

Oneida Tribe of Indians of Wisconsin

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Oneida, WI 54155



UGWA DEMOLUM YATEHE
Because of the help of
this Oneida Chief in
cementing a friendship
between the six nations
and the colony of
Pennsylvania, a new
nation, the United States
was made possible.

Oneida Business Committee Resolution # BC- 7-05-95-K

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty Tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the amendments to the Oneida Administrative Procedures Act have undergone the required Public Hearing, and

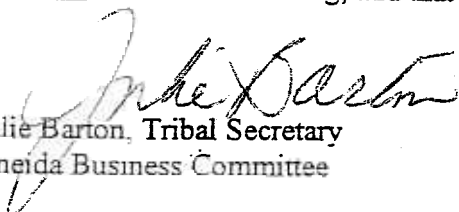
WHEREAS, it is important that the Public Hearing process be amended such that one Oneida Business Committee member be required to attend in order to allow the Public Hearing process to work, and

WHEREAS, the amendments to the Administrative Procedures Act affect only the Public Hearing Process which were adopted by the Oneida Business Committee under the Emergency Adoption procedures,

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby adopts the amended Oneida Administrative Procedures Act to be ratified by the Oneida General Tribal Council at the next available meeting to which the appropriate notice can be made.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 9 Members were present at a meeting duly called, noticed and held on the 5th Day of July 1995; that the foregoing resolution was duly adopted at such meeting by a vote of 8 Members for; 0 Members against, and 0 Members not voting; and that said resolution has not been rescinded or amended in any way.


Julie Barton, Tribal Secretary
Oneida Business Committee

ONEIDA TRIBAL LAW OFFICE

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STATEMENT OF EFFECT Resolution Regarding Amendments to the Administrative Procedures Act

Summary

This resolution makes permanent the amendments to the Public Hearing process in the Administrative Procedures Act subject to ratification of the General Tribal Council.

Analysis

This resolution proposes that the Oneida Business Committee adopt the amendments to the Administrative Procedures Act allowing for one Oneida Business Committee member to sit in a Public Hearing. These amendments have been presented at the required Public Hearing and no comments were received that were not in favor of this amendment.

This law was originally adopted by the General Tribal Council and will take their action to make amendments permanent. There are no provisions within this law requiring the General Tribal Council to adopt any amendments to this law. In the interim, the Oneida Business Committee, acting on behalf of the General Tribal Council may make these amendments, subject to final ratification of the General Tribal Council.

There are no legal issues which would bar adoption of this resolution.

Conclusion

There are no legal issues which would bar adoption of this resolution. However, the General Tribal Council should be presented these amendments for ratification at the earliest possible meeting.

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ONEIDA TRIBAL ADMINISTRATIVE PROCEDURE ACT (*Amended*)

I. AUTHORITY

The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.

II. PURPOSE

The Oneida Business Committee, various committees, entities and administrative bodies of the Oneida Tribe shall act in a responsible and consistent manner when enacting, approving, revising, reviewing, interpreting, implementing, and administering the laws, directions, rules, programs, and policies of the Oneida Tribe as adopted. The following principles shall be the framework of this Act:

- A. Fundamental fairness, justice, and common sense.
- B. Procedural and substantive ordinance and rule-making will include appropriate notice to the General Tribal Council, interested persons, and to the public in order that they may have the opportunity to submit views, opinions, and information.
- C. Record keeping that is responsible, organized, accessible, and understandable.
- D. Deliberative bodies and decision makers which are familiar with the evidence and facts of the cases presented to them as well as issuing clear and concise written opinions; and
- E. Provisions for appeals of administrative errors and contested issues.

III. DEFINITIONS

- A. "AGENCY": Any tribal entity, board, commission, committee, department, or officer authorized by the Oneida Tribe to propose ordinance/rules for adoption by the Oneida Business Committee or a decision maker for the contested cases. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.
- B. "CONFIDENTIALITY": State or quality of being confidential; treated as private and not for publication.
- C. "CONTESTED CASES": A proceeding before an "Agency" in which an opportunity for a hearing before said "Agency" is required by law prior or subsequent to the determination of the "Agency" of the legal rights, duties, or privileges or specific parties unless otherwise provided for by tribal law. This shall include the revocation, suspension, or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting.
- D. "DECLARATORY RULING": A written ruling made by a tribal decision-making body which removes doubts or puts an end to conflicting decisions in regard to what law is in relation to a particular matter.

E. "DELEGATED BODY": A body elected or appointed to act in the stead of another, or a body that is transferred authority from a particular political/governmental unit to another.

F. "DELIBERATIVE BODY": A body that weighs, examines, and consults the reasons for and against a contemplated act or course of conduct or a choice of acts or means in order to form an opinion.

G. "EMERGENCY": An unexpected or unforeseen occurrence or condition; a sudden or unexpected occasion for action; pressing necessity.

H. "LICENSE" or "PERMIT": The approval, permission, or allowance of an individual or group to engage in an activity that is lawfully adopted by the Oneida Tribe.

I. "LICENSING" or "PERMITTING": The process that refers to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license or permit.

J. "ONEIDA BUSINESS COMMITTEE" (OBC): The representative body of the Oneida Tribe elected by the Oneida General Tribal Council pursuant to Article III of the Oneida Tribal Constitution.

K. "ONEIDA GENERAL TRIBAL COUNCIL": The ultimate governing body of the Oneida Tribe is composed of enrolled tribal members as is described in Article III of the Oneida Tribal Constitution.

L. "ORDINANCE": A tribal law that applies to and governs persons activities, and properties subject to tribal jurisdiction.

M. "POLICY": The general principles by which a government is guided in its management of public affairs, or the legislature on its measurement.

N. "RESERVATION": Oneida Tribe of Indians of Wisconsin original reservation containing approximately 65,000 acres as defined by the Treaty of 1838.

O. "RESERVATION ENVIRONMENT" or "RESERVATION RESOURCES": Land, surface water, ground water, fish, animals, flora, fauna, air, wildlife, and capital improvements on or near the reservation.

P. "RULE/REGULATION": Any order or directive, or regulation of general applicability enacted into law and approved by the Oneida Business Committee that exhibits the following:

1. The violation of which may result in a fine, penalty, or other civil administrative sanction;
2. May establish, change, or revoke a procedure, practice, or requirement of administration hearing;
3. May establish, change, or revoke requirements relating to benefits or privileges conferred by law;
4. May establish, change, or revoke standards for assistance, suspension, or revocation of licenses;
5. The amendment or repeal of a prior ordinance/rule;
6. Does not include the following:
 - a. Statements concerning internal management of an area, nor
 - b. Declaratory rulings issued pursuant to this Act as now or hereafter amended.

Q. "SECRETARY": Secretary of the Oneida Business Committee.

R. "SPONSORING AGENCIES": Any tribal agency that prepares an ordinance/rule or other matter under this Act for action by the Oneida Business Committee.

IV. INSPECTION OF AGENCY ORDERS, DECISIONS, AND OPINIONS

Each agency shall keep on file for public inspection all final orders, decisions, and opinions in contested cases as well as an index to said cases, decisions, orders, or opinions ~~except~~ that said public inspection shall be limited by applicable federal law or tribal laws of confidentiality. In addition, said agencies shall forward all agency orders, decisions, or opinions to the "Secretary" who shall keep said records in one centralized area.

V. NOTICE OF INTENT TO ADOPT ORDINANCE/RULE AND OPPORTUNITY TO SUBMIT DATA AND PUBLIC HEARING

A. Duties. Prior to a final proposal to the Oneida Business Committee to adopt, amend, or repeal an ordinance/rule, the ~~sponsoring agency Legislative Operating Committee and the "secretary"~~ shall with approval of the Oneida Business Committee shall:

1. Publish a notice thereof, *thirty calander days prior to a public hearing of a public hearing to be held* on said ordinance in the Oneida Tribal Newspaper (KALIHWSAKS) and post said notice in all tribal premises in a place and manner *as set out by the Legislative Operating Committee* which will advise the following:

a. The authority under which the ordinance/rule is proposed;

b. A statement of the terms, substance, or a description of the subjects and issues involved;

c. The time, place, whom, and manner in which views may be presented. Said notice shall be published and posted for no less than ten (10) days prior to the public hearing.

2. Provide interested persons a reasonable opportunity to submit data, views, or arguments in writing. It is the intent of this Act that public hearings be held. Subsequent to the public comment period and prior to a final Business Committee vote, the ~~Oneida Business Committee and agency~~ Legislative Operating Committee shall consider fully, all oral and written comments concerning the proposed action.

B. Procedures. The public hearing shall include the following procedures ~~pursuant to Oneida Tribal Resolution #2-2-88-A:~~

1. All notice requirements designated pursuant to Article V of this ordinance shall be adhered to.

2. The Secretary shall give notice to the Tribal Manager who shall then inform all Tribal Employees of the hearing.

3. All persons participating at the hearing shall register, if they so desire, to orally testify. All participants may question those registrants. Those who wish to testify orally must register with the Secretary in advance and they will be heard in the order in which registrants are received. A request to present oral testimony should be sent three (3) business days prior to the hearing date.

4. Persons may also register at the hearing but will not be allowed to give testimony until after pre-registered persons speak.
 5. The hearing shall be presided over by a Tribal Legislative Sub-Committee that deals with the particular subject pertaining to that hearing.
 - a. A minimum of three (3) Business Committee members shall be present at the public hearing as part of the legislative sub-committee.
 - b. The Secretary shall give specific notice at least ten (10) days prior to the hearing to Tribal Employees who have special knowledge or expertise on the subject of the hearing. Such employees shall be directed to provide written or oral statements at the hearing.
 6. A five (5) minute time limit for all oral presentations will be imposed. A written summary of the oral presentations will be requested.
 7. Written testimony may be submitted to the Secretary no later than ten (10) business days after the hearing in regard to the specific issues.
- C. **Validity.** An ordinance/rule hereafter adopted is valid only if adopted in substantial compliance with this section or if an emergency ordinance/rule designated as such is adopted in compliance with the "Emergency Ordinance/Rule" section.
- D. **Filing/Expiration.** All adopted ordinances/rules shall immediately be filed with the Secretary. All regular ordinances/rules hereafter adopted pursuant to this Act shall become effective upon the expiration of ten (10) business days following the passages of said ordinance/rule unless so stated in ordinance/rule. No proceeding can be contested for purpose of non-compliance with the procedural requirements of this section, as now or hereafter amended one (1) year has elapsed from the effective date of the ordinance/rule.
- E. **Adoption by Oneida Business Committee.** Ordinances/rules shall become effective upon their adoption by the Oneida Business Committee and in compliance with Section D above.
5. The hearing shall be presided over by a Tribal Legislative Sub-Committee that deals with the particular subject pertaining to that hearing.
 - a. A minimum of three (3) Business Committee members shall be present at the public hearing as part of the legislative sub-committee.
 - b. The Secretary shall give specific notice at least ten (10) days prior to the hearing to Tribal Employees who have special knowledge or expertise on the subject of the hearing. Such employees shall be directed to provide written or oral statements at the hearing.
 6. A five (5) minute time limit for all oral presentations will be imposed. A written summary of the oral presentations will be requested.
 7. Written testimony may be submitted to the Secretary no later than ten (10) business days after the hearing in regard to the specific issues.

VI. EMERGENCY ORDINANCES/RULES AND AMENDMENTS

- A. **Emergencies.** If an emergency requires and the Oneida Business Committee so finds, that an immediate adoption or the amendment of an ordinance/rule is necessary for the preservation of

the public health, safety, or general welfare of the reservation population, and that observance of the above stated requirements would be contrary to public interest, the Oneida Business Committee may adopt the ordinance/rule or amendment immediately as an emergency ordinance/rule or amendment. **THE FOLLOWING SHALL APPLY:**

1. A finding and brief statement of the reasons for the finding shall be incorporated in the Ordinance/Rule or Amendment.
 2. An emergency Ordinance/Rule or Amendment shall remain in effect for no longer than six (6) months unless said emergency condition appears to continue for no longer than six (6) months. Should this occur, the Oneida Business Committee shall take formal action for an extension of no longer than six (6) months.
 3. The emergency Ordinance/Rule or Amendment shall be published as required pursuant to Article V of this Act solely to inform the public of said adoption.
- B. Emergency Ordinances/Rules shall become effective immediately upon their adoption by the Oneida Business Committee and said emergency Ordinance/Rule shall be promptly file with the Secretary.

VII. STATEMENT AND FORMAT OF PROPOSED ORDINANCES/RULES

- A. **Format.** The format of a proposed ordinance shall contain the following: 1) Title, 2) Purpose, 3) Scope, 4) Definitions, and 5) Authority.
- B. **Statement.** The sponsoring agency shall submit a statement with the proposed Ordinance/Rule which described the purpose of the Ordinance/Rule and applicable procedures. The statement shall include, but not be limited to, the following:
1. A title, a description of the Ordinances/Rules, purpose, the name of the sponsoring agency, and any other information that may aid in the process of identifying the purpose and intent of the proposed Ordinance/Rule.
 2. A summary of the proposed Ordinance/Rule.
 3. The sponsoring agency responsible for drafting the proposed Ordinance/Rule and applicable procedures for implementation and enforcement of the proposed Ordinance/Rule.
 4. Fifty copies of the proposed Ordinance/Rule shall be typewritten and submitted to the Secretary.
 5. All pages of the proposed Ordinance/Rule shall be numbered, dated, and marked "draft" until said Ordinance/Rule is officially adopted by the Oneida Business Committee.
 6. Any further specific format requirements of a proposed Ordinance/Rule shall be made available to the sponsoring agencies by the Secretary prior to submission of a proposed Ordinance/Rule.
- C. **Filing.** The sponsoring agency shall have on file all copies and statements prepared in accordance with this section, and available for public inspection upon filing the proposed Ordinance/Rule with the Secretary.

VIII. REQUEST FOR ADOPTION, AMENDMENT, OR REPEAL OF ORDINANCE/RULE

A. Procedures. Any interested person may request an agency or the Oneida Business Committee directly to propose that the Oneida Business Committee adopt, amend, or repeal any ordinance/rule. Should this occur the following shall apply:

1. Within sixty (60) days after the submission of a request, the agency or the Oneida Business Committee shall formally consider the request, and
2. Within sixty (60) days thereafter, the agency or the Oneida Business Committee shall either deny the petition in writing, (stating reasons for denial or initiate Ordinance/Rule proceedings in accordance with this Act.

IX. DECLARATORY RULING AND JUDGEMENTS ON VALIDITY OF ORDINANCE/RULE

A. Declaratory Rulings. Declaratory Rulings shall be initially made by the agency or any interested person may petition an agency for a Declaratory Ruling with the respect to the applicability to any person, property, or state of facts of any Ordinance/Rule enforceable by such agency.

1. A Declaratory Ruling shall be binding between the petition and agency/individual so long as the following is adhered to:
 - a. An informal hearing has been held, and
 - b. Said Declaratory Ruling has been submitted to and verified by the Secretary.
2. A Declaratory Ruling shall not be applicable if said ruling is set aside or altered by a Tribal Appellate body.

B. Declaratory Judgement. A petitioner and/or sponsoring agency may petition the appropriate Oneida Tribal Appeals Commission to issue a declaratory judgement should it appear that the Ordinance/Rule or its proposed application threaten to interfere with or impair the legal rights or privileges of the petitioner; the following shall apply prior to such a petition being heard:

1. The appellate body shall have jurisdiction over the issue, and
2. The Ordinance/Rule exceeds the lawful authority of the Oneida Business Committee or the General Tribal Council, and
3. The Ordinance/Rule failed to comply with lawful Ordinance/Rule making procedures.

X. CONTESTED CASES

A. Notice. Whenever a contested case has arisen within the Oneida Tribal Administrative System, the following notice requirements shall be adhered to:

1. The notice shall be in writing, and
2. The notice shall be postmarked, delivered, or published no later than ten (10) days prior to the action or proceeding, and
3. Said notice shall include statements specifying:
 - a. The violation, citing the rules, regulations, policies, or laws, and

- b. The specific grievance which shall include the alleged facts and/or charges and the date, time, and place describing the alleged violation and/or non-compliance, and
- c. The name of all parties involved, including an agency or entity, if applicable, and
- d. The nature of relief requested.

4. Types of Notices

a. Notices are required to adhere to the above requirements in the following progression, unless personal service is more practical than by mail:

- 1) Service by registered mail, (return receipt requested).
- 2) Personal Services. This shall occur by formal service by an officer of the Oneida Public Safety Department. The person serving shall verify the date, time, and place of service to the subject served.
- 3) Publication. This shall be used if the whereabouts of the subject is unknown and cannot be located after a diligent attempt to seek such location by one of the above methods of service. Publication shall be in the Oneida Tribal Newspaper (KALIHWISAKS), and another paper located in an area where the subject was last known to have resided and shall be designated as a LEGAL NOTICE stating the name and the last-known address of the person/entity being located.
- 4) A designated person or department shall be established by the Oneida Tribe to accept petitions for contested cases and follow through on the entire case.

B. Records.

- 1. The record in a contested case shall include the following:
 - a. All pleadings, motions, and intermediate rulings, and
 - b. Evidence received or considered, and
 - c. A statement of matters officially noticed, and
 - d. Questions and offers of proof, objections and rulings thereon, and
 - e. Proposed findings and exceptions, and
 - f. Any decision, opinion, or report by the officer presiding at the hearing, and
 - g. A complete record of the proceeding shall be taped except for deliberations.
- 2. Fees of Reproduction. The tribe shall fix a consistent fee for the cost of reproducing records.

C. Procedures and Rules. The following shall be adhered to when a contested case is being heard:

- 1. Pre-hearing Rules (Minimum Time Frame)
 - a. Parties shall submit documentation for the hearing officers to review at least two (2) business days prior to a hearing. Documentation submitted after this time will not be considered unless the panel of hearing officers elects, by a majority, to

accept and consider said documentation because it may have a direct impact upon the outcome of the hearing.

b. Hearing officers are responsible to pick up documentation twenty-four (24) hours prior to a hearing from a location designated by each agency.

c. Hearing officers are to be present for a hearing a minimum of thirty (30) minutes prior to a scheduled hearing.

d. After proper service of notice, agencies, commissions, hearing officers or their authorized agents may do the following:

1) Issue a subpoena upon the request of any party upon a statement showing general relevance of the evidence requested; said request may be signed by the party itself or its designated representative; or

2) Issue a subpoena upon their own motion.

2. The hearing format shall be as follows:

a. Grieving party presents case;

b. Responding party presents case;

c. Grieving party cross questions;

d. Responding party cross questions;

e. Grieving party rebuttal;

f. Responding party rebuttal;

g. Original Hearing Body deliberations and findings. (Deliberations of the Original Hearing Body are confidential and not subject to reproduction.)

3. Rules that encompass witnesses shall be as follows:

a. Character witnesses may submit written affidavits;

b. The presence of witnesses shall be the responsibility of each party and/or the Original Hearing Body members;

c. Witnesses who will not be available for a scheduled hearing shall submit a notarized statement as it relates to the hearing in order for this documentation to be considered in the case;

d. A witness list will be submitted at least two (2) business days prior to the hearing by each party presenting witnesses.

4. The Original Hearing Body shall institute recesses and postponements as they see fit.

5. The Original Hearing Body shall ask questions at any time during the hearing.

6. The findings and hearing are Tribal record. Tribal members may request copies of the record of the case at the requesting parties expense, except in juvenile cases or when juveniles are involved.

7. Deliberation of the Commission is confidential and not subject to reproduction.

8. The respondent has a right to be made aware of the grievance or grievances against him/her. The grievance(s) shall be attached to the notification of the hearing.

9. All parties have a right to be represented by an advocate if they so choose. The expenses of the advocate shall be the total responsibility of the parties. Tribal entities shall have access to a Tribal Attorney if they so choose.

10. The parties have the right to present witnesses and evidence on their own behalf.
11. The parties have a right to at least ten (10) business days written notification prior to a hearing.
12. The parties have a right to a timely hearing and decision; therefore, notification to the parties of the final decision shall be sent or personally served within ten (10) business days following the hearing and said hearing and decision shall be completed within 120 days unless time line is waived by both parties.
13. Both parties may receive all records that pertain to the grievance which is being reviewed.
14. The affected parties have a right to documentation of the following:
 - a. The final decision, and
 - b. The reason(s) for the final decision, and
 - c. The action to be taken as a result of the final decision.
15. The parties have the right to request one (1) appeal of the final decision of the Original Hearing Body to a designated appeals body of the Oneida Tribe because of:
 - a. Procedural irregularities which were objected to at the formal hearing, and/or procedural irregularities which are brought to the attention of the Original Hearing Body and/or
 - b. Decisions which were made clearly against the weight of testimony and evidence presented to the Original Hearing Bodies and/or
 - c. New evidence which is made available to the appeal body which was not available to the parties or Original Hearing Officers until after the final decision.
16. Should the grieving party and/or his/her advocate fail to appear at any scheduled hearing or meeting without justifiable cause, the grievance shall be dismissed.
17. Should the grieving party and/or his/her advocate fail to appear at any scheduled hearing or meeting without justifiable cause, said absence shall be considered an admission to the grievance and the decision of the Commission shall be based on such an admission.
18. All proceedings that arise as a result of the action of the Oneida Child Protective Board or any other juvenile proceeding shall be confidential except to the interested parties as listed in the proceedings and the Oneida Human Services Department. All hearings shall be closed to everyone except the above mentioned parties and department.
19. The decision of the hearing body shall be based upon witness testimony, evidence presented, the record of the proceeding, and the matters officially noticed.
20. Findings and Conclusions. Every decision and order rendered by an agency in a contested case shall be in writing in the record and shall include the findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Subsequent to a decision being made, the following shall occur:
 - a. Parties to the action shall be notified of the decision and order in person or by mail, and

b. A copy of the decision and order, along with the findings and conclusions, shall be delivered or mailed to each party and if a party is represented by an attorney of record within ten (10) days of said decision.

21. Appeal. Should a party feel that a reconsideration of the contested case should occur, the party shall then follow an Oneida Tribal Appeals procedure.

D. Evidence.

1. Agencies, commissions, hearing officers or their authorized agents, may admit and consider evidence which is commonly viewed as acceptable and having direct connection to the subject case, by reason of prudent people in the conduct of their affairs which shall include but not be limited to:

a. Giving effect to the rules or privilege recognized by law (ex: attorney-client, husband-wife, etc.), and

b. Excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence.

2. All evidence, including but not limited to, records and documents in the possession of the agency of which it desires to avail itself, along with other factual information or evidence, shall be offered and made part of the record in the case and shall be considered in the determination of the case. Documentary evidence may be accepted in the form of copies or excerpts, or incorporated by reference, and/or notarized or verified when appropriate.

3. Every party shall have the right of cross-examination of witnesses who testify and shall have a right to submit rebuttal evidence.

4. Agencies, commissions, hearing officers, or authorized agents may take notice of general, technical, or scientific facts within their specialized knowledge in the evaluation of the evidence presented them. Parties shall be notified prior to or during the hearing as to facts that have been so noticed and they shall have the opportunity to contest such facts.

E. Orders, Fines, Penalties, and Judgements.

An authorized hearing body, subsequent to a contested case/hearing, may issue fines, orders, penalties and/or judgements that comply with the Indian Civil Rights Act and that may include, but not be limited to, the following:

1. An order directing a violator or person in non-compliance of/with a tribal law or regulation to pay for actual damages as well as punitive damages.

2. In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.

3. An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.

4. An order specifying a monetary fine for violation or non-compliance of/with tribal rules, regulations, or ordinances.

5. An order requiring appropriate exclusion and/or mandated community service and/or denial of specific tribal benefits.

6. Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

7. An order placing a lien upon property owned by a person within jurisdiction of the Oneida Tribe of Indians of Wisconsin. Said lien shall be filed in a county court and/or the appropriate tribal registry.

F. Consideration of Record, Reopening, and Consultation.

1. Consideration and Reopening. The officials who are to render a decision shall personally consider the record of the case. Subsequent to the close of the contested case hearing and when determined to be in the interest of justice, the decision-making officials may temporarily postpone the decision and elect to reopen the record and request the parties to the proceeding submit additional written documentation and/or present an oral argument. After full consideration and deliberation of additional information, the decision-making officials shall render a decision within five (5) business days.

2. Consultation. No hearing official, agency, or commission presiding in a contested case or preparing/proposing a decision shall consult with any person/party on any issue of fact or law in the proceedings except that in appraisal or analyzation of the record for a decision the hearing official may:

- a. Consult with members of the agency making the decision; and
- b. Have the aid and advice of one or more personal assistants; and
- c. Have the assistance of other employees of either agency or the office of a Tribal Attorney who has not participated in the proceeding in any manner or who is not engaged for the agency in any investigation functions in the same or any current factually related case.

XI. APPELLATE REVIEW OF AGENCY OR COMMISSION ACTION

A. Appellate Review of Contested Case or Promulgation of a Rule. Any person aggrieved by either a final decision in a contested case or by the promulgation of a rule or regulation of a rule under the act, is entitled to appellate review only under the provision of this Act.

B. Procedures. The request for appellate review of the above shall follow those procedures adopted as Oneida Appeals Commission procedures.

C. Objections. Only an objection to a rule or procedure which was raised with reasonable specificity during the public comment (hearing) period or during the contested case may be raised during appellate review.

D. Stay. The filing of an appellate review petition shall not stay enforcement of the agency nor the rule, but the agency or appellate reviewing body may order a stay upon such terms as it deems proper.

E. Appellate Decision. The appeals body may:

1. Affirm, modify, or reverse a final decision, order, or judgement; and/or
2. Remand the case back to the original hearing body and order a new hearing; and/or
3. Direct the entry of an appropriate judgement or order; and/or

4. Require such other action or further proceeding as may be appropriate to each individual action.
 5. Decisions of the appeals body shall be made by a majority vote.
- F. Appeals Body Acceptance. The Oneida Appeals Commission shall accept an appeal if one or more of the following elements are found in a decision of an original hearing:
1. A violation of constitutional provisions;
 2. The decision is outside the scope of the authority or otherwise unlawful;
 3. The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level;
 4. Arbitrary and/or capricious;
 5. There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision and if said irregularity were not present, the decision would have been different; and/or
 6. There is a presentation or introduction of new evidence that was not available at the hearing level which, if available, may have affected the final decision.
- G. Appeals Commission Procedure.
1. Time and Process
 - a. An appeal shall be filed within thirty (30) business days of the entry of the final decision order or judgement appealed from.
 - b. A written intent to appeal and a \$25.00 filing fee shall be filed at an area designated by the Oneida Tribe to accept such appeal requests.
 - c. A designated tribal office shall prepare the Notice of Appeal and shall request all the documents, exhibits, pleadings, and transcripts pertaining to the case on appeal from the original hearing.
 2. Notice of Appeal
 - a. The Notice of Appeal shall be sent to all parties with ten (10) business days of being filed and shall designate the following:
 - 1) The identification of the parties;
 - 2) The final decision, order, or judgement appealed from; and
 - 3) A short statement of the reasons for appeal.
 - b. The designee of the Commission shall mail a copy of the Notice of Appeal to all parties. The notice shall follow the notice progression and contain the same requirements as is in the Notice section of that Contested Case.
 - c. Within fifteen (15) business days after receipt of the total record of the original hearing record, the appropriate appeals body shall meet to review the case and set the date for final consideration, unless the time limit is waived and extended by both parties.
 - d. Hearing record shall be sent to appeals body within ten (10) business days of Notice of Appeal being filed.
 3. Designation of Parties
 - a. The party or parties filing the appeal shall be designated appellants.

- b. Parties who are subject to an appeal, but are not appellants, shall be designated as respondents.
- 4. Appeals Body Cost. Appeal administration costs will be determined on a yearly basis by the Oneida Business Committee.
 - a. Should the appellant be successful, the respondent shall pay the costs.
 - b. Should the respondent be successful, the appellant shall pay the costs.
 - c. Should the appeal be remanded, the parties shall share the costs equally.
- 5. Judgement on Appeals. A judgement by the Oneida Appeals Commission shall be considered final within the Oneida Tribal Judicial System.
- 6. Forms of Appeal
 - a. The appeals body may require one or both of the following methods to be presented by the parties to the appeals body for review:
 - 1) An oral argument; and/or
 - 2) A brief or memorandum submitted by the parties.
 - b. Notice of the date of an argument or submission of a brief of memoranda shall follow the Notice Requirement listed below.
 - c. Brief of Memoranda. Should the appeals body request a brief of memoranda, the following shall apply:
 - 1) An original and three (3) copies shall be filed within the appeals body by the appellant within ten (10) days of the request.
 - 2) The appeals body designee shall send a copy of the memoranda to the respondent(s) (or have it served personally if more convenient) with a return receipt requested or affidavit that shall be kept on file within ten (10) days of receipt by the designee.
 - 3) The respondent, after receipt of appellant's memoranda, shall file with the appeals body designee an answer memoranda that will include an original and three (3) copies within ten (10) days of receipt of the memoranda.
 - 4) The appeals body designee shall send a copy of the memoranda to appellant within ten (10) days of receipt of by designee (or have it served personally if more convenient) with a return receipt requested or affidavit, that shall be kept on file.
 - 5) No further memoranda, briefs, or statements shall be allowed without leave of the appeals body.
 - d. Oral Argument. Should an oral argument be required of the parties, each argument shall last no longer than twenty (20) minutes exclusive of questions of the Commission.
 - e. Subpoena or Witnesses and Records
 - 1) The Commission may require a designee of the Commission to compel attendance of witnesses or the production of books, records, documents, or other items necessary to the final disposition of an appeal proceeding.

- 2) Non-compliance with the above subpoena order will result in a contempt charge being filed.
- 3) Said subpoenas shall be served by the Oneida Public Safety Department.
- f. Records of Appeal. The record of all proceedings of the appeals body shall be kept on file and maintained by an office designated by the Oneida Tribe.
7. The entire appeal process shall be concluded within 120 days from the time of filing.

XII CONTEMPT PROCEEDINGS (Please refer to Section X. Contested Cases, Section E)

A. Contempt. Should an individual fail to obey a subpoena or refuse to testify or appear when requested concerning any matter under investigation or examination at a hearing or refuse to obey any order or judgement of a tribal board or commission, the agency issuing the subpoena may petition a designated tribal appeals body for enforcement of the subpoena. The petition shall include:

1. A copy of the subpoena, order, or judgement;
2. Proof of service;
3. The specific manner of alleged non-compliance; and
4. A request that the appeals body issue an order to require a witness to appear and testify before the agency or commission.

B. The Oneida Appeals Commission Action After Receipt of Petition.

The Oneida Appeals Commission, upon receipt of such petition or within five (5) days of receipt shall:

1. Enter an order directing the witness to appear before the Oneida Appeals Commission at a time and place to be set by such order; and
2. Require that the witness at the designated time show cause why he has not responded to the subpoena, why he has refused to testify, or why he is failing to comply with an order or judgement.

C. Action. Should it appear to the Oneida Appeals Commission that the subpoena was properly issued and that the questions the witness refuses to answer are reasonable and relevant to either the contested case or a rule-making hearing, the appeals body shall:

1. Enter an order that the witness appear at the time and place fixed in the original order; and/or
2. Enter an order that requires the witness to testify or produce required documents and comply with the existing order; and/or
3. Require that the person failing to appear, testify, or comply with an order pay a fine and/or be subject to a penalty as is described in this ordinance.

D. Contempt Proceedings.

Should the person fail to comply with Section C above, said person is subject to Article X, Section E of this Act.

XIII. AGENCY/COMMISSION HEARING BODIES AND CONTESTED CASE HEARING BODIES RESPONSIBILITY AND AUTHORITY

- L. Responsibility. Hearing officers or their authorized agents may:
1. Administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge to a tribal decision-making forum;
 2. Issue subpoenas;
 3. Rule upon offers of proof and receive relevant evidence;
 4. Require pre-hearing meetings;
 5. Regulate the course of the hearing;
 6. Hold conferences for the settlement or simplification of the issues;
 7. Dispose of procedural matters by decision;
 8. Take any other action authorized by tribal law consistent with this Act; and
 9. Issue final orders and judgements.

B. Authority.

An agency/commission may hold a public hearing, subpoena witnesses, administer oaths, take testimony from any person under oath, and in connection with, require the production of any documents relating to the contemplated regulation when attempting to determine the need or the desire of proposing that the tribe adopt, amend, repeal, or revise rule, regulation, or proposed ordinance/rule or regulation.

XVI. MISCELLANEOUS ADMINISTRATIVE RULES

- A. Oral Proceedings. Oral proceedings shall be recorded or transcribed for the purposes of agency decision. A copy of the entire record or any part thereof, shall be furnished to any party upon their written request and payment of the costs.
- B. Fees of Reproduction. The Oneida Business Committee shall have the power to fix a consistent fee for the cost of reproducing records required to be produced by an agency or commission subpoena which shall be paid by said agency or commission.
- C. Subpoena. Subpoenas may be served outside the reservation to the maximum extent allowable in conformation with the requirements of the Due Process Clause of the Indian Civil Rights Act, 25 U.S.C. 1301, for purposes of long arm justification with respect to any activity occurring within the Oneida Reservation.
- D. The Federal Rules of Civil Procedures and Evidence. The Federal Rules of Civil Procedures and Evidence may, where applicable, be used as general guides for proceedings before any agency, except as to matters covered explicitly by tribal law. The Federal Rules shall be interpreted as instructive rather than controlling in any event.

XV. LICENSING AND/OR PERMITTING AND EMERGENCY ACTIONS

- A. License and/or Permit Notice of Action. No revocation, suspension, annulment, modification, or withdrawal of any license or permit is lawful, unless prior to an agency or

commission proceeding, the agency gives notice, as is required by tribal law (return receipt) to the licensee of facts or conduct which warrants the intended action, and the licensee was given reasonable opportunity to show compliance with all lawful requirements (right to cure) for the retention of the license or permit and said licensee or permittee is given notice that he/she has a right to challenge such action under the procedures of a contested case.

B. Emergency Action. Where an agency or commission finds that protection of tribal and/or public health, safety, or welfare require that immediate emergency action be taken, summary suspension of a license or permit may be ordered pending proceedings for revocation. Said order shall include the rationale and/or findings. Said action, (revocation or other action) shall be instituted within five (5) working days of emergency action and shall be decided upon promptly with appropriate notice to the affected licensee or permittee.

XVII. SEVERABILITY, REPEAL, EFFECTIVE DATE, CONFLICT WITH FEDERAL LAW, LIMITATIONS OF ACT AND COMPLIANCE WITH ACT

A. Severability. Should a provision of this Act or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of the Act which are considered to have legal force without the invalid provisions.

B. Repeal. All other Oneida Tribal laws, rules, or regulations which are inconsistent with this Act and are held subject to this Act are hereby repealed, but such shall not affect pending proceedings. All ordinances adopted previously shall be consistent with this Act.

C. Effective Date. This Act shall take effect days after the date of formal approval by the Oneida Business Committee.

D. Conflict with Federal Law. Should any part of this Act be found to be in conflict with federal requirements which are required in order that the Oneida Tribe receive federal funds; the conflicting section of this Act is to be considered inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this Act in its application to those agencies or departments directly affected.

E. Compliance with Act. Nothing in this Act shall be held to diminish constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. All requirements or privileges relating to evidence or procedures shall apply equally to agencies and persons. Every agency or commission is granted authority to comply with the requirements of this Act. Subsequent tribal law shall not supersede or modify this Act or its applicability to any agency unless it is done so expressly by tribal law.

Adopted - 8-19-91-A-GTC

Amended - 9-7-94-A-BC (Emergency Amendment)

Amended - (Proposed Adoption by BC for Ratification by GTC)