

***TS'ESÉMELEP SLEWÓYELH***

**Shxw'ōwhámél First Nation  
Cannabis Law, 2018**

**(a law to provide for the control of cannabis use and sale 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. *Tómiyeq̓w* – 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 *Sxwōx̓wiyá:m*, *Sqwélq̓wel* and *Shxweli*, 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;
- H. Si:yá:m Council has a responsibility for the health, safety and wellbeing of our community, including our youth, and to minimize the risks and public nuisances that may arise as a result of the legalization of cannabis (Ts'esémelep) in Canada, and hereby seeks to control and regulate the production, sale and use of cannabis (Ts'esémelep) to reduce such risks and nuisances to Shxw'ōwhámél and its members; and
- I. Although the Government of Canada has adopted legislation regarding cannabis, such legislation focuses on the protection of health and safety of Canadians as a whole, and does not adequately take into account the local context of Shxw'ōwhámél and its members, over which the Si:yá:m Council has greater knowledge and inherent jurisdiction and authority,

**NOW THEREFORE BE IT RESOLVED THAT** this Ts'esémelep Slewóyelh, the *Shxw'ōwhámél First Nation Cannabis 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 Cannabis Law*.

## PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Law is to protect the health, safety and well-being of our community, including our youth, from the risks that may arise as a result of the legalization of cannabis, or Ts'esémelep, in Canada.
- 2.2 Application. The provisions of this Law apply to all Shxw'ōwhámél Lands. In addition, in the exercise of our inherent jurisdiction and authority over our Territory, which right flows from *Chichelh Si:yá:m*, Shxw'ōwhámél takes the position that this Law also applies to all lands situated within our Territory, including those outside the boundaries of the Shxw'ōwhámél Lands, in such manner as Council deems fit from time to time.
- 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;
- “**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, 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”;

“**Retail Licence**” has the meaning provided in section 7.1;

“**Shxw’ōwhámél**” means Shxw’ōwhámél First Nation;

“**Shxw’ōwhámél Lands**” has the meaning provided to that term in the Land Code; and

“**Ts’esémelep**” means:

- (a) the whole or any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than:
  - (i) a non-viable seed of a cannabis plant;
  - (ii) a mature stalk, without any leaf, flower, seed or branch, of such a plant, and a fibre derived from such a stalk; and
  - (iii) the root or any part of the root of such a plant;
- (b) any substance or mixture of substances that contains or has on it any part of such a plant; and
- (c) any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.

### 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 – PUBLIC USE OF TS'ESÉMELEP**

- 4.1 General. No individual may use, consume, smoke or vape Ts'esémelep in or in close proximity to:
- (a) a public park, school, highway, road or sidewalk within Shxw'ōwhámél Lands;
  - (b) any areas frequented by minors within Shxw'ōwhámél Lands; or
  - (c) Shxw'ōwhámél-operated buildings or Shxw'ōwhámél-operated facilities for recreation, sports, education, health, welfare, administration, governance, safety, communications and/or public works.
- 4.2 Possession. No individual may possess more than 3.5 grams of Ts'esémelep in public on Shxw'ōwhámél Lands with the exception of transporting Ts'esémelep to or from a residential unit or a Ts'esémelep production or retail facility.

## **PART 5 – TS'ESÉMELEP PLANTS**

- 5.1 General. Ts'esémelep plants may only be grown as follows:
- (a) a maximum of two (2) Ts'esémelep plants per house or residential unit on Shxw'ōwhámél Lands for personal use;
  - (b) for medicinal purposes by individuals that hold a valid medicinal Ts'esémelep (cannabis) licence issued by Shxw'ōwhámél or another authority approved by Shxw'ōwhámél; and
  - (c) in full compliance with this Law and the applicable medicinal licence.
- 5.2 Specific requirements. Notwithstanding section 5.1, no Ts'esémelep plants be grown in a house or residential unit unless all of the following conditions are met:
- (a) in locations not visible or accessible by minors;
  - (b) no hydroponics are used to grow, or assist the growth of, the Ts'esémelep plants;
  - (c) no irrigation hoses are used to water the Ts'esémelep plants;
  - (d) the residential home or unit must be maintained in a clean and safe condition, including proper ventilation; and
  - (e) no Ts'esémelep plants may be visible from any public location.

## **PART 6 – CANNABIS PRODUCTION FACILITIES**

- 6.1 Locations. Shxw'ōwhámél will only consider granting its approval for a Ts'esémelep production facility proposed on Shxw'ōwhámél Lands that are zoned under the *Shxw'ōwhámél Zoning Law* as:
- (a) C1 Zone (general commercial);
  - (b) NR Zone (natural resource); or

- (c) FD Zone (future development) where Shxw'ōwhámél decides that such lands may be used for a Ts'esémelep production facility.

For greater certainty, Shxw'ōwhámél will not grant any approval for a Ts'esémelep production facility proposed on any lands that do not fall within the zones listed in this section 6.1.

- 6.2 Community Meeting. The Lands Department will hold a community meeting to discuss any proposed application submitted to it in accordance with this Part 6 and the requirements under the Land Code.
- 6.3 Requirements. Any applicant who proposes to construct and/or operate a Ts'esémelep production facility within Shxw'ōwhámél's Territory must:
  - (a) attend a preliminary meeting with the Lands Department to:
    - (i) discuss the facility and proposed activities therein;
    - (ii) provide evidence of the proposed facility abiding to federal Ts'esémelep laws; and
    - (iii) respond to any questions that the Lands Department may have;
  - (b) provide a copy of the application for licensing or permitting of the facility that is required by the federal government to the Lands Department at the same time as such application is submitted to the federal government;
  - (c) pay the prescribed application fee to the Lands Department at the same time as the application is submitted under subsection 6.3(b);
  - (d) meet with the Lands Department, Lands Advisory Committee and/or Council, as requested, to review the application and respond to questions;
  - (e) attend the community meeting held by the Lands Department to discuss the proposed application if so requested by the Lands Department;
  - (f) seek to fully address any concerns that the Lands Department, Lands Advisory Committee and/or Council may have with the application, revise the application as required to address such concerns, and provide a copy of the revised application to the Lands Department at the same time as such revised application is submitted to the federal government.
- 6.4 Recommendation on Application. On receipt of the final application for the Ts'esémelep production facility pursuant to subsection 6.3(f), the Lands Department will review the application and provide a recommendation to Council.
- 6.5 Approval. Council will review the application and the Lands Department's recommendation, and if Council approves the application, it will pass a resolution on such approval.
- 6.6 Other Authorizations. On receipt of approval under section 6.5, the applicant must seek and obtain all other relevant permits, licences, interests in land and authorizations under

other applicable Shxw'ōwhámél laws before commencing any construction of the proposed production facility.

- 6.7 Other portions of Shxw'ōwhámél Territory. Any applicant that proposes to construct and/or operate a Ts'esémelep production facility within Shxw'ōwhámél's Territory, but not within the boundaries of Shxw'ōwhámél Lands, will, at minimum, be required to follow the same procedural steps outlined in sections 6.2 to 6.6 before receiving any support for its proposal from Shxw'ōwhámél.

## **PART 7 – SALE OF TS'ESÉMELEP**

- 7.1 Licence. The sale of Ts'esémelep within Shxw'ōwhámél Lands is prohibited without a duly issued cannabis retail facility licence ("**Retail Licence**") issued in accordance with this Law.
- 7.2 Cap. Unless otherwise agreed-to by Council, a maximum of one (1) Retail Licence may be issued at any time on Shxw'ōwhámél Lands.
- 7.3 Permitted Locations. Shxw'ōwhámél will only consider granting a Retail Licence for a Ts'esémelep retail facility proposed on Shxw'ōwhámél Lands that are:
- (a) zoned under the *Shxw'ōwhámél Zoning Law* as:
    - (i) C1 Zone (general commercial);
    - (ii) C2 Zone (tourism commercial); or
    - (iii) FD Zone (future development) where Shxw'ōwhámél decides that such lands may be used for a Ts'esémelep retail facility; and
  - (b) at least three hundred (300) meters from a public parks, schools, Shxw'ōwhámél-operated buildings and Shxw'ōwhámél-operated facilities for recreation, sports, education, health, welfare, administration, governance, safety, communications and/or public works.
- 7.4 Prohibited Retail. For greater certainty, no Retail Licences may be issued to any of the following:
- (a) Ts'esémelep retail facility proposed on any lands that do not fall within the zones listed in subsection 7.3(a);
  - (b) Ts'esémelep retail facility that do not meet the minimum distance requirements set out in subsection 7.3(b);
  - (c) Ts'esémelep consumption lounges;
  - (d) Ts'esémelep delivery services; and
  - (e) festivals / special events,

and any sale of Ts'esémelep contrary to this section 7.4 is an offence enforceable under this Law and the *Shxw'ōwhámél Enforcement Law*.

- 7.5 Community Meeting. The Lands Department will hold a community meeting to discuss any proposed application submitted to it in accordance with this Part 7 and the requirements under the Land Code.
- 7.6 Application Process. Any applicant who proposes to construct and/or operate a Ts'esémelep retail facility within Shxw'ōwhámél's Territory must:
- (a) attend a preliminary meeting with the Lands Department to
    - (i) discuss the retail facility and proposed activities therein;
    - (ii) provide evidence of the proposed facility abiding to provincial Ts'esémelep retail facility laws; and
    - (iii) respond to any questions that the Lands Department may have;
  - (b) provide to the Lands Department an application for licensing or permitting of the facility that meets the requirements of the provincial Ts'esémelep retail facility laws and any other prescribed requirements under Shxw'ōwhámél laws;
  - (c) meet with the Lands Department, Lands Advisory Committee and/or Council, as requested, to review the application and respond to questions; and
  - (d) attend the community meeting held by the Lands Department to discuss the proposed application if so requested by the Lands Department;
  - (e) seek to fully address any concerns that the Lands Department, Lands Advisory Committee and/or Council may have with the application, revise the application as required to address such concerns, and provide a copy of the revised application to the Lands Department at the same time as such revised application is submitted to the provincial government.
- 7.7 Recommendation on Application. On receipt of the final application for the Ts'esémelep retail facility pursuant to subsection 7.6(d), the Lands Department will review the application and provide a recommendation to Council.
- 7.8 Approval. Council will review the application and the Lands Department's recommendation. If, after reviewing the application and recommendations, Council approves the application, it will pass a resolution on such approval.
- 7.9 Terms and Conditions. A Council approval issued pursuant to section 7.8 will include the following terms and conditions:
- (a) limited right of sale to specified Ts'esémelep oils, seeds and accessories;
  - (b) prohibited sale of alcohol and tobacco at the same location;
  - (c) minors prohibited from entering the retail facility;
  - (d) hours of operation limited to a maximum between the hours of 9 am to 9 pm;
  - (e) specified security requirements;



- (f) restrictions on advertising and sign content and placement;
- (g) requirements to provide updated information on the retail facility's employees to Shxw'ōwhámél;
- (h) licence fees; and
- (i) such other terms and conditions that Council considers appropriate in the circumstances.

7.10 Other portions of Shxw'ōwhámél Territory. Any applicant that proposes to construct and/or operate a Ts'esémelep retail facility within Shxw'ōwhámél's Territory, but not within the boundaries of Shxw'ōwhámél Lands, will, at minimum, be required to meet the requirements set out in this Part 7, except subsections 7.3(a) and 7.4(a), before receiving any support for its proposal from Shxw'ōwhámél.

## **PART 8 – ENFORCEMENT AND OFFENCES**

8.1 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.

8.2 Authority of Enforcement Officer. An Enforcement Officer may:

- (a) inspect any Ts'esémelep production facility and Ts'esémelep retail facility located on Shxw'ōwhámél Lands at all reasonable times to ensure compliance with this Law; and
- (b) issue a ticket for any offence under this Law.

8.3 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 and 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.

8.4 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.
- 8.5 Qwi:qwelstóm. Notwithstanding sections 8.3 and 8.4, 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 9 – IMMUNITY**

- 9.1 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.
- 9.2 No Defence. Section 9.1 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.
- 9.3 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.
- 9.4 Limitation Period. Subject to sections 9.1 and 9.3, 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.

- 9.5 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 10 – AMENDMENT**

- 10.1 General. Subject to sections 10.4 and 10.5, this Law may only be amended in the manner provided in the Land Code.
- 10.2 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.
- 10.3 Regular Reviews. Shxw'ōwhámél will review and, if appropriate, amend this Law in accordance with section 10.1 every five (5) years, or whenever Council determines, in its sole discretion, that this Law should be reviewed and, if appropriate, amended.
- 10.4 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.
- 10.5 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 11 – GENERAL PROVISIONS**

- 11.1 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.

- 11.2 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.
- 11.3 Orders. An order made pursuant to this Law will have immediate effect.
- 11.4 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 Cannabis Law, 2018* is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on December 10, 2018.

Chris Codrini

Jennifer George

Naomi Hattaway

Paul

Quorum consists of    Council members.