- 2.2 Application. The provisions of this Law apply to all Shxw'ōwhámél Lands, as defined in the Land Code.

- 2.3 **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.
- 2.4 **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:

"dBA" means the sound pressure level in decibels measured using the "A" weighting network setting of an approved sound meter and with slow response. Noise levels of common sounds are depicted in Schedule "A" of this Law for illustrative purposes;

"Council" means the appointed Si:yám 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*;

"Fire Ring" means a circle made of forged metal, stones, concrete, or other non-combustible materials that is built directly on the ground and designed to contain a fire;

"Lands Advisory Committee" means the Lands Advisory Committee established under the Land Code;

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

"Lands Manager" means the person appointed by Council to oversee the administration of Shxw'ōwhámél Lands, the Land Code and related laws and policies of Shxw'ōwhámél;

"Member" means a member of Shxw'ōwhámél;

"Night" means the hours between:

- (a) the later of sunset or 9:00 p.m. of one day; and
- (b) 7:00 a.m. of the following day;

"Outdoor Assembly" means a public outdoor gathering of persons for a music concert, festival, rally, sporting event or other similar type of public gathering, and includes outdoor entertainment for commercial or charitable purposes;

"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;

"Public Place" includes, but is not limited to, any highway, street, park or other real property owned, held, administered or managed 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" or **"SFN"** means Shxw'ōwhámél First Nation; and

"Structure" has the meaning provided to that term in the Shxw'ōwhámél Zoning Law.

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 sections 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.

3.4 Schedule. The following Schedule forms part of and is integral to this Law:

- (a) Schedule "A" – Noise Levels (in dB(a)) of Common Sounds

PART 4 – PROHIBITED NOISES AND SOUND DISTURBANCES

- 4.1 Public Places. No person shall make or cause, or permit to be made or caused, any noise or sound in a Public Place that disturbs or tends to disturb unreasonably the quiet, peace, rest, enjoyment, comfort or convenience of Persons in the neighbourhood or vicinity.
- 4.2 Specific Prohibitions. Without limiting the generality of this Law, unless a Person has a temporary use permit issued under the *Shxw'ōwhámél Zoning Law*, no Person shall cause, permit or allow the following noises or sounds:

- (a) any noise or sound during the Night that exceeds 65 dBA as measured at any point within six (6) metres from the boundary or property line of the real property or parcel of land from which the noise or sound is emanating;
- (b) any noise or sound caused by, or made in the course of the construction, erection, reconstruction, alteration, repair or demolition of any building, Structure or thing, or the excavation or filling-in of land, at any time during the Night, which noise or sound is audible six (6) metres from the boundary or property line of the real property or parcel of land from which the noise or sound is emanating;
- (c) any industrial noise or sound, the level of which exceeds 90 dBA as measured at any point six (6) metres from the boundary or property line of the real property or parcel of land from which the noise or sound is emanating, for a duration of more than fifteen (15) minutes at a time; or
- (d) any noise or sound emanating from an Outdoor Assembly or public address system between the hours of 7:00 a.m. and 11:00 p.m. of the same day, the level of which exceeds 90 dBA as measured at any point six (6) metres from the boundary or property line of the real property or parcel of land from which the noise or sound is emanating.

4.3 Non-Application. The provisions of this Part 4 do not apply to:

- (a) the operation of a generator during power outages;
- (b) the operation of an emergency vehicle proceeding upon an emergency;
- (c) the emergency repair of a public utility, road or highway by a utility company or Shxw'ōwhámél or either of its employees or contractors;
- (d) noise emanating from Shxw'ōwhámél cultural events from activities that are legitimately part of such events;
- (e) the construction, erection, reconstruction, alteration, repair or demolition of any building, structure or thing, or the excavation or filling-in of land during day-time hours (i.e., not during the Night), Monday to and including Saturday;
- (f) the operation of road maintenance equipment by Shxw'ōwhámél, the District of Hope, the Fraser Valley Regional District, the Province of British Columbia or an agent acting on any of their behalf, including snow removal or highway cleaning operations; or
- (g) operation of a public address system required under a building or fire code.

4.4 Complaints.

- (a) The following process will be followed to submit a noise complaint:
 - (i) the complainant must attend the Lands Department office and fill out a prescribed complaint form;

- (ii) on the submission of a completed complaint form, the Lands Department will investigate the matter, including by discussing it with the complainant and the alleged noise-maker;
- (iii) if warranted based on the Lands Department's investigation, the Lands Department may, in its sole discretion:
 - (A) issue a warning to the noise-maker, which warning may be consider in the issuance of tickets under this Law, the application of the *Shxw'ōwhámél Housing Law*, and/or the application of the *Shxw'ōwhámél Enforcement Law*; and/or
 - (B) seek to mediate a resolution between the parties and other affected Persons for a specific exemption to the requirements of this Law with the objective of promoting good neighbourly relationships and community quality.

(b) It is an offence under this Law to make false complaints regarding noise.

PART 5 – FIRES

5.1 Accumulation of Combustible Materials.

- (a) No Person may cause, allow or permit any accumulation of combustible growth, waste or rubbish of any kind which in the opinion of the Lands Manager is liable to catch fire and endanger property, to be or to remain upon any premises.
- (b) All growth that is liable to catch fire and endanger property shall be promptly cut down and removed by the owner or occupant of the premises on which the growth is located to such location prescribed from time to time by the Lands Department.
- (c) If this section 5.1 is not complied with, the Lands Manager may cause the work to be completed and bill the owner or occupant of such premises for all costs and expenses, along with a 15% administration fee.

5.2 Prohibitions. Notwithstanding any other provision of this Law, no Person may:

- (a) burn any garbage, fuels, plastics, hazardous materials, rubber tires, petroleum products or other materials that may create dangerous air emissions or heavy black smoke within Shxw'ōwhámél Lands;
- (b) start a fire unless it is supervised by a competent person over the age of nineteen (19) years knowledgeable about controlling fires;
- (c) allow fire smoke to become a nuisance;
- (d) fail to terminate an open fire (which termination requires first placing water on the fire, then stirring the remnants of the fire and, finally, where available, placing sand or dirt on top of the remnant of the fire);

- (e) light, ignite, start or burn any fire within Shxw'ōwhámél Lands during a fire ban issued for such lands by Shxw'ōwhámél, the Government of British Columbia, or any other local government;
- (f) discard, throw down or drop any lighted match, cigar, cigarette or other burning substance into combustible material or in close proximity thereto within Shxw'ōwhámél Lands;
- (g) make or light any fire on or in any Public Place, except if and as authorized by the Lands Manager; and/or
- (h) light, ignite, start or burn any fire in open air, or in any portable incinerator, outdoor fireplace or other portable appliance or device in the open air, for any purpose, except as specifically provided in this Law.

5.3 Fire Rings. A Person may only light, ignite, start or burn a fire in a Fire Ring if all of the following conditions are met:

- (a) the Fire Ring does not exceed 1.5 meters in diameter;
- (b) an accessible and sufficient water source is located in close proximity to the Fire Ring;
- (c) the Fire Ring is located a safe distance from standing timber and any flammable or combustible materials; and
- (d) the Fire Ring is located the greater of:
 - (i) thirty (30) feet from any Structure; and
 - (ii) such limits indicated in applicable home insurance policies, if any.

5.4 Food Cooking Purposes. Wood, charcoal, natural gas or propane gas fires for the sole purpose of cooking food, in accordance with the instructions for safe use provided by the manufacturer, if applicable, is permitted.

5.5 Smokehouses. A Person may only construct and/or use a smokehouse as follows:

- (a) the Person informs the Lands Department prior to constructing the smokehouse, and abides with all reasonable directions provided by the Lands Department;
- (b) the smokehouse is constructed to the maximum extent possible of non-combustible materials;
- (c) an accessible and sufficient water source is located in close proximity to the smokehouse;
- (d) the smokehouse is located a safe distance from standing timber and any flammable or combustible materials; and
- (e) the smokehouse is located the greater of:
 - (i) thirty (30) feet from any Structure; and

- (ii) such limits indicated in applicable home insurance policies, if any; and
- (f) the smokehouse is constructed in accordance with other applicable laws, including the *Shxw'ōwhámél Housing Law*

5.6 Burning brush on Agricultural lands. On any property where the applicable zoning permits agriculture use, and where the Lands Manager considers it safe to do so, the Lands Manager may issue a permit in accordance with section 5.7 for burning in the open air of cut and piled brush, slash, grass and other organic agricultural materials resulting from the clearing of land and for the destruction of agricultural waste materials originating on that property, provided that the permit holder shall ensure that:

- (a) a watch is kept on such fire until it is completely extinguished;
- (b) sufficient personnel, appliances and equipment, as determined by the Lands Manager, are readily available to prevent the fire from becoming dangerous to life or property;
- (c) such burning is not carried out within fifty (50) metres from any Structures, standing timber or any other flammable or combustible material;
- (d) no pile of burning material exceeds three (3) metres in diameter or two (2) metres in height; and
- (e) no such burning is carried out where, due to climatic conditions or other hazards, it would be unsafe to do so.

5.7 Permit conditions. The following conditions and requirements apply to a fire permit issued pursuant to section 5.6:

- (a) every application for a fire permit must be submitted to the Lands Manager on a form approved by the Lands Manager;
- (b) the Lands Manager may grant or refuse any fire permit, subject to the provisions of this Law and other applicable laws;
- (c) the Lands Manager may attach to any fire permit such conditions and restrictions as it deems necessary for safety and the prevention of the spread of fire; and
- (d) the Lands Manager may immediately suspend or revoke any fire permit where it determines that the permit holder has done anything which contravenes any provision of this Law or other applicable laws.

5.8 Land Department Burns. Despite any other provisions of this Law, the Lands Department may burn Structures or other materials for the purpose of training its personnel in structural firefighting methods or fire investigation procedures, or to eliminate fire hazards.

5.9 Ceremonial Burnings.

- (a) Subject to subsection 5.9(b), Council may, from time to time, authorize ceremonial burnings for cultural purposes and will inform the Lands Department

of these authorizations for information purposes. [NTD – Lands Advisory Council / Siyam to discuss appropriate definition for “ceremonial burning”]

- (b) If a ceremonial burning is required for an unexpected occurrence, such as a death, prior authorization under subsection 5.9(a) is not required, but the Person have care and control over such ceremonial burning must provide notice to the Lands Department on the next available business day following the burn.
 - (c) The Person(s) responsible for lighting and overseeing a ceremonial burning must ensure that the prohibitions in section 5.2 are strictly upheld.
 - (d) In authorizing ceremonial burnings, Council may, in its sole discretion, impose specific terms and conditions to such authorization, including a requirement to notify specific officials and/or have the fire department attend for safety purposes.
- 5.10 Bans. When the Lands Manager deems it expedient to do so, or where it considers that hazardous fire conditions exist, the Lands Manager may order a total ban on burning (including burning in Fire Rings and/or smokehouses) and may suspend, cancel or restrict for such time as it deems necessary any or all fire permits issued pursuant to this Law or other applicable laws within Shxw’ōwhámél Lands.
- 5.11 Burning without a Permit. Notwithstanding Part 6, the burning of any material without a required permit will result in cost recovery from the owner or occupant of such land where Shxw’ōwhámél or its designate was required to attend for fire services. Failure of the owner or occupant to pay a fee charged within thirty (30) days will result in those costs being added to the owner or occupant’s property taxes and/or rent payable to Shxw’ōwhámél.

PART 6 – ENFORCEMENT AND OFFENCES

- 6.1 General. No Person shall obstruct, interfere with or hinder Shxw’ōwhámél, Council, and Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 6.2 Right to Enter. For the purpose of this Law, an Enforcement Officer may enter any lands on Shxw’ōwhámél Lands at any time for the purpose of ascertaining whether the requirements of this Law are being observed.
- 6.3 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.

6.4 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.

6.5 Orders.

- (a) In addition to any other applicable fine, penalty or remedy, Council, the Lands Department, an Enforcement Officer, or a designated official may issue a stop work order or a cease and desist order to order any Person who has not received full and proper authorization under this Law to cease carrying out any activity, use or construction that is causing or contributing to a disturbance.
- (b) An order made under subsection 6.5(a):
 - (i) may be registered in Court and enforced as a court order; and
 - (ii) 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 permit or authorization pursuant to this Law.
- (c) An order made pursuant to this Law will have immediate effect.

6.6 Qwi:qwelstóm. Notwithstanding sections 6.3 to 6.5, 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 7 – IMMUNITY

7.1 General. No action for damages lies or may be instituted against present or past Council, a Noise Control 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.
- 7.2 No Defence. Section 7.1 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.
- 7.3 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.
- 7.4 Limitation Period. Subject to sections 7.1 and 7.3, 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.
- 7.5 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 8 – AMENDMENT

- 8.1 General. Subject to section 8.3, this Law may only be amended in the manner provided in the Land Code.
- 8.2 Regular Reviews. Shxw'ōwhámél will review and, if appropriate, amend this Law in accordance with section 8.1 every five (5) years, or whenever Council determines, in its sole discretion, that this Law should be reviewed and, if appropriate, amended.
- 8.3 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 9 – GENERAL PROVISIONS

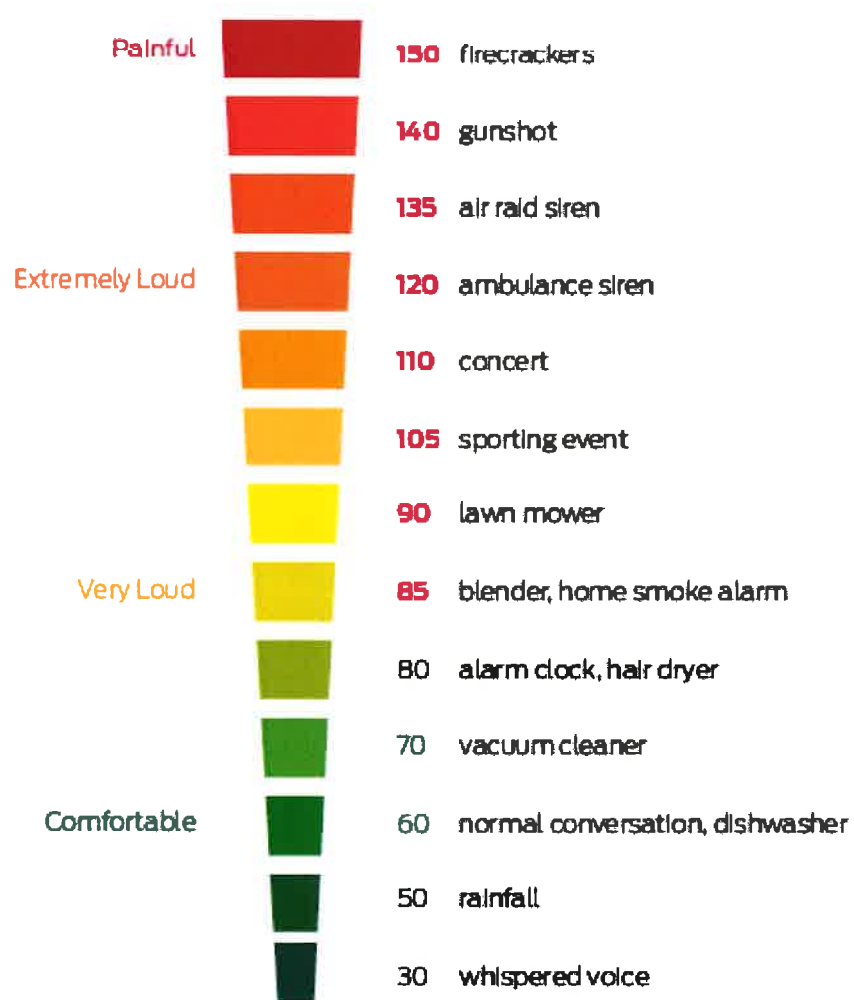
- 9.1 Compliance with other Laws. Where any other law or legal requirement may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of such other applicable law or legal requirement.
- 9.2 Severability. In the event that 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.
- 9.3 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 Noise, Fire and Disturbances Control Law, 2018***, and is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on April 15, 2019.

<u>Irene Smith</u>	<u>Norm Heston</u>
<u>Diana Lita</u>	<u></u>
<u>Chris Casimiri</u>	<u></u>

Quorum consists of __ Council members.

Schedule "A" – Noise Levels (in dB(a)) of Common Sounds





Shxw'owhámel First Nation
58700A STEELMO RD
HOPE BC V0X 1L2

Original
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