

# Oneida Tribe of Indians of Wisconsin



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



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.

## BC Resolution 02-25-15-C

### Adoption of Amendments to the following to remove references to the Oneida Appeals Commission pursuant to GTC Resolution 07-01-13-A:

**Attorney Contract Policy, Condominium Ordinance, Emergency Management and Homeland Security, Employee Protection Policy, Local Land Use Regulation Reimbursement Policy, Notary Act, Oneida Election Law, Oneida Food Service Code, Oneida Nation Law Enforcement Ordinance, Oneida Vendor Licensing, Real Property Law, Social Media Policy, Tattooing and Body Piercing Law and Tribal Environmental Response**

- 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 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** GTC Resolution 07-01-13-A authorized the Oneida Business Committee to make corrective amendments to all of the laws and policies that make reference to the Oneida Appeals Commission or the Oneida Tribal Judicial System and replace those terms with terms that are consistent with the Judiciary Law adopted by GTC Resolution 01-07-13-B; and
- WHEREAS,** GTC Resolution 07-01-13-A authorizes the Oneida Business Committee to bypass the procedural requirements in the Legislative Procedures Act in order to make these changes; and
- WHEREAS,** the amendments that are being made to the Law are those changing references to the Oneida Appeals Commission to "Judiciary," adding a definition of "Judiciary" and removing any references that would require the Judiciary to comply with the Administrative Procedures Act or the Oneida Appeals Commission Judiciary Code, as the Judiciary has their own set of procedural rules.

**NOW THEREFORE BE IT RESOLVED,** that the attached amendments to the Attorney Contract Policy, Condominium Ordinance, Emergency Management and Homeland Security, Employee Protection Policy, Local Land Use Regulation Reimbursement Policy, Notary Act, Oneida Election Law, Oneida Food Service Code, Oneida Nation Law Enforcement Ordinance, Oneida Vendor Licensing, Real Property Law, Social Media Policy, Tattooing and Body Piercing Law and Tribal Environmental Response are hereby adopted effective immediately.

## 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; 8 members were present at a meeting duly called, noticed and held on the 25<sup>th</sup> day of February, 2015; that the

Adoption of Amendments to the following to remove references to the Oneida Appeals Commission pursuant to GTC

Resolution 07-01-13-A:

Attorney Contract Policy, Condominium Ordinance, Emergency Management and Homeland Security, Employee Protection Policy, Local Land Use Regulation Reimbursement Policy, Notary Act, Oneida Election Law, Oneida Food Service Code, Oneida Nation Law Enforcement Ordinance, Oneida Vendor Licensing, Real Property Law, Social Media Policy, Tattooing and Body Piercing Law and Tribal Environmental Response

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forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 2 members not voting; and that said resolution has not been rescinded or amended in any way.

  
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Lisa Summers, Tribal Secretary  
Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

## Attorney Contract Policy

Article I. Purpose and Policy  
Article II. Adoption, Amendment, Repeal  
Article III. Definitions  
Article IV. Procedures

Article V. Contract Contents  
Article VI. Contract Approval  
Article VII. Oneida Law Office

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### Article I. Purpose and Policy

1-1. The purpose of this policy is to regulate the utilization of Attorneys within the Oneida Tribal organization and attorneys and firms hired on retainer outside the Oneida Tribal organization to maximize the professional services and reduce conflict among professionals.

1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to utilize a centralized legal office to ensure efficiency and cost effectiveness.

### Article II. Adoption, Amendment, Repeal

2-1. This policy is adopted by the Oneida Business Committee by resolution BC-6-24-98-B and amended by resolution BC-02-25-15-C.

2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other portions of this policy which are considered to have legal force and effect without the invalid portions.

2-4. All other Oneida policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy, specifically:

- a. BC-6-29-94-A - resolution adopting the Attorney Contracts Policy on an interim basis.

### Article III. Definitions

3-1. This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

3-2. "Attorney Contract" as used herein means any contract for services of any kind, whether as an employee of the Tribe or as a consultant. It includes contracts for piecemeal work, or for projects of any type, length or duration of time.

3-3. "Division" as used herein means any entity of the Oneida Tribe of Indians of Wisconsin for which the liability from actions of that entity reside on the Oneida Tribe, including, but not limited to, all boards, committees, commissions, enterprises, or programs.

3-4. "Chief Counsel" as used herein means the supervising attorney of the Oneida Law Office which is a division of the Oneida Tribe.

3-5. "Judiciary" as used herein means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

### Article IV. Procedures

4-1. All attorney contracts shall be approved by the Oneida Business Committee, provided that those contracts listed below shall be approved in accordance with the procedures set out in 25 C.F.R. 81:

- a. Any attorney contract in the opinion of the Chief Counsel requiring review and approval under 25 C.F.R. §81, or
- b. Any other attorney contract required by law to have review and approval under 25 C.F.R. §81.

4-2. All attorney contracts shall be signed by the Chairperson and one officer of the Oneida Business Committee on behalf of the Oneida Tribe of Indians of Wisconsin. All attorney contracts shall be contracted through the Chief Counsel's office and supervised by Chief Counsel's office.

4-3. Exceptions to Supervision Requirement. The following are exceptions to the requirement that attorneys are supervised by Chief Counsel's Office:

- a. Judiciary - attorneys retained by the Judiciary shall have a clause within any contract which maintains the autonomy of the judicial branch.
- b. Compliance Division - Employee Advocates Office - attorneys retained by the office shall have a clause within any contract which maintains the autonomy of that office.
- c. Other offices which represents persons against the interests of the Oneida Tribe as service offered by the Oneida Tribe.

#### Article V. Contract Contents

5-1. Attorney contracts shall contain the following clauses. Provided that, Chief Counsel may approve exceptions to any of the clauses listed in this section.

5-2. Attorney contracts shall contain the minimum information, limitations, restrictions and the like as set out below:

- a. Documentation required annually regarding acquisition and maintenance of bar status - good standing.
- b. A statement that no conflicts of interest exist prior to executing the contract and after executing the contract.
- c. A clause that indicates that the parties to the contract may terminate upon reasonable notice by either parties or the Chief Counsel. Further, that continuation of the contract is not subject to automatic renewal and is subject to continuing budgeting for the position..
- d. A clause clearly indicating what services and/or deliverables will be rendered under the contract.
- e. A clear description of the compensation. Compensation as defined for this section means a payment made to an Attorney for the purpose of reimbursement of time, office expenses, travel, support staff or other costs associated with rendering legal services as further defined or limited within a contract.
- f. A clause indicating that the Chief Counsel of the Oneida Law Office is the direct supervisor of the Attorney and that all final work product and payment of any compensation will be approved and verified by the Chief Counsel *except as indicated in sec. 4-3.*
- g. A clause that clearly indicates that the attorney is required to submit reports to the Chief Counsel as required by the Chief Counsel *except as indicated in sec. 4-3.*
- h. A clause indicating that indicates that any approval or signature by any person or persons on behalf of the Oneida Tribe, whether on a contract, or agreement shall not constitute a waiver of sovereign immunity on behalf of the Oneida Tribe of Indians of Wisconsin, the Oneida General Tribal Council, the Oneida Business Committee or any of its agents or sub-entities.

5-3. All Attorney Contracts shall have attached a conflict of interest disclosure form and a non-disclosure form.

## Article VI. Contract Approval

6-1. Attorney contracts shall be approved in the manner set out in this section.

6-2. Negotiation for services to be rendered will be the responsibility of the hiring party, provided that, final negotiation regarding payment shall be by Chief Counsel.

6-3. The hiring party will forward the negotiated services rendered to the Chief Counsel's office for integration into the contract.

6-4. Chief Counsel completes negotiation of contract contents and forwards final approval to the Oneida Business Committee. Provided that, prior to final approval, professional qualifications are verified by the Oneida Law Office through receipt of confirmation of good standing, at a minimum, with the State Bar of Wisconsin through a copy of the annual bar card or original letter of good standing.

## Article VII. Oneida Law Office

7-1. There is established an Oneida Law Office which shall consist of a Chief Counsel, Deputy Chief Counsel, attorneys and office staff.

7-2. The Oneida Law Office shall be designated as the legal office of the Oneida Tribe of Indians of Wisconsin. Further, legal opinions regarding the interpretation of laws, policies, regulations, codes, procedures and the like promulgated, adopted, approved or otherwise by the Oneida Tribe shall not be binding unless approved by this office.

7-3. Attorney opinions interpreting laws, policies, regulations, codes, procedures and the like promulgated, adopted, approved or otherwise from attorneys contracted through the Oneida Law Office and assigned to divisions or contracted as consultants, are considered non-binding unless approved by the Chief Counsel.

7-4. The Oneida Law Office shall be the contracting party for all law firms or attorneys contracted on a retainer basis or for single purpose services or deliverables.

*End.*

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Adopted - BC-6-22-94-G

Adopted - BC-6-29-94-A

Adopted - BC-6-24-98-B

Amended - BC-02-25-15-C

**Chapter 68**  
**CONDOMINIUM ORDINANCE**  
**Sakotinuhsane·há Olihwá·ke**  
**the matters of where they rent**

68.1-1. Purpose	68.14-1. Insurance
68.2-1. Adoption, Amendment, Repeal	68.15-1. Repair or Reconstruction
68.3-1. Definitions	68.16-1. Eminent Domain
68.4-1. General Application of this Law	68.17-1. Books and Receipts and Expenditures
68.5-1. Rules of Construction	68.18-1. Separate Taxation
68.6-1. Association of Unit Owners	68.19-1. Mechanics' and Materialmen's Liens
68.7-1. Bylaws	68.20-1. Liability
68.8-1. Declaration	68.21-1. Personal Application
68.9-1. Establishment of a Condominium	68.22-1. Easements and Encroachments
68.10-1. Condominium Plat	68.23-1. Disclosure Requirements
68.11-1. Percentage Interests	68.24-1. Blanket Mortgages and Other Blanket Liens
68.12-1. Use of Common Elements	68.25-1. Provisions Requiring Employment of Declarant
68.13-1. Common Expenses and Common Surpluses	68.26-1. Appeals to and Commission

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**68.1-1. Purpose.** The purpose of this ordinance is to provide a condominium form of use and ownership for multi-unit residential buildings and improvements located on tribal land.

**68.1-2. Policy**

- (a) The provisions of this ordinance shall extend to all Multi-Unit residential buildings on tribal land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, and on such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.
- (b) The sale of Tribal land is specifically prohibited under this ordinance.
- (c) It is intended that this Ordinance be enacted in harmony with Oneida Tribe's Real Property Law.

**68.2-1. Adoption, Amendment, Repeal.** This law is adopted by the Oneida Business Committee by Resolution é BC-7-30-97-A and amended by resolution BC-02-25-15-C.

**68.2-2.** This law may be amended pursuant to procedures set out in the Oneida Administrative Procedures Act, by the Oneida Business Committee or the Oneida General Tribal Council.

**68.2-3.** Should a provision of this law or its application be held invalid, such invalidity shall not affect other provisions which are considered to have legal force without the invalid portions.

**68.2-4.** This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**68.3-1. Definitions.** This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Allocated interests" means the undivided percentage interest and liability in the common elements, and the number of votes at meetings of the association that belong to each unit.
- (b) "Association" means all of the condominium's unit owners acting as a group in accordance with its bylaws, the declaration and this regulation.
- (c) "Common elements" mean all of the condominium except the units.
- (d) "Common expenses and common surpluses" mean the expenses and surpluses of the association.

- (e) "Condominium" means any residential property that the Tribe has classified as such. Condominiums are multi-units residential facilities separately owned by two or more unit owners.
- (f) "Condominium instrument" mean the declaration, plats, and plans of a condominium together with any attached exhibits or schedules.
- (g) "Declarant" is the person who subjects his or her property to a condominium declaration established under this law.
- (h) "Declaration" means the instrument by which the property becomes subject to this chapter.
- (i) "Expandable condominium" means a condominium to which additional property or units or both may be added in accordance with the provision of the association's bylaws, the declaration and this law.
- (j) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (k) "Limited common elements" mean those elements that are reserved for the exclusive use of one or more but less than all the unit owners.
- (l) "Mortgagee" means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.
- (m) "Oneida agency" means the Tribal entity that acts as declarant for the purposes of this law.
- (n) "Overrule contract" is the contract between the Oneida Division of Land Management and the unit owner concerning covenants and restrictions. This contract has the power to overrule any provisions in the condominium declaration and the condominium bylaws. The purpose of this contract is to allow the Tribe to manage its housing policy, in the interest of Tribal members and the maintenance and creation of good living conditions for the future.
- (o) "Person" means an individual, corporation, partnership, association, trustee or other legal entity.
- (p) "Real Property" means unimproved land, land together with improvements on it or improvements without underlying land. Property may consist of noncontiguous parcels or improvements.
- (q) "Small Condominium" means a condominium with two to four units.
- (r) "Tribe" means the Oneida Tribe of Indians of Wisconsin, also called the Sovereign Oneida Nation of Wisconsin.
- (s) "Unit" means a part of a condominium intended for independent use, including one or more cubicles of air at one or more levels of space or one or more floors in a building. A unit may include two or more noncontiguous areas.
- (t) "Unit owner" means a tribal member or surviving spouse who holds legal title to and occupies a condominium unit.

**68.4-1. General Application of this Law** . This law shall apply to all properties and improvements that the Tribe has classified as condominium as a result of their submission to the provisions of this law.

68.4-2. *Status of Units.* A unit together with its undivided interest in the common element, for all purposes constitutes real property.

68.4-3. A unit owner is entitled the exclusive ownership and possession of his or her unit.

68.4-4. Except as otherwise provided by this law, no unit owner may do any alterations which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

68.4-5. If any unit owner fails to comply with this law, the declaration, bylaws or overrule contract, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.

**68.5-1. Rules of Construction.** *Certain rules of law not applicable.* Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invalidate any provision of this law or of any condominium instruments, bylaws or other instrument made pursuant to this regulation.

68.5-2. *Substantial conformity of condominium instruments and bylaws sufficient.* The provisions of any condominium instruments and bylaws filed under this law shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this law, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unitowner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

68.5-3. *Provisions of condominium instruments and bylaws severable.* All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

68.5-4. *Conflicts in provisions.* If there is any conflict between any provisions of a declaration and provisions of a condominium plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of the overrule contract, the overrule contract shall control. If there is any conflict between the abovementioned documents and this law, the provisions of this law shall control.

68.5-5. *Instruments construed together.* Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this law applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

**68.6-1. Association of Unit Owners.** *Legal Entity.* The affairs of every condominium shall be governed by an association which is legal entity for all purposes.

68.6-2. *Organization.*

(a) *Establishment.* The Oneida Business Committee shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is organized the association shall consist at all times exclusively of all the unit owners. Thirty days after the conveyance of 75% of the common element interest to purchasers, the Division of Land Management or other Oneida agency shall release itself from control over the condominium association.

(b) *Meeting to elect directors.* Once 50% of the units have been conveyed, the unit owners and the Division of Land Management shall meet to elect the directors and



officers of the executive board of the association. The directors and officers shall take office upon election.

(c) *Calculation of percentage.* The common element interest conveyed to purchasers in pars. a. and b. shall be based on the percentage of undivided interest belonging to each unit which has been conveyed assuming that all the units to be completed are included in the condominium.

68.6-3. *Power of the Association.*

(a) *Powers.* An association has powers to:

- (1) Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;
- (2) Employ and dismiss employees and agents;
- (3) Sue on behalf of all unit owners; and
- (4) Exercise any other power conferred by the bylaws, the declaration and by the overrule contract.
- (5) Negotiate with the Division of Land Management or other Oneida agency for the exemption from covenants and restrictions established in the overrule contract.

(b) *Conditional Powers.* Subject to any restrictions and limitations specified by the bylaws, the declaration and/or by the overrule contract, an association may:

- (1) Make contracts and incur liabilities;
- (2) Regulate and impose charges for the use of common elements;
- (3) Cause additional improvements to be made as a part of the common elements;
- (4) Acquire, hold, encumber and convey any right, title or interest in or to real property;
- (5) Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements; and
- (6) Grant or withhold approval of any action by a unitowner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

68.6-4. *Termination of Contracts and Leases.* If entered into before the officers elected by the unit owners under section six take effect, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

68.6-5. *Roster of unit owners; Meetings of the Association.*

(a) An association shall maintain a current roster of the names and addresses of all the unit owners to whom notice of meetings shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner will be able to vote at an association meeting until he or she has furnished this information.

(c) At least 10 days written notice must be given, delivered or mailed to every unit owner's address as shown on the roster, before a regular or special meeting of the association may be held.

(d) Every unit owner is entitled to full participation at meetings of the association.

(e) Unless otherwise provided in this law and subject to the provisions in the laws, the declaration and/or the overrule contract, decisions of an association shall be made by consensus of the unit owners present.

68.6-6. *Unit owner's interest in Association's property.* A unit owner only has rights, title or interest in any property owned by the association as a holder of percentage interest in common elements.

**68.7-1. Bylaws.** *By laws to govern administration.* A condominium's administration shall be governed by bylaws. Every unit owner shall comply with the bylaws and the rules adopted under the bylaws and the covenants, restrictions and conditions set forth in the overrule contract between the Division of Land Management or other Oneida agency and the unit owners. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages and injunctive relief. Such action shall follow the judicial procedures established in the Oneida Administrative Procedures Act, and may be brought by the association, by the Division of Land Management, or other Oneida agency, or in a proper case, by an aggrieved unit owner.

68.7-2. *Required particulars.* The bylaws shall express at least the following particulars:

- (a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager, or otherwise, and specifying the powers, manner of selection and removal of them
- (b) The mailing address of the association.
- (c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.
- (d) The election by the unit owners of a board of directors of whom not more than one is a non-unit owner, the number of persons constituting the same and that the terms of at least 1/3 of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors and whether or not the board may engage the services of a manager or managing agent.
- (e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.
- (f) The manner of borrowing money and acquiring and conveying common property.

68.7-3. *Prohibiting participation of certain unit owners.* The bylaws may contain a provision prohibiting any unit owner from participation at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

68.7-4. *Amendment.* The bylaws may be amended by consensus of all unit owners. Each particular set forth in sec. 7-2 shall be expressed in the bylaws as amended.

68.7-5. *Title to condominium units unaffected by bylaws.* Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this regulation.

**68.8-1. Declaration.** A declaration shall contain:

- (a) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous

to the unit's boundaries, are deemed limited common elements belonging to that unit exclusively and need not be described in the declaration.

(b) The percentage interest that belongs to each unit.

(c) Statement for purpose for which the building and each of the units are intended and restricted as to use.

(d) The name of the person to receive service of process in the cases provided in this law, together with the address of the person and the method by which the association may designate a successor to the person.

(e) The name and address of the condominium and the name shall include the word "condominium" or be followed by the words "a condominium."

(f) A description of the land on which a condominium is, or is to be, located.

(g) A general description of each unit including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

68.8-2. The condominium declaration shall be submitted by the declarant to the Division of Land Management. The Division of Land Management may require alterations made to the declaration, in order for it to satisfy the Tribe's policy requirements. These policy requirements are based on the protection of the long-term interests of Tribal members.

68.8-3. A condominium declaration may be amended with the written consent of all the unit owners. Such amendments shall not have the effect of canceling any of the covenants or restrictions set forth in the overrule contract. All amendments to the declaration shall be submitted for approval to the Division of Land Management.

68.8-4. Actions taken pursuant to this section may be contested in the manner described in section twenty-six.

**68.9-1. Establishment of a Condominium.** A declarant shall record a condominium instrument with the Division of Land Management.

68.9-2. All instruments affecting title to the units shall be recorded and assessed as in other real property transactions at the Division of Land Management.

68.9-3. Within 60 days of submission of the declaration to the Division of Land Management, the Division of Land Management will deliver a draft of the overrule contract to the declarant. The declarant will have 60 days to propose changes to the overrule contract. The declarant may withdraw its proposal to submit its property to this regulation if an agreement is not reached within the time prescribed as to the provisions of the overrule contract, or may appeal in accordance with Article XXVI.

68.9-4. Residential real property may only be converted to a condominium if the owner gives 120 days written notice prior to end of tenant's lease of the conversion of the building(s) to a condominium. A tribal member who is a tenant has the exclusive option to purchase the property for period of 60 days following the delivery of the notice.

**68.10-1. Condominium Plat.** A Condominium Plat is to be filed for record at the Oneida Register of Deeds. When any condominium instruments are recorded, the declarant shall file for record a condominium plat in a separate plat book maintained for condominium plats.

68.10-2. A condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and the original allotment number(s) in which the property is located on each sheet of the plat. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(b) A survey of the property described in the declaration complying with the minimum standards for property surveys outline in section 7-4 of the Real Property Law, and showing the location of any unit or building located or to be located on the property.

(c) Diagrammatic floor plans of each building located or to be located on the property which show the approximate dimensions, floor area and location of each unit in it. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and one-inch margin on all other sides on durable white paper 14 inches in length and 22 inches in width with nonfading black image or reproduced with photographic silver haloid image on double matte polyester film of not less than 4 millimeter thickness and 14 inches long by 22 inches wide. The maps and plans shall be drawn to a convenient scale.

(e) *Designation of units.* Every unit shall be designated on the condominium plat by the unit number or other appropriate designation.

(f) *Surveyor's certificate.* A condominium plat is sufficient for the purposes of this law in there is attached to or included in it a certificate of a licensed land surveyor, certified to practice that profession by the Tribe that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat. Provided that, until such time as regulations are developed regarding the certification of licensed land surveyors, certification under this section shall be verification of a valid state license, permit, or other approval of qualifications.

68.10-3. A description in any instrument affecting title to any unit which makes reference to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

**68.11-1. Percentage Interests.** *Undivided percentage interest in common elements.* Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this regulation, all common elements shall remain undivided. Except as provided in this regulation, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

68.11-2. *Rights to common surpluses.* Common surpluses shall be disbursed as provided under Article XVI.

68.11-3. *Liability for common surpluses.* Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under Article XIII.

68.11-4. *Change in percentage interest.* The percentage interests shall have a permanent character and, except as specifically provided by this law, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they belong. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

68.11-5. *Alterations within units:*

(a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any

other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

68.11-6. *Relocation of boundaries.*

(a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(e) Plats and plans showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect or licensed land surveyor certified by the Tribe to practice his or her profession. Provided that, until such time as regulations are developed regarding the certification of civil engineers, architects, or licensed land surveyors, certification under this section shall be verification of a valid state license, permit, or other approval of qualifications.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

**68.12-1. Use of Common Elements.** The common elements may be used only for the purposes for which they were intended and, except as provided in the condominium instruments, bylaws, or the overrule contract the common elements are subject to mutual rights of support, access, use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit to which their use is limited in the condominium instruments and bylaws.

68.12-2. The declaration, bylaws or the overrule contract may allow any unit owner of a unit to which the use of any limited common element is restricted to grant the use of the limited

common element to any other unit owner, subject to the rights of any existing mortgagor. Thereafter, the grantor has no further right to use the limited common element.

**68.13-1. Common Expenses and Common Surpluses.** *Disposition of common surpluses.* All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as the association decides.

68.13-2. *Funds for payment of common expenses obtained by assessments.* Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

68.13-3. *Liability for assessments.* A unit owner shall be liable for all assessments, or installments thereof, coming due while owning a unit. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

68.13-4. *Condominium lien.* All assessments, until paid, together with interest on them and actual costs of collection constitute a lien on the units on which they are assessed, if a statement of lien is filed within 6 months after the date the assessment becomes due. The lien is effective against a unit at the time the assessment becomes due regardless of when within the 6 month period it is filed. A statement of condominium lien is filed in the Division of Land Management, stating the description of the unit, the name of the record owner, the amount due and the period for which the assessment was due. The clerk shall index the statement of condominium lien under the name of the record owner in the condominium lien docket. The statement of condominium lien shall be signed and verified by an officer or agent of the association as specified in the bylaws and then may be filed. On full payment of the assessment for which the lien is claimed, the unit owner shall be entitled to a recordable satisfaction of the lien.

68.13-5. *Statement.* Any grantee of a unit is entitled to a statement from the association setting forth the amount of unpaid assessments against the grantor and the grantee is not liable for, nor shall the unit conveyed be subject to a lien which is not filed under sec. 13-4 for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming any lien which is not filed under sec. 13-4 prior to the request for the statement against the grantee.

68.13-6. *Priority of lien.* All sums assessed by an association but unpaid for the share of the common expenses chargeable to any unit constitutes a lien on the unit and on the undivided interest in the common elements belonging to it prior to all other liens except:

- (a) Liens of general and special taxes.
- (b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.
- (c) Mechanic's liens filed prior to the making of the assessment.

68.13-7. *Interest on unpaid assessment.* Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

68.13-8. *Enforcement of lien.* A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property at the Division of Land Management. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey

the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may be brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

68.13-9. *Form of statement of condominium lien.* A statement of condominium lien is sufficient for the purposes of this regulation if it contains the following information and is substantially in the following form:

Statement of Condominium Lien

This is to certify that \_\_\_\_\_, owner(s) of unit No. \_\_\_\_\_ in \_\_\_\_\_ Condominium (is) (are) indebted to the association in the amount of \$ \_\_\_\_\_ as of \_\_\_\_\_, 19\_\_\_\_ for (his)(her)(its)(their) proportionate share of common expenses of the Condominium for the period from (date) to (date) plus interest thereon at the rate of \_\_\_\_\_%, costs of collection, and actual attorney fees.

Association

By: \_\_\_\_\_

Officer's title (or agent)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**68.14-1. Insurance.** An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Such insurance shall not cover the contents of units, the improvements the unit owner has made, or liabilities arising strictly within the individual units.

68.14-2. Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the Land Commission has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

68.14-3. Provisions for the insurance described in sec. 14-1 and sec. 14-2 shall be made without prejudice to the right of each unit owner to obtain insurance for his or her own unit, for its contents, the improvements the unit owner has made, and liabilities that the unit owner wishes to be insured against.

**68.15-1. Repair or Reconstruction.** A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

68.15-2.

(a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of all the unit owners. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage



interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

**68.16-1. Eminent Domain. Definition.** In this section, "taking under the power of eminent domain" includes any sale, encroachment or any pending or threatened condemnation proceeding.

**68.16-2. Allocation of award; provisions in declaration or bylaws.** A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

(a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and

(b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

**68.16-3. Allocation of award, in absence of provisions in declaration or bylaws.** Unless otherwise provided for in a declaration, bylaws or contract, any damages for a taking of all or part of a condominium shall be awarded as follows:

(a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.

(b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

**68.16-4. Reconstruction following taking.** Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of all the unit owners. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

**68.16-5. Adjustment of percentage interests following taking.** Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit.

**68.16-6. Priority in distribution of damages for each unit.** All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

**68.16-7. Preservation of the right of appeal.** The owner of each unit taken shall have the individual right of appeal of the necessity of taking and of the condemnation award made for the taking. An association shall have the right of appeal of the necessity of taking of the common elements and the right of appeal of the condemnation award made for the taking of the common elements. An appeal by an association shall be binding upon the individual unit owners for the necessity of taking or the condemnation award made for the taking of the common elements. The unit owners having an interest in the ownership of limited common elements may

individually or as a group ~~app~~ the necessity of taking or ~~the~~ condemnation award made for the taking of the ~~limited~~ common elements.

**68.17-1. Books and Receipts and Expenditures.** *Record keeping; availability for examination.*

An association shall keep detailed, accurate records using standard bookkeeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the ~~comm~~ common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours.

68.17-2. *Disclosure information.* Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary to the seller to comply with section twenty-three. The seller shall pay the association the actual costs of furnishing the information.

**68.18-1. Separate Taxation.** Every unit and its percentage of undivided interest in the ~~comm~~ common elements shall be deemed to be a parcel and ~~all~~ be subject to separate assessments and taxation by the Tribe for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the ~~comm~~ common elements shall be deemed to be a parcel separate from the unit.

68.18-2. The rights, duties and obligations of unit owners under this regulation shall inure to and be binding upon grantees under ~~the~~ deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

**68.19-1. Mechanics' and Materialmen's Liens.** Subsequent to recording a declaration under this law and while the property ~~remains~~ subject to this regulation, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

68.19-2. Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

68.19-3. Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lien the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

**68.20-1. Liability.** An action for tort alleging a wrong done by any agent or employee of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

68.20-2. A judgment for money against an association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established under the declaration in an

amount not exceeding the market value of the unit but not against any other property of any unit owner.

68.20-3. All actions arising from this section shall follow the procedures described in section twenty-six.

**68.21-1. Personal Application.** All unit owners, tenants of the owners, employees of owners and tenants or any other persons that in any manner use property or any part thereof subject to this law shall be subject to this law, the governing contract, and to the declaration and bylaws of the association adopted under this regulation.

68.21-2. All agreements, decisions and determinations lawfully made by an association shall be deemed to be binding upon all unit owners.

**68.22-1. Easements and Encroachments.** *Presumption as to existing physical boundaries.*

Any existing physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

68.22-2. *Encroachment as result of authorized construction, reconstruction or repair.* If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

68.22-3. *Easements included in grant of unit.* A grant or other disposition of a condominium unit shall include and grant and be subject to any easement arising under the provisions of this article without specific or particular reference to the easement.

68.22-4. *Association's right of entry to make repairs.* An association shall have an irrevocable right and an easement to enter units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this section may be considered a trespass.

68.22-5. Easements through the common elements of a condominium shall be requested at the Division of Land Management. The Division of Land Management shall notify the unit owners of the request for an easement; and they shall have 15 days from delivery of the notification in which to present their views and opinions as regards the request.

**68.23-1. Disclosure Requirements.** *Material to be furnished by seller to purchaser before closing.* Not later than 15 days prior to the closing of the sale of a unit to a purchaser, the seller shall furnish to the purchaser the following:

- (a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
- (b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.
- (c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium

to which it is anticipated the unit owners or the association will be a party following closing.

(d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.

(f) A plat map of any contemplated expansion of the condominium with a narrative of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

(h) A copy of the overrule contract.

68.23-2. *Change in material following delivery to purchaser.* Any material furnished under sec. 23-1 may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

68.23-3. *Purchaser's right to rescind contract for sale.* Any purchaser may at any time within 5 business days following receipt of all information required under sec. 23-1 and within 5 business days following receipt of all information required under sec. 23-2, rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

68.23-4. *Untrue statement or omission of material fact.* Any seller who in disclosing information required under sec. 23-1 makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within 6 months after facts constituting a cause of action are or should have been discovered.

68.23-5. *Waiver of purchaser's right.* Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

**68.24-1. Blanket Mortgages and Other Blanket Liens.** As a condition to the first transfer of title to each unit:

(a) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;

(b) A unit being transferred and an undivided interest in the common areas and facilities belonging to it shall be released by partial release duly recorded; or

(c) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities that belong to it from the lien of a mortgage or other lien upon the payment of a sum certain.

**68.25-1. Provisions Requiring Employment of Declarant.** Any provision of a declaration or other instrument made pursuant to this law, except for the overrule contract, which requires the

owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void.

**68.26-1. Appeals to Land Commission.**

(a) All complaints arising from this law, the overrule contract, the condominium instruments, the by laws or decisions of a condominium association or its board of directors will be presented in writing to the Division of Land Management office immediately after the party's discovery of the circumstances or decisions that created the grievance.

(b) The Division of Land Management director shall attempt to mediate the grievance and shall respond to the aggrieved and all other interested parties within 30 days of receipt of the written complaint with the resolution of the grievance, if any.

(c) The decisions and actions taken by the Division of Land Management staff may be taken to the Land Commission or a sub-committee created by it for the purpose of a hearing on such grievances or to the Judiciary.

68.26-2. All appeals beyond those in section 26-1a. and b. shall follow the procedural form described in the Administrative Procedures Act.

*End.*

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Adopted BC-7-30-97-A  
Amended- BC-02-25-15-C

**Chapter 35**  
**EMERGENCY MANAGEMENT AND HOMELAND SECURITY**  
Yotlihokté Olihwá'ke

Matters that are concerning immediate attention

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|--|--|
| 35.1. Purpose and Policy                                 | 35.6. Tribal Cooperation                                 |
| 35.2. Adoption, Amendment, Conflicts                     | 35.7. Public Health Emergencies and Communicable Disease |
| 35.3. Definitions  | 35.8. When an Emergency is Proclaimed                    |
| 35.4. Emergency Management/Homeland Security             | 35.9. Enforcement and Penalties                          |
| 35.5. Oneida Nation Emergency Planning Committee (ONEPC) |  |
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**35.1. Purpose and Policy**

35.1-1. The purposes of this law are to:

- (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and
- (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and
- (c) establish the use of the National Incident Management System (NIMS); and
- (d) designate authority and responsibilities for public health preparedness.

35.1-2. It is the policy of this law to provide:

- (a) a description of the emergency management network of the Tribe; and
- (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of Tribal emergency response management plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
- (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

**35.2. Adoption, Amendment, Conflicts**

35.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98A and amended by BC-12-20-06-G, BC-05-13-09-F.

35.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or Oneida General Tribal Council.

35.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

35.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution, or motion.

35.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**35.3. Definitions**

35.3-1. This section shall govern the definitions of words or phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Biological Agent” means an infectious disease or toxin that has the ability to adversely affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.
- (b) “Communicable Disease” means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances on inanimate objects that may cause a public health emergency.
- (c) “Community/Public Health Officer” means an agent of the OCHS, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.
- (d) “Director” means the Director of the Tribe’s Emergency Management/Homeland Security Agency.
- (e) “Emergency Management Network” means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Tribe may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.
- (f) “Emergency Operations Plan” means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.
- (g) “Entity” means any Tribal agency, board, committee, commission, or department.
- (h) “Fair Market Value” means the everyday cost of a product in an ordinary market, absent of a disaster.
- (i) “Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.
- (j) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (k) “National Incident Management System” or “NIMS” means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) that provides a consistent nationwide approach for federal, state, local and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- (l) “OCHS” means the Oneida Community Health Services, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.
- (m) “Oneida Nation Emergency Planning Committee” or “ONEPC” means the committee that assists the Director in the implementation of this law.
- (n) “Proclaim” means to announce officially and publicly.
- (o) “Public Health Emergency” means the occurrence or imminent threat of an illness or health condition which:
- (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
  - (2) poses a high probability of any of the following:
    - (A) a large number of deaths or serious or long-term disability among

humans; or

(B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.

(p) "Quarantine" means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease or chemical, biological, or radiological agent, for a period of time equal to the longest usual incubation period of the disease or until there is no risk of spreading the chemical, biological, or radiological agent. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease or chemical, biological, or radiological agent.

(q) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(r) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

(s) "Vital Resources" means food, water, equipment, sand, wood, or other materials obtained for the protection of life, property and/or the environment during a proclaimed emergency.

#### 35.4. Emergency Management/Homeland Security

35.4-1. There is hereby created an Emergency Management/Homeland Security Agency which is responsible for planning and coordinating the response to a disaster or emergency that occurs within the boundaries of the Reservation.

35.4-2. The Director shall be responsible for coordinating and planning the operational response to an emergency and is hereby empowered to:

(a) organize and coordinate efforts of the emergency management network of the Tribe.

(b) implement the Emergency Operations Plan as adopted by the Oneida Business Committee.

(c) facilitate coordination and cooperation between entities and resolve questions that may arise among them

(d) incorporate the HSPD 5, issued on February 28, 2003 which requires all Federal, state, local, and tribal governments to administer the best practices contained in the NIMS.

(e) coordinate the development and implementation of the NIMS within the Tribe.

(f) ensure that the following occurs:

(1) an Emergency Operations Plan is developed and maintained, and includes training provisions for applicable personnel.

(2) emergency resources, equipment, and communications systems are developed, procured, supplied, inventoried, and accounted for.

(g) establish the line of authority as recorded in the Emergency Operations Plan as adopted by the Oneida Business Committee.

(h) enter into mutual aid and service agreements with tribal, local, state, and federal governments, subject to Oneida Business Committee approval.

35.4-3. In the event of a proclamation of an emergency on the Reservation, the Director is hereby empowered:

(a) to obtain vital resources and to bind the Tribe for the fair market value thereof, upon approval of the Emergency Management/Homeland Security purchasing agent, who is identified in the Emergency Operations Plan. If a person or business refuses to provide



the resource(s) required, the Director may commandeer resources for public use and bind the Tribe for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.

(b) to require emergency activities of as many Tribal members and/or employees as deemed necessary.

(c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.

(d) to coordinate with tribal, federal, state, and local authorities.

### **35.5. Oneida Nation Emergency Planning Committee (ONEPC)**

35.5-1. The ONEPC shall consist of representatives from entities and a community representative as identified in the ONEPC bylaws as approved by the Oneida Business Committee.

35.5-2. The ONEPC shall meet as necessary to assist the Director in drafting and maintaining the Emergency Operations Plan.

35.5-3. At the request of the Director, the ONEPC shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.

### **35.6. Tribal Cooperation**

35.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.

35.6-2. A person who is disabled or dies while in service as a public safety officer, as defined in the Public Safety Officers' Benefits Program, the spouse of that person and/or any children of that person may be eligible for benefits as determined by the Bureau of Justice Assistance under the Public Safety Officers' Benefits Program, 42 U.S.C. ch. 46, subch. XII.

### **35.7. Public Health Emergencies and Communicable Disease**

35.7-1. In order to prevent a public health emergency, the Director and the Community/Public Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.

35.7-2. If the Community/Public Health Officer suspects or is informed of the existence of any communicable disease, the Community/Public Health Officer shall investigate and make or cause examinations to be made, as are deemed necessary.

35.7-3. The Community/Public Health Officer may quarantine, isolate, require restrictions, or take other communicable disease control measures as necessary. Any individual, including an authorized individual, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this law.

(a) The list of quarantinable diseases shall be specified in a resolution adopted by the Oneida Business Committee as recommended by the Community/Public Health Officer.

(b) The Community/Public Health Officer shall immediately quarantine, isolate, or take other communicable disease control measures upon an individual if the Community/Public Health Officer receives a diagnostic report from a physician or a written or verbal notification from an individual or his or her parent or caretaker that

gives the Community/Public Health Officer a reasonable belief that the individual has a communicable disease that is likely to cause a public health emergency.

(c) When the Community/Public Health Officer deems it necessary that an individual be quarantined or otherwise restricted in a separate place, the Community/Public Health Officer shall have that individual removed to such a designated place, if it can be done without danger to the individual's health.

**Cross-reference:** See also Resolution Identifying Quarantinable Diseases BC-05-13-09-G.

35.7-4. The Community/Public Health Officer shall act as necessary to protect the public, including requesting the Director to take steps to have a public health emergency proclaimed, as identified in 35.8.

35.7-5. If an individual is infected with a communicable disease and the Community/Public Health Officer determines it is necessary to limit contact with the individual, all persons may be forbidden from being in direct contact with the infected individual, except for those persons having a special written permit from the Community/Public Health Officer.

35.7-6. The Tribe's law enforcement agency shall work with the Community/Public Health Officer to execute the Community/Public Health Officer's orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested.

35.7-7. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's support. The OCHS is responsible for the following costs accruing under this section unless the costs are payable through third party liability or through any benefit system

- (a) the expense for law enforcement assistance under 35.7-4.
- (b) the expense of maintaining quarantine and isolation of the quarantined area.
- (c) the expense of conducting examinations and tests made under the direction of the Community/Public Health Officer.
- (d) the expense of care for dependent persons of the infected individual.

35.7-8. When a public health emergency is proclaimed, the Community/Public Health Officer may do all of the following, as necessary:

- (a) order an individual to receive a vaccination, unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual, for reason of religion or conscience, refuses to obtain the vaccination.
- (b) isolate or quarantine individuals, including those who are unable or unwilling to receive the vaccination under (a).
- (c) prevent any individual, except for those individuals authorized by the Community/Public Health Officer, from entering an isolation or quarantine premises.

### **35.8. When an Emergency is Proclaimed**

35.8-1. The Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or presidential declaration.

35.8-2. The Director may request that the Oneida Business Committee proclaim the existence of an emergency. In the event the Oneida Business Committee is unable to proclaim or ratify the existence of an emergency, the Director may proclaim an emergency which shall be in effect until such time the Oneida Business Committee can officially ratify this declaration. The Oneida Business Committee may proclaim the existence of an emergency without a request from the Director, if warranted.

35.8-3. The emergency management network of the Reservation shall be as specified in the Emergency Operations Plan, as adopted by the Oneida Business Committee.

35.8-4. The provisions of Chapter 34, *Oneida Tribal Regulation of Domestic Animals Ordinance*, shall not apply during a proclaimed emergency. During a proclaimed emergency, the Conservation Department shall be responsible for the care, disposal, and sheltering of all abandoned domestic animals and livestock.

35.8-5. No proclamation of an emergency by the Oneida Business Committee or the Director may last for longer than thirty (30) days, unless renewed by the Oneida Business Committee. After an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an after-action report to be presented to the Oneida Business Committee, any interested entity, and the public. This report shall be presented to the required parties no longer than sixty (60) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee.

### **35.9. Enforcement and Penalties**

35.9-1. It shall be a violation of this law for any person to willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed.

(a) Violators of this law may be subject to a fine of not more than \$200 per violation to be issued by the Oneida Police Department and paid to the Tribe. Employees of the Tribe who violate this law during their work hours or who refuse to follow the Emergency Operations Plan may be subject to disciplinary action instead of a fine.

35.9-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the Judiciary before the fine is to be paid.

35.9-3. Employees of the Tribe who are disciplined under this law may appeal the disciplinary action in accordance with the personnel policies and procedures of the Tribe.

*End.*

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Adopted - BC-7-15-98-A

Amended -BC-12-20-06-G

Emergency Amended -BC-4-30-09-A (Influenza A (H1N1))

Amended-BC-5-13-09-F

## Employee Protection Policy

Article I. Purpose and Policy  
Article II. Adoption, Amendment, Repeal  
Article III. Definitions

Article IV. Disclosure  
Article V. Protection

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### Article I. Purpose and Policy

1-1. The purpose of this policy is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this policy to protect the Nation's interests.

### Article II. Adoption, Amendment, Repeal

2-1. This policy shall become effective upon adoption.

2-2. This policy shall supersede, repeal, rescind any prior law or policy regarding employee protection. Provided, that the law or policy is in direct conflict or extends lesser protection than this Employee Protection Policy.

2-3. This policy may be amended or repealed by the Oneida Business Committee pursuant to the Oneida Administrative Procedures Act.

### Article III. Definitions

3-1. This article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

3-2. "Abuse of Authority" means using the authority, whether real or assumed, of any position, whether actual or assumed, to obtain information, goods or services to the detriment of the tribe, or using the authority as described above to directly or indirectly punish any person or employee for disclosing information as described below.

3-3. "Appropriate Agency" means a delegated person or officer to receive disclosures in the Internal Auditing, Gaming Commission, Tribal School Board, Police Commission and Personnel Commission.

3-4. "Disciplinary Action" means any action by an employer affecting an employee to their detriment, including, but not limited to - dismissal, demotion, transfer, removal of duty, refuse to restore, suspend, reprimand.

3-5. "Disclosure" means to reveal otherwise nonpublic information or other information that would otherwise remain concealed during a period which it should be brought to light.

3-6. "Employee" means any person working for the Oneida Nation in its programs, enterprises, and governmental functions, whether elected, appointed, or hired as a limited term employee, vendor, or contractor.

3-7. "Information" means the specific time, date, who, when, where, what, how in any disclosure that would prevent detrimental actions being taken against the Oneida Nation.

3-8. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

3-9. "Merit Further Investigation" means that point at which a person(s) hearing the information believes that it requires further action.

3-10. "Mismanagement" means failure to use reasonable good sense in using the authority granted through the job description, delegated authority by any supervisor, and/or personal

judgment to advance the economic, financial, and political value of the Oneida Nation by properly using employee time, equipment, funds, and their own time

3-11. "Retaliatory Action" means any action, either disciplinary or otherwise, taken against any employee, whether supervisory or supervised, for that employee's disclosure of information as directed within this policy, excluding any action that can be reasonably justified as taken in good faith based on documented employee performance. Action other than disciplinary action that may be retaliatory, by way of example, could be loss of hours, rescheduling shifts outside of normal shift changes, change of job requirements without notice, verbal or physical harassment, reduction of pay, denial of educational benefits, reassignment, failure to increase base pay.

3-12. "Substantial Waste of Public Funds" means any use of funds in a manner not directed by policy, including any preference law adopted by the Oneida Nation.

#### Article IV. Disclosure

4-1. General. The Oneida Tribe recognizing the negative impact on the employee that may arise from presenting information that protects the Oneida Tribe from adverse actions of its elected officials, employees, contractual employees, and contractors and offers the processes in this Policy to protect employees against retaliation in the event information is presented. This Policy is effective after presentation of information and protects against retaliation. No identification of a protected status is necessary when information is properly presented. No protection can be extended unless information is properly presented.

4-2. An employee is protected under this policy when the disclosure of the information is given, in confidence, in written form, dated, and signed, to the any of the following persons:

- a. Supervisor
- b. appropriate agency or entity
- c. law enforcement agency
- d. attorney retained by the employee.
- e. Employee Advocates

Provided that, disclosure, through circumstances other than in person, the employee shall fully identify themselves.

4-3. A protected disclosure includes the following elements:

a. identity of person making the disclosure b. identity of person or persons against whom disclosure is being made c. to the best of the employees knowledge, the date and time at which the disclosed action occurred, and d. summary of the disclosed action.

4-4. All disclosures shall be kept confidential, until such time as action is being taken against the person or persons identified in the disclosed information.

4-5. Disclosures made in reference to section 4-1 of this policy shall be directed as soon as possible to the appropriate agency or entity, with the permission of the disclosing person/persons. The disclosed information will be in a sealed envelope, which may be hand carried, mailed certified or delivered by law enforcement. A receipt shall be required to be signed, and dated by the recipient.

4-6. Disclosures made in reference to 4-2(d) of this policy shall be with the understanding that no attorney shall be directed to act in a manner that the attorney finds to be in conflict with any professional responsibility or rule.

4-7. The appropriate agency shall send a written decision to the disclosing party that the disclosure has or does not have merit, along with any further action that will be taken within twenty (20) business days. If a disclosure merits further action, the disclosing party will be notified that they may be called by the appropriate agency to give additional testimony at a closed meeting and on approximately what date. Further, appropriate agencies will follow the

hearing procedures set out in the Administrative Procedures Act for a Hearing of Record. Appropriate agencies are authorized to use their full powers to take corrective measures where disclosures merit action, and to utilize all Tribal agencies to effectively correct any and all problems found. This includes, but is not limited to, the following action:

- a. Oneida Business Committee garnishment action to recover lost funds,
- b. Personnel Commission for disciplinary action,
- c. Judiciary for appropriate civil actions,
- d. Criminal prosecutions, where indicated in appropriate federal or state courts.

#### Article V. Protection

5-1. Any employee who discloses information in the manner described in this policy shall be protected from any and all employment related retaliation to the fullest extent of this Article.

5-2. Any employee who believes that retaliatory action is being taken against them may follow procedures set out below:

- a. This policy supersedes those complaint procedures set out in the Personnel Policy and Procedures Manual and the employee may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or
- b. If a disciplinary action, that employee may go directly to the Personnel Commission with their grievance.

5-3. The Personnel Commission is authorized through this policy to proceed immediately with any alleged retaliation grievance placed before them by any employee. Any resolution of a retaliation grievance must be written and placed in all parties files. All parties include, but are not limited to, persons actively involved with knowingly implementing any retaliation action and named by the grieving party.

5-4. Any person acting under the authority of another, who has a good faith belief of the correctness of their actions, is a legal defense against any retaliation grievance and, if accepted by the Personnel Commission, bars placement of the results of the action in that employee's file. Provided that, the person was not found to be actively involved in an retaliatory action. Provided further, that the employee acting in good faith has not asked that the results of any retaliation hearing be placed in their file.

5-5. If a disclosing employee files a grievance alleging a protected status as a result of a disclosure and that retaliation has occurred, the disclosing employee may request a protective order which may be as follows:

The Personnel Commission Hearing Body hereby orders that the Human Resources Department shall monitor (name of supervisor/job title)'s actions in regard to (name of disclosing employee/job title). This employee has alleged a protected status under the Employee Protection Policy which the Personnel Commission Hearing Body has determined that sufficient evidence exists to prove that such a status exists. This protective order shall remain in place until such time as a final decision is issued by this Personnel Commission Hearing Body.

*End.*

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Emergency Adoption - BC-4-20-95-B  
Permanent Adoption - BC-12-6-95-B  
Amendments - BC-1-20-99-B  
Amendments - BC-6-30-04-J  
Amendments - BC-02-25-15-C

## Local Land Use Regulation Reimbursement Policy

Article I. Purpose and Policy

Article II. Adoption, Amendment, Conflicts

Article III. Definitions

Article IV. Eligible Individuals and Businesses

Article V. Reimbursement and Denials

Article VI. Appeals

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### Article I. Purpose and Policy

1-1. *Purpose.* It is the purpose of this policy to preserve and protect the inherent right of the Oneida Tribe of Indians of Wisconsin to create and enforce Tribal land use regulations on the Reservation. Certain local governments refuse to recognize the preemption of state and local land use regulations with respect to the activities of Tribal members and Tribal member-owned businesses on the Reservation, and with respect to non-members and non-Tribal member owned businesses utilizing Tribal land, and refuse to recognize the authority of the Tribe to regulate such activities. This situation causes hardships for such Tribal members, non-members and businesses who are inappropriately threatened with enforcement of local land use regulations. The purpose of this policy is to alleviate such hardship.

1-2. *Policy.* It is the policy of the Tribe to reimburse Tribal members, non-members and businesses subject to Tribal land use regulations for fees and/or fines associated with compliance under written protest with local land use regulations. This policy neither condones the acts of local governments nor concedes that such local governments have jurisdiction to regulate the land use of Tribal members, non-members and businesses otherwise subject to Tribal law.

### Article II. Adoption, Amendment, Conflicts

2-1. This policy was adopted by the Oneida Business Committee by resolution BC-09-08-10-B and amended by resolution BC-02-25-15-C.

2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this policy and a provision of another policy, the provisions of this policy shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

2-6. This policy shall not be construed to repeal, abrogate, annul or impair any intergovernmental agreements between the Tribe and local governments.

### Article III. Definitions

3-1. This article shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Appropriate Tribal department" means the Tribal department(s) that approved an individual's or business's use of the land in accordance with the applicable Tribal land use regulations.

(b) "Business" means a firm, association, organization, partnership, estate, trust, company, corporation or similar entity.

- (c) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (d) "Local government" includes, but is not limited to towns, villages, cities and counties organized pursuant to the laws of the State of Wisconsin.
- (e) "Local land use regulations" means local government's ordinances containing inspection and/or permit requirements which regulate private use of land.
- (f) "Reservation" means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (g) "Tribal fee land" means land to which the Tribe holds title in fee simple on the Reservation.
- (h) "Tribal land" means Tribal trust land and Tribal fee land.
- (i) "Tribal land use regulations" means the following regulations:
- (1) Chapter 41, Non-Metallic Mine Reclamation
  - (2) Chapter 42, Wood Cutting Ordinance
  - (3) Chapter 43, Well Abandonment Law
  - (4) Chapter 46, On-Site Waste Disposal Ordinance
  - (5) Chapter 47, Sanitation Ordinance
  - (6) Chapter 48, Water Resources Ordinance
  - (7) Chapter 66, Building Code of the Oneida Reservation
  - (8) Chapter 69, Zoning and Shoreland Protection Law
  - (9) Any Tribal law which is hereafter adopted and/or designated as a Tribal land use regulation.
- (j) "Tribal member" means an enrolled member of the Oneida Tribe of Indians of Wisconsin.
- (k) "Tribal member owned business" means a business which is majority owned and managed by one (1) or more enrolled members of the Tribe.
- (l) "Tribal trust land" means land to which the United States holds title for the benefit of the Tribe pursuant to federal law.
- (m) "Tribe" means the Oneida Tribe of Indians of Wisconsin.
- (n) "Under written protest" means written documentation demonstrating that the individual or business has protested the application of the local land use regulations to his or her activities and conveyed such protest to the local government.

#### **Article IV. Eligible Individuals and Businesses**

4-1. This policy extends only to the following:

- (a) All Tribal members or Tribal member owned businesses on the Reservation on land under the Tribal member's or Tribal member owned business's ownership or control;
- (b) All non-members or non-Tribal member owned businesses who, in accordance with Tribal law, lease, occupy or otherwise use Tribal fee lands or trust lands on the Reservation; and
- (c) All Tribal members, non-members, and businesses, whether Tribal member owned or non-Tribal member owned, who, in accordance with Tribal law, lease, occupy or otherwise use Tribal trust land outside the boundaries of the Reservation.

#### **Article V. Reimbursement and Denials**



5-1. Where the following conditions are met, the Tribe will reimburse the individuals or businesses identified in Section 41:

- (a) The individual or business first complies with all applicable Tribal land use regulations, including obtaining any required permits and/or inspections.
- (b) The individual or business receives written notification from a local government stating that the individual or business is in violation of local land use regulations, or the individual or business is otherwise threatened with enforcement of local land use regulations.
- (c) One of the following occurs:
  - (1) The individual or business complies with the local land use regulation after October 28, 2009 under written protest; or
  - (2) The individual or business complied with the local land use regulation from January 1, 2009 through October 28, 2009 without protesting in writing.
- (d) The individual or business submits the following to the appropriate Tribal department:
  - (1) receipts for the local government's fines and/or fees for compliance with the local land use regulation; and
  - (2) verification that the individual or business complied with the local land use regulation under written protest, if required to comply under written protest.

5-2. When an individual or business identified in Section 4-1 satisfies the requirements set forth in Section 5-1, the Tribe shall reimburse the individual or business for fees and/or fines actually paid by the individual or business to the local government; however, in no event shall the Tribe bear any responsibility for the following:

- (a) Additional costs the individual or business incurs as a result of his or her compliance under written protest with the local land use regulations, including, but not limited to, construction costs or engineering costs.
- (b) Enforcement actions mandated by a local government, including, but not limited to, building razing.
- (c) Fines in excess of \$1,000.

5-3. If an individual or business is denied reimbursement, the appropriate Tribal department shall inform the individual or business of the denial in writing within ten (10) business days after receiving the reimbursement request. The notice shall also inform the individual or business he or she has ten (10) business days after receiving the denial to file an appeal and where he or she can file an appeal.

5-4. In no case shall an individual or business purport to allow a local government to rezone Tribal fee land or Tribal trust land.

## Article VI. Appeals

6-1. Any individual or business denied reimbursement for fees and/or fines actually paid by the individual or business may file an appeal with the division director of the department which denied the reimbursement. The denial of reimbursement shall specify where the individual or business may appeal the decision. The appeal shall be filed within ten (10) business days after the individual or business is notified of the denial of reimbursement.

6-2. The division director, or a designee, shall determine whether the individual or business is eligible for reimbursement within five (5) business days of receipt of the appeal. The determination shall be sent by registered mail (return receipt requested) or delivered in person to the individual or business.

6-3. If reimbursement is denied by the division director, or designee, the individual or business may file an appeal of the decision with the Judiciary.

*End.*

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Emergency Adoption – BC-10-28-09-C

Emergency Adoption (extension) – BC-04-28-10

Adopted – BC-09-08-10-B

Amended – BC-02-25-15-C

## Chapter 82 NOTARY ACT

82.1-1 Implementation  
82.2-1 Commissioning  
82.3-0 Powers and Limitations  
82.4-0 Journal and Seal

82.5-1 Certificates  
82.6-0 Liability and Remedies  
82.7-1 Changes of Status  
82.8-1 Authorization

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**82.1-1. Implementation.** *Short Title.* This Act may be cited as the Oneida Notary Act.

**82.1-2. Purposes.**

(a) This Act shall be construed and applied to advance its underlying purposes, which are:

- (1) to promote, serve and protect the public interest;
- (2) to simplify, clarify and modernize the law governing notaries.

**82.1-3. Interpretation.** In this Act, unless the context otherwise requires, words in the singular include the plural, and words in the plural include the singular.

**82.1-4. Definitions.**

(a) As used in this Act:

- (1) "Commission" means to empower to perform notarial acts and the written authority to perform those acts.
- (2) "Copy certification" means a notarial act in which a notary certifies having made a photocopy of a document that is neither a public record nor publicly recordable.
- (3) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (4) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.
- (5) "Notarial act" and "notarization" means any act that a notary is empowered to perform under Section 3-1.
- (6) "Notarial certificate" and "certificate" mean the part of, or attachment to, a notarized document for completion by the notary and bearing the notary's signature and seal.
- (7) "Notary public" and "notary" means any person commissioned to perform notarial acts under this Act.
- (8) "Oath" and "affirmation" means a notarial act, or part thereof, in which a notary certifies that a person made a vow in the presence of the notary on penalty of perjury.
- (9) "Official misconduct" means:
  - (A) a notary's performance of, or failure to perform, any act prohibited, or mandated, respectively, by this Act or by any other law in connection with notarization; or
  - (B) a notary's performance of a notarial act in a manner found by the commissioning official to be negligent or against public interest.
- (10) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (11) "Satisfactory evidence of identity" means identification of an individual based on:

(A) at least two (2) current documents, issued by a Tribal, state, or federal government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or Tribal, state or federal government with at least the individual's signature; or

(B) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

82.1-6. *Severability Clause.* If any provision of this Act, or its application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

82.1-7. *Amendments.* The Oneida Business Committee is delegated the authority to amend this Act.

### **82.2-1. Commissioning.**

(a) Except as otherwise provided in subsection (c), the Tribal Secretary shall commission as a notary a qualified person who submits an application in accordance with this Act.

(b) A person qualified for a notarial commission must:

(1) be at least twenty-five (25) years of age; and

(2) lawfully reside within the exterior boundaries of the Oneida Reservation and be an enrolled member of the Oneida Nation of Wisconsin; and

(c) The Tribal Secretary may deny an application based on:

(1) the applicant's conviction for a crime involving dishonesty or moral turpitude; or

(2) revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by the Oneida Nation of Wisconsin or the state of Wisconsin or any other state; or

(3) the applicant's official misconduct as defined in Section 1-4(a)(8), whether or not disciplinary action resulted.

82.2-2. *Jurisdiction and Term.* A person commissioned as a notary by the Tribal Secretary may perform notarial acts in any part within the exterior boundaries of the reservation for a term of four (4) years, unless the commission is revoked under Section 6-21 or resigned under Section 7-4.

82.2-3. *Bond.* No notarial commission becomes effective until, within thirty (30) days after its issuance, an oath of office and one-hundred fifty (150) dollar bond has been filed with the Tribal Secretary. The bond must be executed by a licensed surety, for a term of four (4) years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditions upon the notary's misconduct as defined in Section 1-4(a)(8).

82.2-4. *Recommissioning.* An applicant for recommissioning shall submit a new application and comply anew with the provisions of Article II with the following exception: in place of passing an exam, the applicant must sign the renewal declaration in Section 2-26.

### *Part 2.*

#### *82.2-21. Application.*

(a) Every application for a notarial commission must be made on forms provided by the Tribal Secretary and include, at least:

(1) a statement of the applicant's personal qualifications; and

- (2) an examination written by the applicant; and
- (3) a declaration signed by the applicant; and
- (4) an application fee.

82.2-22. *Statement of Personal Qualifications.*

- (a) The application must state, at least:
  - (1) the applicant's age;
  - (2) the applicant's residence address;
  - (3) that the applicant can read and write English; and
  - (4) all criminal convictions of the applicant, including any plea of admission and no contest; and
  - (5) all issuances, denials, revocations, suspensions, restrictions and resignations of a notarial commission or other professional license involving the applicant within the exterior boundaries of the Oneida Reservation, or the State of Wisconsin, or any other state.

82.2-23. *Examination.* Every applicant for a notarial commission shall pass a written examination that tests the applicant's knowledge of notarial laws and procedures and is based on materials distributed by the Tribal Secretary with the application forms.

82.2-24. *Certified Declaration.* Every applicant for a notarial commission shall sign the following declaration in the presence of the Chairman of the Business Committee:

Declaration of Applicant

I, \_\_\_\_\_ (name of the applicant), solemnly swear or affirm under penalty of perjury that the personal information in this application is true, complete and correct; that I carefully have read the materials describing the duties of a notary for the Oneida Nation of Wisconsin; and that I will perform, to the best of my ability, all notarial acts in accordance with the law.

\_\_\_\_\_ (Signature of Applicant)

(Notarial certificate as specified in Section 5-4)

82.2-25 *Fees.*

(a) Every Applicant for a notarial commission shall pay to the Oneida Nation of Wisconsin a nonrefundable fee of fifteen (15) dollars.

(b) In addition, every applicant shall deposit seventy-five (75) dollars with the Tribal Secretary before receiving the notary supplies. The applicant shall receive a written receipt from the Tribal Secretary which indicates the name of the applicant, the date which the applicant received the notarial supplies and the amount the applicant deposited. The notarial supplies shall include, but not be limited to:

- (1) the notarial stamp;
- (2) at least ten (10) blank jurat certificates, ten (10) blank copy certificates and ten (10) blank oath and affirmation certificates; and
- (3) a copy of this Act.

82.2-26. *Renewal Oath.* Every applicant for notarial recommission shall sign the following declaration in the presence of the Tribal Secretary:

Renewal Declaration

I, \_\_\_\_\_ (name of Applicant), solemnly swear or affirm under penalty of perjury that I have carefully reviewed and reread the materials describing the duties of a notary for the Oneida Nation of Wisconsin and any other legislation, laws or resolutions

passed by the General Tribal Council or the Oneida Business Committee in furtherance of this Act.

I understand that I am signing this declaration in place of taking an exam and that I am fully capable of continuing to fulfill my duties as a notary for the Oneida Nation of Wisconsin.

82.2-27. *Confidentiality.* Disciplinary information in an applicant's or notary's Statement of Personal Qualifications under paragraphs (4) and (5) of Section 2-22 may be used by the Tribal Secretary and designated Tribal employees for the sole purpose of performing official duties under this Act and may not be disclosed to any other person than:

- (1) the applicant;
- (2) the applicant's authorized representative or surety;
- (3) a representative of the Oneida Nation of Wisconsin acting in an official capacity;
- or
- (4) a person specified by the Tribal commission order.

### *Part 3*

#### 82.2-31. *Governmental Employees.*

- (a) The Tribal Secretary may commission any number of Tribal employees to act as notaries, but notaries so empowered may perform notarial acts only in their service of their respective Tribal agencies.
- (b) Notaries empowered under this section may perform notarial acts in any part within the exterior boundaries of the Oneida Nation of Wisconsin reservation for a term of four (4) years, and shall seek recommissioning by the Tribal Secretary for the subsequent term.
- (c) An applicant for a notarial commission under this section must meet the requirements in Article II, Part 2, except the applicant shall include a written declaration signed by the applicant's governmental employer stating that the commissioning is in the public interest; and the fee in Section 2-25 is waived for employees of the Oneida Nation of Wisconsin.
- (d) The bond and costs of all notarial supplies for a notary empowered under this section must be paid from funds of the notary's governmental agency.
- (e) No fees may be charged for notarial services performed by a notary empowered under this section.
- (f) Upon leaving the employment of their Tribal agencies, notaries empowered under this section shall resign their commissions immediately under Section 7-4 and dispose of their journals under Section 7-5.
- (g) A notary empowered under this section shall comply with all provisions of this Act, unless otherwise specified in this section.

#### **82.3-0. Powers and Limitations.**

##### *Part 1*

82.3-1. *Powers.* A notary is empowered to perform the following notarial acts:

- (a) oaths and affirmations;
- (b) jurats; and
- (c) copy certifications.

82.3-2. *Disqualifications.* A notary is disqualified from performing a notarial act if the notary:

- (a) is a signer or named in the document that is to be notarized;

(b) will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in Section 3-21; or

(c) is related to the person whose signature is to be notarized as a spouse, brother, sister, mother, father, son, daughter, grandson, granddaughter, uncle, aunt, grandfather, grandmother, nephew or niece; or is related to the person by any of the foregoing designations by fact of marriage.

#### 82.3-3 *Impartiality.*

(a) A notary may not influence a person to enter into or not to enter into a lawful transaction involving a notarial act by the notary.

(b) A notary shall perform notarial acts in lawful transactions for any requesting person who tenders the appropriate fee specified in Section 3-21.

82.3-4 *False Certificate.* A notary may not execute a certificate containing a statement known by the notary to be false or perform any official action with the intent to deceive or defraud.

82.3-5 *Testimonials.* A notary may not endorse or promote any product, service, contest or other offering if the notary's title or seal is used in the endorsement or promotional statement.

#### 82.3-6 *Unauthorized Practice of Law.*

(a) A non-attorney notary may complete but may not select notarial certificates, and may not assist another in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(b) This section does not preclude a notary who is duly qualified in a particular profession from giving advice relating to matters in their professional field.

(c) A notary may not make representations to have powers, qualifications, rights, or privileges that the office of notary does not have, including the power to counsel on immigration matters.

(d) A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice or sign in the same language:

(1) the statement, prominently displayed: "I am not an attorney or a paralegal or a lay advocate and have no authority to give advice on immigration or other legal matters"; and

(2) the fees for notarial acts specified in Section 3-21(a).

(e) A notary may not use the term "notario publico" in any business card, advertisement, notice or sign.

(f) A notary may use the Oneida language on any business card, advertisement, notice or sign.

### *Part 2*

#### 82.3-21. *Fees.*

(a) The maximum fees that may be charged by a notary for notarial acts are not to exceed:

(1) for oaths or affirmations without signature, fifty (50) cents per person;

(2) for jurats, fifty (50) cents per signature; and

(3) for certified copies, twenty-five (25) cents per page certified.

82.3-22 *Notice of Fees.* Notaries shall display an English-language schedule of fees for notary acts, as specified in Section 3-21(a). No part of any displayed notarial schedule may be printed smaller than 12-point type.

## **82.4-0. Journal and Seal.**

### *Part 1*

82.4-1. *Journal.* A notary shall keep, maintain, protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing numbered pages.

### 82.4-2. *Entries in Journal.*

(a) For every notarial act, the notary shall record in the journal at the time of notarization at least the following:

- (1) the date and time of day of the notarial act;
- (2) the type of notarial act;
- (3) a description of the document of proceeding;
- (4) the signature and printed name and address of each person for whom a notarial act is performed;
- (5) the evidence of identity of each person for whom a notarial act is performed, in the form of either: (i) a statement that the person is "personally known" to the notary and the number of years the notary has known the person, (ii) a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration;
- (6) the fee, if any, charged for the notarial act; and
- (7) the address where the notarization was performed if not the notary's business address.
- (8) and if the notarized documents were in English or the Oneida language.

(b) A notary shall retain as an official record a duplicate photocopy of each certified copy.

(c) A notary shall record in the journal the circumstances in refusing to perform or complete a notarial act.

82.4-3. *Signatures in Journal.* At the time of notarization, the notary's journal must be signed, as applicable by:

- (a) the person for whom the notarial act is performed;
- (b) the credible witness swearing or affirming to the identity of the person for whom the notarial act is performed;
- (c) the two (2) witnesses to a signature by mark of the document that is notarized.

### 82.4-4. *Inspection, Copying, and Disposal of Journal.*

(a) A journal of notarial acts is an official public record that may be inspected in the notary's presence by any individual whose identity is personally known to the notary or proven on the basis of satisfactory evidence, who specifies the notarial act sought, and who signs the notary's journal.

(b) Upon request in compliance with subsection (a), the notary shall provide a photocopy of an entry in the journal at a cost of not more than twenty-five (25) cents per photocopy. If a certified copy is requested, the cost is as specified in Section 3-21.

(c) A notary shall safeguard the journal and all other notarial records as valuable public documents and never destroy them, except at the direction of the Business Committee.

(d) The journal must be kept in the exclusive custody of the notary, and may not be used by any other notary nor surrendered to an employer upon termination of employment.

(e) Upon resignation, revocation, or expiration of a notarial commission, or death of the notary, the notarial journal and records must be delivered by certified mail or other means providing a receipt or by hand to the Oneida Business Committee in accordance with Article VII.



Part 2

82.4-21. *Official Signature.* In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name on the notary's commission.

82.4-22. *Official Seal.*

(a) A notary shall keep an official notarial seal that is the exclusive property of the Oneida Nation of Wisconsin and that may not be used by any other person nor surrendered to an employer upon termination of employment.

(b) Upon resignation, revocation, or expiration of a notarial commission, or death of the notary, the seal must be returned to the Oneida Tribal Secretary for destruction in accordance with section seven. A new seal must be obtained for any new commission under Section 4-24.

82.4-23. *Seal Impression.*

(a) Near the notary's official signature on a notarial certificate, the notary shall affix in ink a sharp, legible, and photographically reproducible impression of a notarial seal that must include the following elements:

- (1) the notary's name exactly and indicated on the commission;
- (2) the words "Notary Public," "Oneida Tribe of Indians of Wisconsin" and "My Commission Expires (Commission Expiration Date)";
- (3) the address of the notary's business or residence; and
- (4) a border in a circular shape no larger than one and one-half (1½) inches in diameter, surrounding the required words in subsection (2).

(b) Illegible information within the seal impression may be typed or printed legibly by the notary adjacent to but not within the impression. §4-24 Obtaining a Seal.

All Seals used by the notaries of the Oneida Nation of Wisconsin shall be issued by the Business Committee after the applicant has met the requirements in Section 2-1(b).

**82.5-1. Certificates. Jurat.** A notary shall use a jurat certificate in the following form in notarizing as signature on an affidavit, deposition, or other sworn or affirmed written declaration:

Oneida Nation of Wisconsin

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_, (personally known to me) (proved to me through government-issued documentary evidence in the form of \_\_\_\_\_) to be the person(s) who signed the preceding or attached document in my presence and who swore or affirmed to me that the signature(s) (is) (are) voluntary and the document truthful.

(Official seal and signature of notary)

**82.5-2. Certified Copy.** A notary shall use a certificate in the following form in notarizing a certified copy:

Oneida Nation of Wisconsin

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I certify that the preceding or attached document, and the duplicate retained by me as a notarial record, are true, exact, complete, and unaltered

9 photocopies made by me of \_\_\_\_\_, (description of document),

9 photocopies presented to me by the document's custodian, \_\_\_\_\_ (name of custodian)

and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

(Official seal and signature of notary)

82.5-3. *Certified Documents.* No notary may certify a publicly recordable document.

82.5-4. *Oaths and Affirmations.*

(a) A person seeking notarization or an oath or affirmation must, if he or she is able, say the oath out loud. The notary public must witness this recitation.

(b) If the person seeking notarization is unable to say the oath or affirmation aloud, he or she must read and sign a written copy of the oath or affirmation. In any case, whether the person seeking notarization is able to recite the oath or affirmation or not, a written copy of the oath or affirmation must include the following information on the document or attached to the document:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me, the undersigned notary, personally appeared \_\_\_\_\_,

9 personally known to me

9 proved to me through government-issued documentary evidence in the form of identifications defined in Section 1-5(10) of the Oneida Notary Public Act to be the person(s) who recited the attached oath or affirmation in my presence and who swore or affirmed to me that the recitation and signature(s) are voluntary and the document truthful.

(Official seal and signature of notary)

## **82.6-0. Liability and Remedies.**

### *Part 1.*

82.6-1. *Liability of Notary, Surety, and Employer.*

(a) A notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization.

(b) A surety for a notary's bond is liable to any person for damages proximately caused that person by the notary's official misconduct in performing a notarization, but this liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants. Regardless of the number of claimants, a surety's total liability may not exceed the penalty bond.

(c) An employer of a notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization related to the employer's business, if the employer directed, encouraged, consented to, or approved the notary's misconduct, either in the particular transaction or, impliedly, by previous actions in at least one similar transaction.

(d) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of official misconduct that was coerced by threat of the employer, if the threat, such as of demotion or dismissal, was made in reference to the particular notarization or, impliedly, by the employer's previous action in at least one similar transaction. In addition, the employer is liable to the notary for damages caused to the notary by demotion, dismissal, or other action resulting in the notary's refusal to commit official misconduct.

(e) The Oneida Nation of Wisconsin reserves the right to collect damages paid as a result of an employee's misconduct either directly stemming from an notarial act, or as an employer coercing the notary to commit official misconduct.

*Part 2.*

82.6-21. *Revocation.*

(a) The Tribal Secretary may revoke a notarial commission on any ground for which an application for commission may be denied under Section 2-1.

(b) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Tribal Secretary, or other official designated by the Tribal Secretary, who may pursue the investigation to a conclusion, whereupon it must be made a matter of public record whether or not the finding would have been grounds for revocation.

82.6-22. *Other Remedies.*

(a) The Tribal Secretary may deliver a written Official Warning To Cease Misconduct to any notary whose actions are judged to be official misconduct under Section 1-5.

(b) The Tribal Secretary may seek an injunction from the Judiciary or any other judicial body created by the Oneida Nation of Wisconsin to prevent a person from violating any provision of this Act.

82.6-23. *Civil Forfeiture.* A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated; respectively, by this Act shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-24. *Additional Remedies Not Prevented.* The remedies of this Act supplement other remedies provided by law.

*Part 3.*

82.6-31. *Impersonation.* Any person not a notary who knowingly acts or otherwise impersonates a notary shall forfeit not less than \$50.00, nor more than \$500.00.

82.6-32. *Wrongful Possession.* Any person who knowingly obtains, conceals, defaces or destroys the seal, journal or official records of a notary shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-33. *Improper Influence.* Any person who knowingly solicits, coerces or in any way influences a notary to commit official misconduct shall forfeit not less than \$50.00 nor more than \$500.00.

82.6-34. *Enforcement.* Any and all of the sections of this Act may be enforced by an official designated by the Oneida Business Committee for separate issues, or for all issues.

**82.7-1. Change of Status.** *Change of Address.* Within thirty (30) days after the change of a notary's business or residence address, the notary shall deliver to the Tribal Secretary, by certified mail or other means of providing receipt or by hand, a signed notice of the change, giving both old and new addresses.

82.7-2. *Change of Name.*

(a) A notary with a change of name shall deliver to the Tribal Secretary a signed notice of the change, giving both old and new names and the effective date of the new name.

(b) Starting on the effective date, a notary with a new name official shall sign that name on all notarial certificates, but only after the following steps have been completed:

- (1) the notice described in subsection (a) has been delivered;

- (2) a Confirmation of Notary's Name Change has been received from the Tribal Secretary;
- (3) a new seal bearing the new name exactly as in the confirmation has been issued by the Tribal Secretary; and
- (4) the surety for the notary's bond has been informed in writing.

82.7-3. *Lost Journal or Seal.* Within ten (10) days after the loss or theft of an official journal or seal, the notary shall deliver to the Tribal Secretary, by certified mail or other means providing a receipt or by hand, a signed notice of the loss or theft, and inform the appropriate law enforcement agency in case of theft.

82.7-4. *Resignation.*

(a) A notary who resigns a notarial commission shall deliver to the Tribal Secretary, by certified mail or other means providing a receipt or by hand, a notice indicating the effective date of resignation.

(b) Notaries who cease to reside or work within the exterior boundaries of the reservation or who become unable to read and/or unable to write shall resign their commissions.

82.7-5. *Disposition of Seal and Journal.*

(a) Except as provided in subsection (b), when a notarial commission is resigned, revoked or expires, the notary shall:

- (1) as soon as reasonably practicable, return the official seal to the Tribal Secretary for destruction; and
- (2) within thirty (30) days after the effective date of resignation, revocation, or expiration deliver to the Oneida Business Committee, by certified mail or other means of providing a receipt or by hand, the notarial journal and records.

(b) A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by the Oneida Nation of Wisconsin, need not deliver the journal and records within thirty (30) days after commission expiration, but must do so within three (3) months after expiration unless recommissioned within that period.

82.7-6. *Death.* If a notary dies during the term of commission, the notary's heirs or personal representative, as soon as reasonably practicable after death, shall:

- (a) return the seal to the Tribal Secretary for destruction; and
- (b) deliver by certified mail or other means providing a receipt or by hand,
  - (1) a signed notice of the date of death to the Tribal Secretary, and
  - (2) the notarial journal and records to the Oneida Business Committee.

**82.8-1. Authorization.** *Evidence of Authenticity of Notarial Act.*

(a) The authenticity of the official notarial seal and signature of a notary of the Oneida Nation of Wisconsin may be evidenced by:

- (1) a certificate of authority from the Tribal Secretary, authenticated as necessary.

82.8-2. *Certificate of Authority.* A certificate of authority evidencing the authenticity of the official notarial seal and signature of a notary of the Oneida Nation of Wisconsin must be in the following form:

Certificate of Authority for a Notarial Act

I, \_\_\_\_\_, (name, title, jurisdiction of authenticating official) certify that (name of notary), the person named in the seal and signature on the attached document is a notary public for the Oneida Nation of Wisconsin and was authorized to act as such at the time of the document's notarization.

To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

*End.*

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Adopted - GTC-7-11-94-C  
Amended - BC-02-25-15-C

**Chapter 2**  
**ONEIDA ELECTION LAW**

**Onayote?a:ká· Tho Ni· Yót Tsi? ayethiyataláko Tsi? Kayanláhsla**

People of the Standing Stone how it is we will appoint them the kind of laws we have

2.1. Purpose and Policy	2.7. Notice of Polling Places
2.2. Adoption, Amendment, Repeal	2.8. Registration of Voters
2.3. Definitions	2.9. Election Process
2.4. Election Board	2.10. Closing Polls and Securing Ballots
2.5. Candidate Eligibility	2.11. Election Outcome and Ties
2.6. Selection of Candidates	2.12. Elections

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**2.1. Purpose and Policy**

2.1-1. It is the policy of the Tribe that this law shall govern the procedures for the conduct of orderly Tribal elections, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Tribe in the conduct of elections. It is intended to govern all procedures used in the election process.

**2.2. Adoption, Amendment, Repeal**

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution # GTC 7-06-98-A and amended by resolutions #GTC-01-04-10- A and BC-02-25-15-C. The amendments adopted by resolution #GTC-01-04-10-A shall be effective January 4, 2010.

2.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Business Committee or the Oneida General Tribal Council. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

2.2-4. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.

2.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**2.3. Definitions**

2.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding Tribal holidays.

2.3-5. "Campaigning" shall mean all efforts designed to influence Tribal members to support or reject a particular Tribal candidate including, without limitation, advertising, rallying, public

speaking, or other communications with Tribal members.

2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Tribal elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Tribe to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Tribe, or as defined in any law or policy of the Tribe.

2.3-10. "Election" shall mean every primary and election.

2.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. "Oneida Police Officer" shall mean an enrolled member of the Oneida Tribe of Indians who is a police officer on any police force.

2.3-16. "Private property" shall mean any lot of land not owned by the Tribe, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-17. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-18. "Qualified voter" shall mean an enrolled Tribal member who is 21 years of age or older.

2.3-19. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

2.3-20. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

2.3-21. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

2.3-22. "Tribal newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Tribe for the benefit of transmitting news to Tribal members which is designated by the Election Board as a source for election related news.

2.3-23. "Tribe" means the Oneida Tribe of Indians of Wisconsin.

## **2.4. Election Board**

### *Section A. Establishment, Composition and Election*

2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Constitution.

2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

2.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

2.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

#### *Section B. Duties of the Election Board*

2.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

#### *Section C. Specific Duties of Officers and Election Board Members*

2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Oneida Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Tribal Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Oneida Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Oneida Enrollment Department.
- (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as



determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between Tribal members and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

#### *Section D. Compensation Rates*

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the budgeting process of the Tribe.

2.4-12. The Oneida Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

### **2.5. Candidate Eligibility**

#### *Section A. Requirements*

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled Tribal member, as verified by membership rolls of the Tribe.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
  - (1) a valid Wisconsin driver's license;
  - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
  - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Tribal mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

#### *Section B. Eligibility Review*

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall

select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Tribal mail, faxed or other delivery method will be accepted.

### *Section C. Campaign Financing*

2.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Tribe or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any Tribal office or business/facility.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
  - (1) Campaign signs shall not be posted or erected on any Tribal property except for private property with the owner/tenant's permission.
  - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
  - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
- (c) Employees of the Tribe shall not engage in campaigning for Tribal offices during work hours. Tribal employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
- (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
- (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by

the Election Board in an amount specified in a resolution adopted by the Business Committee.

*Section D. Candidate Withdrawal*

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

2.5-14. *Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

**2.6. Selection of Candidates**

*Section A. Setting of Caucus*

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

*Section B. Petition*

2.6-3. Any eligible Tribal member may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing

endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Tribal Secretary's Office or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

- (1) printed name and address;
- (2) date of birth;
- (3) Oneida Tribal Enrollment Number; and
- (4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Tribal Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Oneida Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

## **2.7. Notice of Polling Places**

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of Tribal businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all Tribal members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Oneida Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the Tribal newspaper.

## **2.8. Registration of Voters**

### *Section A. Requirements*

2.8-1. *Registration of Voters.* All enrolled members of the Tribe, who are twenty-one (21) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Tribal Constitution.

### *Section B. Identification of Voters*

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Tribal I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

*Section C. Registration Procedures*

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. Oneida Enrollment Department personnel shall be responsible for verifying Tribal enrollment. Conduct of Oneida Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

*Section D. Qualification/Verification of Voter Eligibility*

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Tribal Constitution, Article III Section 2, to vote in tribal elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

**2.9. Election Process**

*Section A. Polling Places and Times*

2.9-1. In accordance with Article III, Section 4 of the Tribal Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida Tribal facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

- (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) Tribal members verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

#### *Section B. Ballot Box*

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

#### *Section C. Spoiled Ballots*

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

#### *Section D. Rejected Ballots*

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

### **2.10. Tabulating and Securing Ballots**

#### *Section A. Machine Counted Ballots*

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the Tribal members before the polls were opened per section 2.9-3(a).

#### *Section B. Manually Counted Ballots*

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

*Section C. Securing Ballots*

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

**2.11. Election Outcome and Ties**

*Section A. Election Results Announcement*

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

*"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"*

2.11-2. The Election Board shall post, in the prominent locations, and publish in the Tribal newspaper, the tentative results of an election.

*Section B. Tie*

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

*Section C. Recount Procedures*

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the Tribal Secretary's Office, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Tribal Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

*Section D. Challenges and Declaration of Results*

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Tribal



Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

- (a) Total number of persons voting.
- (b) Total votes cast for each candidate by subsection of the ballot.
- (c) List of any ties and final results of those ties, including the method of resolution.
- (d) List of candidates elected and position elected to.
- (e) Number of spoiled ballots.
- (f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

## **2.12. Elections**

### *Section A. Primary Elections; Business Committee*

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for

notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the Tribal newspaper if time lines allow.

*Section B. Special Elections*

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Tribal newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

*Section C. Referendums*

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Tribal Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Tribe or general membership.

*Section D. Initiation of Special Elections*

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a Tribal member to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

*End.*

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Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended - BC-02-25-15-C

**Chapter 36**  
**ONEIDA FOOD SERVICE CODE**

Kahkwa?ó·ku  
about the food

36.1-1 Purpose	36.8-1 Inspections
36.2-1 Adoption, Amendment, Repeal	36.9-1 Fees
36.3-1 Definitions	36.10-1 Independent Food Service Vendors Badge
36.4-1 Responsibilities and Duties	36.11-1 Exceptions and Exemptions
36.5-1 Compliance	36.12-1 Violations, Enforcement
36.6-1 Requirements for registering	36.13-1 Appeal Rights
36.7-1 Insurance	

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**36.1-1. Authority, Amendment, Repeal.** The Oneida Nation is a federally recognized Indian tribe with the sovereign authority to enact laws as authorized in Article IV, section 1 (f) of the Oneida Constitution.

36.1-2. The policy of this Code is to ensure the safe food handling and sales by food vendors who sell their products for profit on tribal property within the exterior boundaries of the Oneida Nation in Wisconsin through licensing, regulation, control and supervision of those vendors.

36.1-3. The purpose of this Code is to protect and preserve the safety of Oneida Nation citizens and others within it's jurisdiction in conjunction with the most current United States Public Health Service Food Code, hereinafter, the Federal Food Code.

36.1-4. The Federal Food Code is adopted along with this Code to provide guidelines regulating the retail sale, commercial and institutional service and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitation, and other terms; and providing standards for employee food safety knowledge, health and practices, food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning and sanitation, water and liquid and solid wastes, facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a license to operate a food establishment; providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties. (*Chapter 8 and the Chapter 8 annex, annex 1 of the Federal Food Code.*)

**36.2-1. Adoption, Amendment, Repeal** This Code is adopted by the Oneida Business Committee by Resolution# 6-13-01-B and amended by resolution BC-02-25-15-C and is effective ten (10) business days after adoption.

36.2-2. This Code may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or by the Oneida General Tribal Council.

36.2-3. Should a provision of this Code or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which will continue to have legal force without the invalid portions.

36.2-4. All previously enacted or adopted Oneida laws, ordinances, policies or other regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted after adoption of this Code.

**36.3-1. Definitions** This article shall govern the definitions of words and phrases used within the law. All words not defined herein shall be used in their ordinary and everyday sense.

36.3-2. "Oneida Nation" means the Oneida Tribe of Indians of Wisconsin.

36.3-3. "Tribal Property" means property that is owned by the Oneida Nation in fee or held in

trust for the Oneida Nation by the United States of America.

36.3-4. "Reservation" means that area in Wisconsin within the exterior boundaries as set out in the 1838 Treaty with the United States of America.

36.3-5. "Federal Food Code" means the most current United States Public Health Service Model Food Code.

36.3-6. "Food Service Establishment" means a permanent unit or location on tribal property which food is processed on site and intended for individual consumption usually for retail sale. The term includes any such place whether consumption is on or off premises, including, but not limited to the following:

- (a) A restaurant or eating/drinking establishment
- (b) A market or grocery
- (c) A catering business
- (d) A bakery or confectionary
- (e) A convenience store or gas station store

36.3-7. "Independent Food Service Vendors" are those individuals who sell food on tribal property for profit that prepare food off site independent of a permanent establishment such as a restaurant, at a source that has been approved by the Environment Health and Safety Department.

36.3-8. "Temporary Food Service" means a food service establishment that operates at a fixed location on tribal property for a period of not more than 14 consecutive days in conjunction with a single event or celebration.

36.3-9. "Environmental Department" means the Oneida Environment Health and Safety Department, hereinafter, EHS.

36.3-10. "Compliance" means to operate a food service business, i.e. a food service establishment, an independent food service or a temporary food service in conformity with the requirements of this Code, the Federal Food Code and the EHS standard operating procedures.

36.3-11. The "Licensing Department" means that department within the organizational structure of the Compliance Division of the Oneida Nation responsible for administering and issuing licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and Codes.

36.3-12. "The Business Committee" means the Oneida Business Committee

36.3-13. "Risk Management" means the Oneida Risk Management Department.

36.3-14. "Emergency" means that situation an unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others due to the imminent nature of the circumstance.

36.3-15. "Close down" means that the food service vendor, by order of the Compliance Division in conjunction with the Business Committee and the Oneida Police Department, based upon the recommendation of the EHS, will be prohibited to be open for business to the public for the protection of the health, safety or welfare of the community.

36.3-16. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

36.3-17. Adopt all other definitions as written in the Federal Food Code.

**36.4-1. Responsibilities and Duties.** The EHS Department shall administer and regulate the requirements of this Code and the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter, "SOP's", for Food Service Vendors.

36.4-2. The EHS Department shall conduct food handling classes that are required for licensing of independent and temporary food vendors. Food service establishment vendors are exempt from this requirement but are to uphold other requirements per the Federal Food Code.

36.4-3. The EHS Department shall have a copy of the most current Federal Food Code available for inspection at the EHS offices by any and all food service vendors during regular business hours.

36.4-4. The EHS Department shall have a copy of their SOP's for Food Service Vendors available for inspection at the EHS offices by any and all food service vendors during regular business hours.

36.4-5. Risk Management shall make the determination to ensure that the vendor has adequate insurance coverage.

36.4-6. The Licensing Department shall issue a Food Service License, Temporary Food Service License, and a badge for Independent Food Vendors upon successful compliance of the requirements of this Code and the Federal Food Code.

36.4-7. The Licensing Department, in conjunction with the EHS Department, shall determine the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing Department.

36.4-8. The Licensing Department shall determine the monetary fines for noncompliance with this Code as approved by the Business Committee.

36.5-1. **Compliance.** Strict compliance with the specific laws found in this Code and the Federal Food Code are required.

36.5-2. Additions or modifications to the Federal Food Code found in this Code are designed to be Oneida specific.

36.5-3. Non-compliance with this Code or the Federal Food Code will be addressed by the License Department of the Compliance Division upon written complaint and or recommendation from the EHS or Risk Management Departments.

36.6-1. **Requirements for Licensing.** No person or person, corporation or firm shall operate a food service establishment either permanent or temporary, or sell food as an independent food service vendor on tribal property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License issued by the License Department.

36.6-2. Only a person or persons, corporation or firm that complies with the requirements of this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food Vendors License.

36.6-3. A valid license shall be posted in every food service establishment or temporary food service premises; and every independent food vendor shall prominently display the valid badge issued by the EHS Department.

36.6-4. A Food Service License will be issued as follows:

(a) All Food Service Establishments, Independent Food Service vendors and Temporary Food Service vendors must meet the general requirements of the Federal Food Code.

(b) Independent Food Vendors and Temporary Food Vendors are required to satisfy the requirements of the EHS safe food handling instruction and certificate of completion of training must be presented to the Licensing Department prior to the issuance of a Food Service License.

Food Service Establishments must satisfy the requirements of the EHS's pre-inspection report which will be provided to the Licensing Department prior to the issuance of a Food

Service License.

(c) The Licensing Department shall issue a Food Service License pursuant to the recommendations by EHS regarding assurances that the applicant has met the conditions that are required for a satisfactory score pursuant to this Code, the EHS SOP's and the Federal Food Code guidelines with the Hazard Analysis and Critical Control Point, Techniques of Quality Control.

(d) Food Service Licenses for permanent Food Service Establishments and Independent Food Service vendors shall be issued by the License Department for a 12 month period beginning at the fiscal year, October 1 and ending September 30 of the following fiscal year.

(e) Those food vendors that initiate their business at a time other than October 1 of any given year shall have their fees prorated for that year.

(f) Renewal of a license will be for an additional 12 months per fiscal year by the License Department upon approval of the EHS Department.

(g) Temporary Food Service Licenses shall be issued for no more than 14 days at a time.

(h) Temporary Food Service Vendors must have at least one food handler that has successfully completed the EHS food handling instruction and have their certificate of completion displayed at all times during hours of operation.

(i) Food Service Licenses for Food Service Establishments and Temporary Food Service vendors shall be displayed in a conspicuous location within the permanent or temporary food service establishments.

(j) Independent Food Service Vendors must display their badges. (See Article X, below.)

(k) No food prepared by a Food Service Vendor shall be prepared in any room used as, or adjacent to, living or sleeping quarters.

36.6-5. Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to adhere to the requirements of this code when selling food for profit on tribal property.

36.6-6. Food Service Licenses are non-transferable.

**36.7-1. Insurance.** Food Service Establishments and Independent Vendors are required to have adequate insurance as determined by the Risk Management Department's Standard Operating Procedures.

36.7-2. Upon satisfying the requirements of the EHS Department, Food Service Establishments and Independent Food Service Vendors must provide the necessary documents of insurance to Risk Management Department.

36.7-3. At any time during the term of the food service license, if the vendor loses his or her insurance coverage, this must be reported immediately by the vendor to Risk Management and/or the License Department.

36.7-4. Temporary Food Service vendors are exempt from the requirement for additional insurance under this article.

**36.8-1. Inspections.** Food Establishment Vendors and Temporary Food Service Vendors who apply for a license must undergo a pre-inspection of the permanent or temporary establishment by the EHS Department inspector that results in a satisfactory score under the Federal Food Guidelines.

36.8-2. Independent Food Service Vendors who apply for a license must undergo a pre-inspection of the kitchen or original food preparation premises by the EHS Department inspector that results in a satisfactory score under the Federal Guidelines.

36.8-3. Inspections of the food service premises by the EHS Department will be scheduled twice a year.

36.8-4. At any time during the term of the license, either upon receipt of a complaint or upon their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food preparation site.

36.8-5. A reinspection conducted as a result of a prior violation of this code or the Federal Food Code, will be an additional fee to the vendor and must achieve a satisfactory score under the Federal guidelines to cure the violation.

**36.9-1. Fees.** The Food Service license fees shall cover a twelve (12) month period and shall be paid in advance with the application for licensure.

36.9-2. The fee shall be paid annually at the beginning of each fiscal year which is October 1 through September 30 of the following year.

36.9-3. The license fees will be prorated for those applicants who start up their business prior to the beginning of the fiscal year.

36.9-4. The fee shall be returned in full if the application is denied.

36.9-5. The licensing agent shall keep fee records.

36.9-6. Food Service vendors that have had their license suspended or their businesses closed will not be entitled to a refund of their fees.

36.9-7. The fee for a food service license shall be pursuant to an equitable fee schedule as established by the EHS and License Department as reviewed and approved by the Business Committee and shall be available in the Licensing and EHS Departments for review.

36.9-8. The fee schedules may be adjusted annually.

36.9-9. Food Service vendor fees shall be used for the operational budget of the EHS (80%) and administrative budget of the License Department (20%).

36.9-10. Oneida Tribal Enterprise Units are required to pay the license fees under this code.

36.9-11. Oneida Tribal Business Units are exempt from the fee requirements.

**36.10-1. Independent Food Service Vendors Badge.** Upon compliance with the requirements of this Code and the Federal Food Code, the Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS with the vendors/employee's photograph and license number clearly visible.

36.10-2. The badge must be worn by the licensed Independent Food Service Vendor and employees in a manner that is clearly visible to the public at all times while engaging in the sale of their food product.

36.10-3. Independent Food Service vendor badges are non-transferable and must be worn only by the individual to whom it was issued.

**36.11-1. Exceptions and Exemptions.** The following food service vendors will be exempt from the requirements of this Code:

- (a) Private rummage sales.
- (b) Community sponsored non-profit fund raising and/or charity events.
- (c) Official Tribal meetings such as GTC Meetings.
- (d) Food sold on land other than tribally owned land.

**36.12-1. Violations, Enforcement.** Selling food or food products on tribal property without a license is strictly prohibited and will result in a fine and/or the suspension of the vendor's right to

continue to sell food, i.e., the business will be closed down.

36.12-2. A food service vendor's license will be suspended and the food service closed down if the licensed vendor is in non-compliance with the requirements of this Code, the Federal Food Code or for any other reasons related to the protection of the Oneida Nation's community public health, safety or welfare.

36.12-3. A food service vendor's loss of insurance coverage or inadequate coverage for their entity will be cause for a suspension of license and the business will be closed down until the vendor procures adequate coverage and provides the documents thereof to the Risk Management Department.

36.12-4. Failure to pass an inspection conducted by the EHS will be cause for a penalty, revocation or suspension of the license pursuant to EHS and Federal Code guidelines.

36.12-5. The vendor's food service business may be closed down by the License Department in conjunction with the Oneida Police Department for an uncorrected, critical violation of this Code or the Federal Food Code as determined by EHS and as approved by the Business Committee.

36.12-6. The EHS may close down a business immediately on an emergency basis upon evidence of a serious health and/or safety threat to the community due to the imminent nature of the food service violation.

36.12-7. Any food service vendor that has been closed down by EHS as an emergency measure due to the evidence of a serious health or safety threat must provide evidence of satisfactorily corrected compliance to the EHS prior to being allowed to reopen the business.

(a) Any food vendor that has been closed due to a violation of the Food Code must be reinspected by EHS at the vendors cost with a resulting satisfactory score pursuant to this Code and the Federal Food Code guidelines.

(b) Any food service vendor that has been closed down may only receive a probationary license for six months upon evidence of satisfactory compliance with this Code and the Federal Food Code,

(c) After six months of satisfactory compliance with this Code and the Federal Food Code, as determined by EHS pursuant to follow-up inspections, the vendor may apply for an annual license as before.

(d) Any food service vendor who violates any provision of this Code, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with the costs of prosecution. In default of payment of such forfeitures and costs, the Food Service business shall be closed down or remain closed down until such forfeitures and costs are paid and all other areas of non-compliance with this Code or the Federal Food Code have been cured.

**36.13-1. Appeal Rights.** Parties who disagree with the decisions of the EHS, Licensing or Risk Management Departments, regarding issues of licensing, inspections, or insurance may appeal to the Judiciary.

36.13-2. Hearings by the Judiciary will be pursuant to the rules established for the Judiciary.



**Attachment A.**

**Food Service License Fees for 2001-2002**  
(To be adjusted annually)

1. Food Service Establishment License
  - a. Restaurants and Eating/Drinking Establishments
    1. With 0-49 seats \$100.00
    2. With 50-100 seats \$150.00
    3. With 101 + seats \$350.00
  - b. Retail Food Market, Grocery Store \$175.00
  - c. Retail Food Market, Grocery Store  
With restaurant \$225.00
  - d. Bakery/Confectionary \$100.00
  - e. Convenience Store/Gas Station \$100.00
  - f. Catering Business \$100.00
2. Independent Food Service License
  - a. \$75.00 annually
3. Temporary Food Service License
  - a. \$25.00 for each event, not to exceed fourteen consecutive days
4. Tribal Schools No Fee

**THIS LICENSE IS NOT TRANSFERABLE**

All licenses expire on September 30<sup>th</sup> annually. A penalty of \$50.00 will be applied to renewal applications postmarked after October 15<sup>th</sup>. Operation in any fiscal year requires a licence.

**Schedule of Fines**  
**For Non-Compliance with this code or the Federal Food Code**

Any food service vendor who violates any provision of this chapter, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with costs of prosecution. In default of payment of such forfeiture and costs, the Food Service business will be closed and/or remain closed until such forfeitures and costs are paid and all areas of non-compliance with this Code or the Federal Food Code have been cured.  
*Oneida Food Code Article 12-10.*

1 <sup>st</sup> Offense, non-critical:	<u>\$25.00</u>
2 <sup>nd</sup> Offense in Five Years, non-critical:	<u>\$100.00</u>
3 <sup>rd</sup> Offense in Five Years, non-critical:	<u>\$200.00</u>
All Subsequent Non-Critical Offenses in Five Years:	<u>\$250.00</u>
1 <sup>st</sup> Offense, Critical:	<u>\$100.00</u>
2 <sup>nd</sup> Offense in Five Years, Critical:	<u>\$300.00</u>
3 <sup>rd</sup> Offense in Five Years: Critical:	<u>\$500.00</u>
All Subsequent Critical Offenses in Five Year:	<u>\$750.00</u>

**\*Note:** Five or more critical offenses in five years will result in the suspension of the license for one year, the business will be closed down and a fine will be imposed to be paid prior to reinstatement.

Fees for reinspection as a result of an original finding of non-compliance by EHS is \$100.00.

ONEIDA NATION IN WISCONSIN

APPLICATION  
FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY

-ENVIRONMENTAL HEALTH AND SAFETY DEPARTMENT-  
-COMPLIANCE DIVISION LICENSE DEPARTMENT-

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In accordance with the Oneida Food Code. I the undersigned, do hereby respectfully make application to the Environmental Health and Safety Department of the Oneida Nation in Wisconsin. for a license to sell food on tribal property for the year ending September 30, 2002.

**I hereby certify that I am familiar with the Federal laws and Oneida Food Code pertaining to the conditions of said establishment on Oneida Nation tribal property, and I hereby agree, if granted said license, to obey all provisions of said Federal laws and Oneida Food Code.**

ESTABLISHMENT NAME \_\_\_\_\_

ESTABLISHMENT ADDRESS \_\_\_\_\_

ESTABLISHMENT TELEPHONE \_\_\_\_\_

AGENT/MANAGER HOME PHONE \_\_\_\_\_

LEGAL LICENSE \_\_\_\_\_

(List the name of the Individual, Partnership or Corporation)

LICENSEE ADDRESS \_\_\_\_\_

PROPERTY OWNER \_\_\_\_\_

DATE WHEN ONEIDA FOOD HANDLING COURSE COMPLETED \_\_\_\_\_

NAME OF INSURER \_\_\_\_\_

(Attach copy of Insurance deck sheet)

SIGNATURE OF APPLICANT \_\_\_\_\_

**\* MUST BE SIGNED TO OBTAIN A CURRENT LICENSE.**

\*\*\*\*\*

\*\*\*\*\*

APPROVED: \_\_\_\_\_ TOTAL FEE PAID: \_\_\_\_\_

Environment Health and Safety Dept.

**ONEIDA NATION**

**ONEIDA FOOD VENDOR'S LICENSE**

October 1, 2002 through September 30, 2003

**Business:**

(Name and address of business)

**Licensee:**

(Name of Person, partnership  
or corporation)

The person, firm or corporation whose name appears on this license has complied with the provisions of the Oneida Food Code and, as adopted, the Federal Food Code and is hereby authorized to engage in the activity as indicated below at the location named from October 1, 2001 to September 31, 2001. This license is non-transferrable.

\_\_\_\_\_  
(Name of type(s) of food service; restaurant, independent,  
temporary, market, bakery, caterer, etc.)

\_\_\_\_\_  
( License fee)

Dated at the office of the Oneida License Department, this \_\_\_\_\_ (Date issued) \_\_\_\_\_.

\_\_\_\_\_  
Oneida License Department Officer

\_\_\_\_\_  
Oneida Health and Safety Department Officer

POST IN A CONSPICUOUS PLACE

**Chapter 37**  
**ONEIDA NATION LAW ENFORCEMENT ORDINANCE**  
**Shakotiye'nás Olihwáke**  
**The Matters of Those Who Protect Us**

37.1-1 Purpose and Policy  
37.2-1 Adoption, Amendment, Repeal  
37.3-1 Definitions  
37.4-1 General Principles  
37.5-1 Oneida Police Department  
37.6-1 Oneida Police Commission

37.7-1 Appointment of Law Enforcement Officers  
37.8-1 Promotion of Law Enforcement Officers  
37.9-1 Disciplinary Proceedings  
37.10-1 Administrative Leave  
37.11-1 Firearms Control

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**37.1-1. Purpose and Policy .** The purpose of this ordinance is to regulate the conduct of the Oneida Tribe of Indians of Wisconsin law enforcement personnel according to the highest professional standards.

**37.2-1. Adoption, Amendment, Repeal.** This law is adopted by the Oneida Business Committee by BC Resolution 10-10-01-C and amended by resolution BC-02-25-15-C.

37.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

37.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

37.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy.

37.2-5. This ordinance shall be known as the Oneida Law Enforcement Ordinance.

**37.3-1. Definitions.** This article shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

37.3-2. Certified Law Enforcement Officer shall mean a sworn officer who meets all qualifications for law enforcement officer, including accepted professional training and experience, State of Wisconsin Certification or eligibility for Certification which includes but is not limited to, satisfactory background investigation, psychological evaluation, drug testing, and police firearms certification.

37.3-3. Police Supervisors are defined as law enforcement officers who hold the rank of Sergeant or above.

37.3-4. Non-sworn Personnel shall mean those persons who perform duties for the Oneida Police Department as directed by the Police Chief or designee.

37.3-5. Oneida Police Commission shall refer to the entity made up of those individuals appointed by the Oneida Business Committee to serve in the capacity of insuring that community input is maintained within the Oneida Police Department by means of policy review and enforcement.

37.3-6. Commissioner shall mean a member of the Oneida Police Commission.

37.3-7. Oneida Tribe means the Oneida Tribe of Indians of Wisconsin.

37.3-8. Judiciary means the judicial system that was established by Oneida General Tribal

Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

**37.4-1. General Principles.** All operations shall take place on and within Oneida Reservation unless there is a potential that safety and welfare of an individual is being compromised. In addition, law enforcement operations may take place pursuant to mutual aid agreements with local governments.

37.4-2. All law enforcement operations shall be conducted as set forth in this ordinance.

37.4-3. Law enforcement operations shall be used primarily for the purposes of providing law enforcement within the Oneida Community and supplement external law enforcement services offered by local governments within the Oneida Community by powers set forth in Article IV, section 1(f) of the Constitution of the Oneida Tribe of Indians of Wisconsin, and as set forth in compacts and agreements authorized by the Oneida Business Committee or General Tribal Council.

37.4-4. The Oneida Tribe of Indians of Wisconsin shall appoint and employ law enforcement personnel within its boundaries as it deems necessary for the purpose of detecting and preventing crime and enforcing the laws and ordinances of the Oneida Tribe, in addition to protection of persons, property, and premises.

37.4-5. The Oneida Police Department may, as authorized and delegated by this Ordinance and the Oneida Business Committee or General Tribal Council, enter into cross-deputization and other law enforcement agreements with other jurisdictions.

37.4-6. The Oneida Police Department may allow law enforcement use of service firearms in order to protect life, liberty, property, land and premises, according to the usual and minimum accepted law enforcement standards as determined by the Police Chief with approval of the Oneida Police Commission. However, actual use of deadly force shall be allowed solely for the protection of life or the prevention of grievous bodily harm.

37.4-7. A Police Commission is established by this Ordinance to provide oversight regarding the activities and actions of the law enforcement operations to provide the greatest possible professional services to the Oneida community and to allow for community input regarding those law enforcement services through its representatives on the Police Commission. This entity is created as an oversight body and does not involve decision making processes on day to day activities of those law enforcement services.

**37.5-1. Oneida Police Department.** There is hereby established the Oneida Police Department, to which is delegated all law enforcement authority of the Oneida Tribe.

(a) Oneida Police Chief The Department shall be headed by a Police Chief, appointed pursuant to Section 6-5 of this Ordinance.

(b) The Police Chief shall have authority over departmental personnel and operations, subject to the powers of the Oneida Police Commission set forth in Section 6-1 of this Ordinance.

(c) In addition to such divisions as are specified in this Ordinance the Oneida Police Department may create divisions of operation as may be deemed appropriate.

(d) The Police Chief or his/her designee shall have the right to exercise his/her police authority to deputize and use the services and manpower of the Oneida Security Department for emergencies, special events, and investigations.

37.5-2. Conservation Department. There shall be a Conservation Department which is a

division of the Oneida Police Department. This division shall be responsible for the protection of all fish resources, wildlife resources and the lands of the Oneida Tribe.

**37.5-3. Law Enforcement Officers.**

(a) **Law Enforcement Officer: Educational Requirements.** All persons hired after February 1, 1993, shall meet the minimum education requirements within five years of the hire date, which are as follows:

- (1) Possess a two year associate degree from a Wisconsin vocational, technical, and adult education district or its accredited equivalent from another state, or
- (2) Possess documentation showing a minimum of 60 fully accredited college level credits. Documentation will be required in the form of an official transcript; or
- (3) Possess a bachelors degree from a Wisconsin college or university or its accredited equivalent.

(b) **Conditional Employment.** Persons hired after February 1, 1993, who are not certified law enforcement officers at the time of hire, are considered conditional employees and must attain the educational requirements as specified in section 5-3(a), within five years of their date of hire. Conditional employees are not eligible for promotion. Law enforcement officers who fail to meet the specified requirements in section B, shall be subject to immediate termination.

(c) **Educational Requirement: Police Supervisors.** Upon enactment of this ordinance, no law enforcement officer may be considered eligible for promotion to supervisor until the educational requirements of section 5-3(a) have been satisfied. Law enforcement officers promoted prior to the enactment of this ordinance are exempt from the educational requirements specified in section 5-3(a).

(d) **Oneida Police Department Position Restrictions/Exceptions.** The following positions shall be held only by members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant, Conservation Director, and Assistant Conservation Director. All other positions and appointments shall be subject to the Indian Preference rules of the Oneida Tribe.

**37.5-4. Liability Coverage.** The Oneida Tribe shall provide professional liability insurance for all law enforcement officers and Conservation Officers.

**37.5-5. Declaration of Additional Restrictions of Employees.** All personnel of the Oneida Police Department shall be bound by Standard Operating Procedures that are required as a result of the specific and unique needs of law enforcement.

**37.5-6. Law Enforcement Officers to Be Sworn.** Law enforcement officers shall be installed by sworn oath before the Oneida Business Committee at a regular meeting.

**37.6-1. Oneida Police Commission .** Oneida Police Commission. There is hereby established an Oneida Police Commission that shall be responsible for and empowered to do the following:

- (a) Appoint, suspend, or remove the Police Chief of the Oneida Police Department.
- (b) Approve all law enforcement officer appointments made by the Police Chief including the promotion of subordinates.
- (c) Adopt, modify, and repeal rules governing how lists of individuals, concluded to be eligible for appointment to law enforcement officer and promotion, are established.
- (d) Approve competitive examinations used to judge suitability for appointment or promotion of law enforcement officers.

- (e) Approve an eligibility list of individuals determined to be eligible for appointment as a law enforcement officer or promotion.
- (f) Suspend law enforcement officers or other appointed personnel of the Police Department pending the filing and hearing of charges against them, subject to the provisions of Article X.
- (g) Initiate charges against law enforcement officers or other appointed personnel of the Police Department.
- (h) Hear charges filed against law enforcement officers or other appointed personnel of the Police Department, whether filed by the Commission or the Police Chief, make findings and determinations, and impose penalties, up to and including termination.
- (i) Hear appeals of disciplinary actions against any law enforcement personnel or non-sworn personnel.
- (j) Adopt rules governing the Oneida Police Commission's management of its own activities.
- (k) Review contracts, and forward to the Oneida Business Committee for approval, concerning cross-deputization, dispatch function and mutual aid pacts which are made between the Oneida Police Department and a non-tribal agency.
- (l) Approve Standard Operating Procedures of the Oneida Police Department.

37.6-2. Appointment of Commissioners. The Oneida Business Committee shall appoint five members to the Oneida Police Commission for a term of five years. Commissioners may serve more than one term but not more than three consecutive terms.

37.6-3. Commissioner Requirements and Qualifications. The following are membership requirements for serving on the Oneida Police Commission:

- (a) Shall be a member of the Oneida Tribe.
- (b) Must be 25 years of age or older.
- (c) Satisfactory background investigation. The following would prohibit any person from serving on the Oneida Police Commission:
  - (1) A felony conviction in the State of Wisconsin, or any conviction of a crime in another state that would be considered a felony conviction if the offense and adjudication occurred in the State of Wisconsin.
  - (2) A felony arrest which results in a misdemeanor conviction due to a plea arrangement.
  - (3) A conviction of any ordinance violation that could bring discredit to the Commission.
  - (4) Any pardon issued by the Oneida Tribe or the governor of any State, for an offense specified in sections 6-3(c)(1)-(3), shall not deem a person as "exonerated" for the purposes of membership on the Oneida Police Commission.
- (d) Must submit to drug testing prior to appointment and on an annual basis.
- (e) Must not be an employee of the Oneida Police Department.
- (f) Shall attend applicable training.
- (g) Must be a person of known good standing in the community.

37.6-4. Removal From Office. In addition to the Removal Law standards, a Commissioner may be removed for:

- (a) Malfeasance in office.
- (b) Conduct which could jeopardize the reputation of the Oneida Tribe, the Oneida Police Commission, or the law enforcement system.



(c) Any change in status which would place the Commissioner in conflict with the qualifications specified in section 6-3(c) above.

(d) Violation of the confidentiality of closed hearings or any other information declared "confidential" by the Oneida Police Commission.

**37.6-5. Qualifications and Process for Appointment as Police Chief.**

(a) The recruitment and hiring process for Police Chief shall be conducted by the Oneida Police Commission, with assistance, as needed, by the Human Resources Department.

(b) No person shall be accepted as a candidate or eligible to serve as Police Chief who does not meet the following qualifications:

(1) Current certification in the State of Wisconsin as a law enforcement officer or upon approval from State of Wisconsin Standards Board.

(2) Member of the Oneida Tribe.

(3) A minimum of five (5) years creditable service as a sworn law enforcement officer for a state, tribal, local or federal government, with preference for (i) those who have at least an associate degree in police science, criminal justice or similar field, or a bachelor's degree in a related subject; and (ii) those with successful supervisory experience.

(4) Current satisfactory background investigation completed by the Security Department or a law enforcement agency selected by the Oneida Police Commission with results of the investigation reported directly to the Oneida Police Commission.

(5) Current satisfactory psychological examination report.

(6) Current satisfactory medical examination report.

(7) Current drug test with negative results for controlled substances.

(c) Examinations, interviews, further selection criteria and other processes utilized in the hiring process of a Police Chief shall be at the discretion of the Oneida Police Commission,

(d) Upon accepting retirement notification or the resignation of a current Police Chief, the Oneida Police Commission shall appoint an interim or acting Police Chief who shall serve in said capacity until the process for appointment of a new chief can be completed.

**37.7-1. Appointment of Law Enforcement Officers. Job Task Analysis.** The Police Chief shall develop a Job Task Analysis (job description) for law enforcement officers and submit to the Oneida Police Commission for approval.

**37.7-2. Hiring Criteria.** Hiring criteria for law enforcement officers, shall be developed by the Oneida Police Commission and implemented by the Police Chief; and must include, but is not limited to:

(a) educational requirements,

(b) satisfactory background investigation,

(c) psychological examination, and

(d) medical certification.

**37.7-3. Hiring Process Outline.** A Hiring Process Outline shall be developed by Oneida Police Commission and implemented by the Police Chief. The Hiring Process Outline will detail specific steps involved in the hiring process for law enforcement officers, and steps in the process involving scoring, rank scoring, or grading shall be specified, as well as passing grades or scores. The Hiring Process Outline shall include all pertinent steps involved in the hiring

process including but not limited to:

- (a) application process,
- (b) application screening,
- (c) written test procedures,
- (d) oral interviews,
- (e) physical agility testing,
- (f) background investigation,
- (g) conditional offer of employment, and
- (h) psychological and medical testing.

37.7-4. Approval of Additional Law Enforcement Personnel.

- (a) The Police Chief shall make a request for the hiring of additional law enforcement personnel through the Human Resources Department processes.
- (b) Upon receiving approval, the Police Chief shall make a formal request to the Human Resources Department for posting the position(s) available. The current Job Task Analysis, Hiring Criteria, and Hiring Process Outline shall be submitted to the Human Resources Department by the Police Chief.

37.7-5. Process. All phases of the hiring process shall be in accordance with the Hiring Process Outline. Duties and responsibilities of persons involved in the process shall be specified in the outline.

37.7-6. Eligibility List.

- (a) Upon completion of all screening steps of the Hiring Process Outline, a list shall be compiled of all candidates based on cumulative scores earned by each applicant in all graded or scored steps of the current hiring process.
- (b) Candidates shall be ranked in inverse numerical order, that is the candidate with the highest cumulative score is ranked "1", the candidate with the second highest cumulative score is ranked "2", etc.
- (c) The list shall be reviewed and approved by the Oneida Police Commission and submitted to the Police Chief.
- (d) The eligibility list will be valid for one year from the date it was compiled.
- (e) The order of appointment of applicants to the position of law enforcement officers shall follow the order of the eligibility list contingent upon satisfactory background investigation, psychological testing and medical testing.

37.7-7. Commencement of Background Investigation.

- (a) Upon receiving the approved eligibility list, the Police Chief shall direct a subordinate to commence a background investigation upon candidates based on their numerical ranking on the eligibility list, starting with the top candidate.
- (b) Results of the background investigations shall be forwarded to the Police Chief and the Oneida Police Commission.
- (c) A candidate may be deemed as having an unsatisfactory background investigation report by either the Police Chief or the Oneida Police Commission, such determinations to be in writing.

37.7-8. Conditional Offer of Employment. Provided a candidate has satisfactory results in a background investigation, an offer of employment shall be sent to the candidate. The offer shall specify the candidate's appointment to the position of law enforcement officer contingent upon satisfactory psychological and medical testing.

37.7-9. Appointment. Provided a candidate has passed psychological and medical testing, a

formal offer of employment shall be extended to the candidate by the Police Chief. In the event the candidate lacks the minimum educational requirements as specified in Section 5-3(a), the contingency of employment shall be specified in the offer.

**37.8-1. Promotion of Law Enforcement Officers. Criteria For Promotion.** The Oneida Police Commission and the Police Chief shall establish specific criteria for the promotion of law enforcement officers. The criteria shall be placed on the notice or position posting for the promotion.

37.8-2. Process. The process for promotion shall be developed by the Police Chief and approved by the Oneida Police Commission. The specifics of the process shall be placed on the notice or position posting for said promotion.

37.8-3. Psychological Testing Required. All candidates for promotion shall undergo psychological testing and have a satisfactory report prior to promotion. The results of such test shall be made available to the Police Chief and the Oneida Police Commission President.

37.8-4. Promotion. Upon completion of all steps in the promotion process, a law enforcement officer may be promoted upon review and recommendation of Oneida Police Commission to the Police Chief.

**37.9-1. Disciplinary Proceedings: Law Enforcement Officers. Purpose.**

(a) Disciplinary actions may be commenced against a law enforcement officer by the Police Chief for violations of departmental Standard Operating Procedures or laws of the Oneida Tribe or other government. Such actions are independent of and exempt from the Oneida Blue Book. Discipline may range from a verbal warning to termination.

(b) In serious matters, an internal investigation is conducted by the Oneida Police Department and the law enforcement officer under investigation may be placed on administrative leave pursuant to Article XI.

(c) In order to insure due process to law enforcement officers, a law enforcement officer has the right to appeal a disciplinary action to the Oneida Police Commission.

(d) Disciplinary actions may be ordered by the Police Chief. The officer may appeal a disciplinary action to the Oneida Police Commission. Upon filing of an appeal, the Police Chief shall submit formal charges against the officer to the Oneida Police Commission.

(e) Any citizen may file charges or a complaint against an officer with the Police Chief. The Oneida Police Commission can proceed with a hearing after an investigation by the Police Chief.

(f) If a citizen wishes to file a complaint with the Oneida Police Commission, the Oneida Police Commission will refer the complaint to the Police Chief to begin an investigation. Upon completion of the investigation the Police Chief shall submit his written report to the Commission.

37.9-2. Commencement of Disciplinary Hearings. A request for an appeal of a decision of the Police Chief must be submitted in writing to the Oneida Police Commission within 30 calendar days.

(a) If the request is by a law enforcement officer or a citizen against a law enforcement officer, the President must without delay, notify the Police Chief that a hearing has been requested.

(b) The Oneida Police Commission must meet within ten calendar days and set a hearing

date.

(c) The Oneida Police Commission has the right to extend hearing dates for cause.

37.9-3. Rights and Responsibilities of the Oneida Police Commission at Hearings.

(a) The Oneida Police Commission shall have legal counsel and a court reporter present at all formal proceedings.

(b) The Oneida Police Commission has the authority to subpoena witnesses.

(c) Hearing procedures that may be unique to a particular hearing shall be established prior to the hearing.

(d) Disciplinary hearing shall be open, except where:

(1) the person subject to discipline requests in writing that the hearing be closed; or

(2) the Police Chief requests in writing that the hearing be closed and indicates that confidential police matters are involved.

(e) Commissioners shall not discuss the disciplinary matter with anyone outside the Commission until the hearing is completed and a decision is filed.

37.9-4. Rights of the Accused Law Enforcement Officer at Hearings.

(a) Notice of charges that have been made, or will be made, as well as actions that will or may be taken against the individual.

(b) The right to a hearing and respond to the charges.

(c) The right to representation at the individual's expense.

(d) The right to confront and cross-examine his/her accusers.

(e) The right to present evidence and argue his/her view of the facts.

37.9-5. Pre-Hearing Conference.

(a) A pre-hearing conference shall be scheduled at least five (5) working days before the hearing. The law enforcement officer and the complainant shall be notified in writing of the pre-hearing conference and both may be represented.

(b) The following matters shall be accomplished at the conference.

(1) Witness lists and any prior written or recorded statements or reports of witnesses will be exchanged between the parties or their representatives.

(2) Exhibit lists will also be exchanged between the parties or their representatives, and each party and/or their representative shall be permitted to physically inspect all exhibits of the other party.

(3) Witnesses or exhibits not on the pre-hearing conference lists may not be introduced at the hearing unless the Oneida Police Commission determines that the party or their representative can demonstrate a satisfactory reason for the inclusion of such witness or exhibit on the list(s) submitted at the pre-hearing conference.

(4) In the absence of the party's representative at the pre-hearing conference, the Oneida Police Commission shall dismiss the charges unless the party or representative can demonstrate a satisfactory reason for non-appearance.

37.9-6. Hearing Procedure.

(a) The nature of a law enforcement agency requires the highest level of public trust. As a result, hearings will be open to the public to allow the public to be reassured that hearings are conducted under the highest standards of objectiveness and reason.

(b) The President of the Oneida Police Commission has the duties of:

(1) Presiding over the hearing.

- (2) Maintaining order.
- (3) Insuring that the hearing is fair and impartial.
- (c) The President may elect to use an attorney or experienced hearing examiner to assist in conducting the hearing.
- (d) Order of Business.
  - (1) The President calls the hearing to order and
    - (A) Explains that the Oneida Police Commission is not an investigative body.
    - (B) Describes the hearing as a formal inquiry into the facts of the matter in front of them as an original hearing body.
  - (2) The President reads the charges, as filed with the Oneida Police Commission, and cites the rule(s) and/or policy(s) that were alleged to be violated.
  - (3) Testimony begins with the person(s) who filed the charges.
    - (A) Witnesses, evidence, documents, and other related reports will be submitted by the Police Chief or complainant.
    - (B) Witnesses testify under oath which can be administered by the President or any other Commissioner.
    - (C) Any Commissioner may ask questions but they must be relevant to the issues at hand. It is the President's responsibility to insure that the questions are germane.
    - (D) The law enforcement officer or representative may challenge the testimony or evidence presented.
  - (4) The law enforcement officer or representative is given an opportunity to present facts, introduce evidence, and call witnesses to prove:
    - (A) That the law enforcement officer was wrongly charged.
    - (B) The penalty is not appropriate for the violation.
  - (5) The complainant may challenge any testimony offered by the accused.
  - (6) Both sides are allowed to present closing summaries of their position.
  - (7) The President then adjourns the hearing.
  - (8) The Oneida Police Commission retires to executive session to deliberate upon the matter.

37.9-7. Just Cause Standard Applied to Commission Deliberations. The Commissioners shall base their decisions regarding a disciplinary action upon the "just cause" standard.

- (a) Whether the law enforcement officer could reasonably be expected to have had knowledge of the probable consequences of the alleged misconduct.
- (b) Whether the procedure the law enforcement officer allegedly violated is reasonable.
- (c) Whether the Police Chief, before filing charges against the law enforcement officer, made a reasonable effort to discover whether the law enforcement officer did, in fact, violate a procedure.
- (d) Whether the investigation was fair and objective.
- (e) Whether the Police Chief discovered substantial evidence that the law enforcement officer violated the procedure as described in the charges filed against the law enforcement officer.
- (f) Whether the Police Chief is applying the rule or order fairly and without discrimination against the law enforcement officer.
- (g) Whether the proposed discipline is reasonable as it relates to the seriousness of the

alleged violation and to the law enforcement officer's record of service with the Oneida Police Department.

37.9-8. Commission Actions.

(a) The Oneida Police Commission may on appeals, review a disciplinary action taken by the Police Chief, and:

- (1) Approve the action taken by the Police Chief without change.
- (2) Dismiss or modify the charge(s) made by the Police Chief.
- (3) Modify any penalty imposed by the Police Chief.
- (4) Void the action taken by the Police Chief

(b) The Oneida Police Commission may impose any of the following penalties, but is not limited to the penalties listed herein.

- (1) Verbal consultation
- (2) Written reprimand.
- (3) Suspension without pay.
- (4) Demotion in rank.
- (5) Termination of employment.

(c) The Oneida Police Commission's findings shall be in writing and include:

- (1) A statement of all charges filed.
- (2) The specific rule(s), policy(s) or standard(s) of conduct violated.
- (3) A list of charges that the Oneida Police Commission found were proven.
- (4) A summary of the disciplinary actions considered by the Oneida Police Commission.
- (5) The disciplinary action ordered by the Oneida Police Commission and any special actions attached to the approved disciplinary action.

(d) In acting on a complaint including a request for termination of employment, filed with the Oneida Police Commission, the Oneida Police Commission may:

- (1) Dismiss the complaint.
- (2) Dismiss or modify certain charges filed.
- (3) Conclude that the testimony and evidence sustain the charges and impose a penalty.
- (4) Allow the Oneida Police Commission the power to hire an outside agency to conduct the investigation of allegations against the Police Chief.

37.9-9. Appeals of Commission Findings. Appeal of Oneida Police Commission's ruling shall be made to the Judiciary.

**37.10-1. Administrative Leave: Law Enforcement Officers.** General. Administrative leave is an action commenced by the Police Chief affecting the status of a law enforcement officer. A law enforcement officer is temporarily relieved of all law enforcement powers while on administrative leave. The law enforcement officer continues to receive salary and is responsible to report to the Police Chief or perform other duties as assigned. Administrative leave does not denote wrong-doing on the part of the law enforcement officer.

37.10-2. Applicability. Administrative leave may only be ordered in the following circumstances:

- (a) The law enforcement officer poses a threat to themselves or others.
- (b) The law enforcement officer is alleged to have committed a violation(s) which calls for termination of his or her employment as a law enforcement officer and the matter is

under investigation.

(c) The law enforcement officer is alleged to have committed a violation(s) that is under investigation and that would cause a loss of public trust in the Oneida Police Department.

(d) The law enforcement officer is under investigation for alcohol or drug abuse.

(e) The law enforcement officer is under investigation for insubordination, untruthfulness, or commission of a crime.

(f) The law enforcement officer demonstrates behavior indicating the law enforcement officer is unfit for duty.

37.10-3. Duration of Administrative Leave.

(a) In cases where the law enforcement officer is under formal investigation, the law enforcement officer will remain on administrative leave until the investigation is completed.

(1) If the investigation results in allegations being sustained, the law enforcement officer will remain on administrative leave pending issuance of discipline.

(2) If the investigation results in a finding that the charges were unfounded or not sustained, the law enforcement officer shall be immediately returned to active duty status.

(b) In cases where the law enforcement officer is placed on administrative leave for other matters not involving formal investigation, the law enforcement officer shall be returned to active duty status upon order of the Police Chief. The period of administrative leave in incidents not involving investigation shall not exceed thirty working days.

**37.11-1. Firearms Control.** The Oneida Tribe hereby establishes regulations for the carrying of firearms issued to certified law enforcement officers employed by the Oneida Tribe.

(a) The needs and requirements for carrying firearms shall be established and determined by the Police Chief subject to the review of the Oneida Police Commission.

(b) Said requirements shall reflect the needs of the Oneida Tribe in order to protect all persons and property.

*End.*

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Adopted - BC -10-10-01-C  
Revisor Correction 2004 [CB1]  
Amended - BC-02-25-15-C

**Chapter 56**  
**ONEIDA VENDOR LICENSING**  
Lonatkehluní kanaktótha?  
they are permitted to sell to one

56.1-1. Purpose and Policy  
56.2-1. Adoption, Amendment Repeal  
56.3-1. Definitions  
56.4-1. Scope of the Requirement  
56.5-1. Application/Renewal Procedures

56.6-1. Fees for License  
56.7-1. Appeal of Agency and License Commission Decisions  
56.8-1. Revocation of Vendor's License  
56.9-1. Specific Requirements  
56.10-1. Exempt Status

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**56.1-1. Purpose and Policy.** The purpose of this Ordinance is to regulate and license all vendors who provide a service for and do business with the Oneida Tribe of Indians of Wisconsin.

56.1-2. Furthermore, it is the purpose of this ordinance to provide regulations, criteria and procedures for the issuance of licenses to all vendors who provide a service for or do business with the Tribe.

56.1-3. It is also the purpose of this ordinance to generate revenue for the Oneida Tribe of Indians of Wisconsin by implementing and enforcing a collection of fees from vendors for a license to perform a service for or do business with the Tribe.

56.1-4. It is the policy of the Oneida Tribe of Indians of Wisconsin to utilize the Oneida Compliance Division as the authority to implement and enforce the issuance of vendor's licenses and for the collection of fees.

**56.2-1. Adoption, Amendment Repeal.** This ordinance is adopted by the Oneida Business Committee by resolution BC-3-5-97-Enr and amended by resolution BC-02-25-15-C.

56.2-2. This ordinance may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

56.2-3. Should a provision of this ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ordinance which are considered to have legal force without the invalid portions.

56.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this ordinance as related to the licensing of vendors by the Compliance Division are hereby repealed unless specifically re-enacted after adoption of this ordinance.

56.2-5. This law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**56.3-1. Definitions.** This Article shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

56.3-2. "Emergency Situation" means an unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others, cause the loss of perishable goods, or create an economic hardship due to the unavoidable imminent nature of the circumstance.

56.3-3. "Business Entity" means that which exists as a particular and discrete unit, but not limited to, any person, partnership, corporation, joint venture, franchise, governmental



enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the jurisdiction of the Oneida Vendor's Licensing Ordinance.

56.3-4. "Vendor's License" means a permit granted by an appropriate governmental body to a person, business, or corporation to pursue some occupation or to carry on some business or service, and which is subject to the regulations of the Oneida Nation.

56.3-5. "License Fee" means that fee imposed upon all vendors who apply to perform a service for or do business with the Oneida Tribe of Indians of Wisconsin as established and calculated by the Compliance Division pursuant to the regulatory grant of power afforded them by this ordinance.

56.3-6. "Licensing Agent" means an employee of the Oneida Licensing Department of the Oneida Compliance Division with the delegated authority and responsibility to implement and enforce this ordinance.

56.3-7. "Oneida Compliance Division" means that division within the Oneida administration with the purpose and authority to oversee adherence to laws, ordinances, policies and procedures of the Oneida Tribe.

56.3-8. "Oneida License Commission" means the regulatory entity formed to conduct hearings and decide cases of licensing disputes as they relate to those licenses, certificates or permits issued by the Compliance Division.

56.3-9. "Oneida Licensing Department" means that department located within the organizational structure of the Compliance Division of the Oneida Tribe which is responsible for administering licensing programs on behalf of the Tribe, hereafter referred to as department.

56.3-10. "Oneida Nation" means the Oneida Tribe of Indians of Wisconsin.

56.3-11. "Training Session" means an educational experience contracted wholly for the education of tribal members or employees.

56.3-12. "Tribal Members" means persons who are enrolled with the Oneida Tribe of Indians of Wisconsin.

56.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

**56.4-1. Scope of the Requirement.** The provisions and requirements of these regulations shall be adhered to by all business entities and shall apply to every one and every business entity that performs services and/or does business with the Oneida Nation separate from and in addition to those requirements imposed by other Tribal entities, such as, the Oneida Gaming Commission and the Division of Land Management.

56.4-2. A grace period of sixty (60) days from the date of the original passage of the Oneida Vendor's Licensing Ordinance shall be granted in order that all business entities may be brought into compliance with this Ordinance.

56.4-3. Notice shall be given for implementation of the Oneida Vendor's Licensing Ordinance pursuant to the requirements of the Administrative Procedures Act adopted by resolution GTC-8-19-91-A.

56.4-4. All information given for purposes of receiving a vendor's license for doing business with the Oneida Nation, excluding financial information, is considered subject to a request for information and available for public inspection. Provided further, that all

information given for purposes of receiving a vendor's license for doing business with the Oneida Nation, including financial information, is subject to internal audit of the Oneida Nation.

#### 56.5-1. Application/Renewal Procedures

(a) The department shall notify all new applicants of the Oneida Vendor's Licensing Ordinance requirements and procedures for application. Upon request of the licensing agent, the applicant shall be required to provide the necessary documentation to verify the following information:

- (1) The name of the business entity, with proof of identification
- (2) The type of business,
- (3) The business address and the name of the agent for service of process,
- (4) Verification of required adequate insurance coverage or bonding,
- (5) Federal I.D. number or Social Security number.
- (6) Accounts Payable Vendor Number, this information may be provided by the licensing agent,
- (7) Food vendor
- (8) Name of buyer, buyer's address, items sold or services offered
- (9) Signature of applicant and date of application

(b) The licensing agent shall deny, or approve the application based on compliance with the criteria set in this ordinance, verification of the requested information, and; whether or not the following exist:

- (1) payment of the fee paid at the time of application; if the fee is not paid the vendor's license will not be issued. If a business entity is doing business with the Oneida Nation without a vendor's license the department shall notify the Accounting Department to recover the fee by retaining the amount from compensation for the product or services rendered by the vendor;
- (2) first time vendor fees may be prorated per licensing agent's guidelines;
- (3) any outstanding fees owed to the Oneida Nation, all outstanding fees must be paid before a vendor's license will be issued;
- (4) inadequate insurance coverage; insurance verification must be provided to the agent before the vendor's license is issued, the licensing agent will forward the information to Oneida Risk Management for approval; if the applicant/entity has inadequate insurance coverage, the vendor's license will not be issued;
- (5) other factors which relate to the protection of Tribal and/or public health, safety, or welfare.

(c) The licensing agent shall notify the applicant of the approval, or denial of the application within ten (10) working days, and:

- (1) if approved, the licensing agent shall issue the vendor's license to the business entity; and
- (2) if the vendor's license is denied, the reasons for denial of the vendor's license; and
- (3) notification of a right to request an appeal to the decision.

(d) A number shall be assigned to each vendor's license by the licensing agent for identification.

(e) All applications for vendor's license and a copy of each certificate of vendor's license shall be retained by the licensing agent for one (1) year from date of application;

thereafter, said documents shall be retained by Oneida Records Management for seven years.

56.5-2. Renewal procedures shall be as follows:

- (a) The vendor's license shall be applied for annually.
- (b) Vendor's license renewal shall be on a yearly basis, from date of issuance of the vendor's license.

#### 56.6-1. Fees for Licensure

- (a) The fee for a vendor's license shall be pursuant to an equitable fee schedule as established initially by the department, and as reviewed annually by the License Commission, with recommendations from the Oneida Finance Committee and approval of the Oneida Business Committee.
- (b) The department shall retain no more than 50% of the vendor's license fees collected; the balance of the fees collected will be transferred to the Trust Department to be paid in the Elderly Per Capita Fund.
- (c) The vendor's license fee shall be paid over a twelve (12) month period, and
  - (1) The fee shall be paid annually at the time of the application. The fee shall be returned if application is denied.
  - (2) The licensing agent shall keep fee records.
  - (3) Late fee payment may be added to cost of annual license fee. If fee is due, the applicant/entity may be charged \$3 per month, see sec. 51(b)(1-3).
- (d) The vendor's license shall be prepared and sent out by the licensing agent. All vendor's licenses shall be conspicuously placed on or in the premises of the place of business or service.
- (e) The fee shall be determined and based upon the revenue as generated by the business entity with the Oneida Nation the year directly preceding that year and date in which the business entity applies for licensure. Business' with no revenue history shall pay a fee determined by the department based upon a projected revenue figure.

#### 56.7-1. Appeal of Agency and License Commission Decisions

*Oneida License Commission Hearings.*

- (a) Parties who disagree with the decisions of the licensing agent on matters of dispute regarding issues of licensing, certification or permits issued by the Compliance Division, may request a hearing before the License Commission.
- (b) Hearings before the License Commission will be pursuant to the original hearing procedures as set out in the Administrative Procedures Act.

56.7-2. *Appeal of License Commission Decisions.* A party may appeal to the Judiciary for an appellate review and final determination of the License Commission decision.

#### 56.8-1. Revocation of Vendor's License

A vendor's license issued by the Licensing Department may be revoked by the licensing agent if the business entity is in non-compliance with this ordinance, inadequate insurance coverage, or for any other reasons related to protection of Tribal and/or public health, safety, or welfare, pursuant to the following procedures:

- (a) the business entity is notified of the revocation by the licensing agent and the reasons for the revocation; and

- (b) the business entity is given thirty (30) days in which to rectify the non-compliance, except in the case of inadequate insurance coverage, in which case the vendor's license will be revoked when the information of inadequate coverage is verified; and
- (c) should the business entity come into compliance or secure adequate insurance coverage, the vendor's license shall be reinstated;
- (d) if compliance is unattainable, the business entity is notified of his/her right to appeal the licensing agent's decision to revoke the vendor's license.

56.8-2. Procedures for non-compliance and revocation of a vendor's license after thirty (30) days shall be as follows:

- (a) Notice will be given to the Oneida Accounting Department that vendor's license has been revoked, whereupon the Accounting Department shall suspend all future payment to said vendor for all services or goods.
- (b) Upon revocation of the vendor's license, the business entity shall be prevented from doing business with the Oneida Nation until such time the former licensee is able to comply with the Ordinance and submits a new application.
  - (1) Any fees owed shall be deducted from any potential compensation due to the provider.
  - (2) Verification and approval of required insurance coverage shall be provided by the Oneida Risk Management Department.

#### 56.9-1. Specific Requirements

Applicants subject to approval must be in compliance with requirements as set forth in all related Tribal ordinances, including but not limited to, Oneida Indian Preference laws, Oneida Food Vendors Ordinance, Real Property Law, and Oneida gaming laws.

56.9-2. A food vendor shall be issued a vendor's license contingent upon the requirements of the Oneida Environmental Health Department which includes a certificate of training and written notice to the department. A certificate from the Oneida Environmental Health Department certifying completion of necessary requirements and instructions for safe food handling must be presented at time of application.

56.9-3 Applicants who are contracting for construction work must have their bid awarded by the Oneida Tribe in accordance with the Construction Improvement Process Policy.

56.9-4. Applicants who are selling, brokering, or leasing real estate must have approved real estate licenses as required by the Real Property Law.

56.9-5. Applicants who are contracting for electrical, plumbing, /air conditioning or building work must be licensed by the Oneida Zoning Department as required by the Building Code of the Oneida Reservation.

#### 56.10-1. Exempt Status

The following must be licensed but are exempt from the required fee:

- (a) Those individuals who receive stipend revenue for Oneida Nation as members of entities of the Oneida Nation.
- (b) Vendors whose revenue from the tribe is less than \$1,000 per year.
- (c) Consultants, means all individuals, businesses or corporations who have a consultant relationship with the Oneida Nation for the purpose of providing professional advice, training or any other service for profit and whose revenue from the Oneida Nation is less than \$500 per year.

(d) Training sessions where the focus is wholly upon the education and/or training of Tribal members or employees and where the amount contracted for does not exceed \$2,000. Those training sessions that exceed the \$2,000 limit will be subject to the usual fees assessed for licensure.

(e) One time deferral for payment of vendor's license fees of up to thirty (30) days for emergency situations may be granted. Application for fee deferral must be made at the time of application with specific explanation of the emergency situation filed in writing by the applicant.

(f) A failure to pay or payment after the deferral date has expired, may be grounds for denial of a vendor's license or assessment of late fee penalties.

56.10-2. The following are exempt from licensure:

(a) Services or products provided by another federally recognized Tribe, subject to all the laws and the Ordinances of the Oneida Tribe.

(b) Services or products provided by another government, subject to all the laws and ordinances of the Oneida Tribe.

**ATTACHMENT A  
VENDORS LICENSING FEE SCHEDULE FOR 1996  
FLAT FEE AMOUNT**

Yearly Oneida Vendors Fee ..... 1100.00

Approved by:

ONEIDA BUSINESS COMMITTEE:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Debra Doxtator, Chairwoman

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Julie Barton, Secretary

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*End.*

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Adopted- BC-2-17-92-C  
Adopted- BC-3-5-97-E  
Amended- BC-02-25-15-C

**CHAPTER 67**  
**REAL PROPERTY LAW**  
**Toká/ske Kayan/khsla Tsi? Ni?yohuntsya'té**  
The real/certain laws of the territory of the nation

67.1.	Authority, Purpose, Policy	67.9.	Disposition Of Estates Of Deceased Tribal Members
67.2.	Adoption, Amendment, Repeal	67.10.	Real Estate Trust Accounts
67.3.	Rules Of Statutory Construction	67.11.	Leasing Of Real Property
67.4.	Definitions	67.12.	Records
67.5.	Interests In Real Estate: Individual Or Tribal	67.13.	Real Estate Licensing
67.6.	Holding Of Ownership	67.14.	Real Estate Financing
67.7.	Legal Descriptions	67.15.	Tribal Real Estate Taxes
67.8.	Title Transfer	67.16.	Organization

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**67.1. Purpose and Policy.**

*67.1-1. Purpose*

- (a) The purpose of this Law is to provide regulations and procedures for the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.
- (b) In addition, this Law establishes a training and licensing mechanism for any person who lists, sells, buys, exchanges, leases, rents, or deals in any way with real property coming under the scope of this Law.
- (c) Nothing in this Law shall be construed as a waiver of the sovereign immunity of the Oneida Tribe of Indians of Wisconsin.

*67.1-2. Policy*

- (a) The provisions of this Law shall extend to all tribal lands and waters held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.
- (b) The licensing provisions of this Law shall extend to any person who lists, sells, buys, exchanges, leases, rents or deals in any way with real property coming under 1-3a, of this Law, including employees of the tribe.
- (c) Any transaction which would add property to the tribal land base shall be administered through the Division of Land Management under the provisions of this Law.
- (d) The sale of tribal land is specifically prohibited under this Law, except for the purposes of consolidation or partition of property.
- (e) It is not intended by this Law to repeal, abrogate, annul, impair or interfere with any rules, regulations, or permits previously adopted or issued pursuant to tribal or federal laws. Further, it is intended that Wisconsin law be considered as an integral part of real property transfer occurring within or without the Reservation, insofar as the transaction is between a non-Oneida person(s) who hold fee simple title to land within the Reservation and the Tribe or a tribal member.

(f) Expenses and Fees. The Land Commission shall establish an equitable fee schedule for each activity or service provided in this Law. All fees collected will be used for the maintenance of services and management of lands which come under the authority of this Law.<sup>1</sup>

## **67.2. Adoption, Amendment, Conflicts.**

67.2-1. This Law was adopted by the Oneida Business Committee by BC-5-29-96-A and amended by BC-3-01-06-D, BC-04-28-10-E and BC-02-25-15-C.

67.2-2. This Law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

67.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

67.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

67.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

## **67.3. Rules Of Statutory Construction.**

67.3-1. General words are understood to be restricted in their meaning by more specific words which came before.

67.3-2. If the meaning of a general word cannot be reconciled with the meaning of a specific word in this Law the specific word will control.

67.3-3. When a series of words of general meaning is followed by words of limitation, the limitation will apply only to the last word in the list, unless otherwise stated.

67.3-4. The word "shall" is mandatory and the word "may" is permissive.

67.3-5. The Law should be read as a whole. The words are not meant to be isolated, and their meaning must be found in reference to the statement as a whole.

67.3-6. If a later enacted Law or statute cannot be read in agreement with an earlier enactment, the later enactment will control when interpreting the meaning from context.

67.3-7. "Land" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including things permanently attached by nature, such as tree and water.

67.3-8. "Real Estate" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it, whether natural or permanent man-made additions.

67.3-9. "Real Property" or "Property" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it,

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<sup>1</sup> Other laws that are relevant to the purpose and implementation of this Law include:

Oneida Shoreland Protection Ordinance

Oneida Zoning Ordinance

Oneida Administrative Procedures Act

25 CFR 150-179 (Land and Water)

25 CFR 15 (Probate)

25 CFR 261-265 (Heritage Preservation)

Wisconsin Statutes and Administrative Code relating to the practice of Real Estate

State and Federal Laws specifically cited in Ordinance



whether natural or permanent man-made additions, plus the bundle of legal rights which include control, exclusion, possession, disposition and enjoyment.

67.3-10. The word "Person" when used in this Law includes individuals, corporations or partnerships.

#### **67.4. Definitions.**

67.4-1. Accounting. The responsibility of a broker to report the status of all funds received from or on behalf of the principal.

67.4-2. Agency. Any tribal entity, board, commission, committee, department or officer authorized by the Oneida Tribe to propose Law/rules for adoption by the Oneida Business Committee. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.

67.4-3. Appraisal. A process of estimating a property's value.

67.4-4. Attorney. A person trained and licensed to represent another person in court, to prepare documents defining or transferring rights in property and to give advice or counsel on matters of law.

67.4-5. Broker. A person who acts as an agent and negotiates the sale, purchase or rental of property on behalf of others for a fee, and must be licensed under this Law under certain circumstances.

67.4-6. Bundle of Rights. The "rights" of ownership include the right of possession, the right to control the property within the framework of the law, the right of enjoyment, the right of exclusion and the right of disposition.

67.4-7. Buyer. The person who hires a broker to find a parcel of real estate that has certain characteristics or is usable for specific purposes; or the person who buys a piece of real estate from a seller broker or salesperson.

67.4-8. Care. The broker must exercise a reasonable degree of care and skill while transacting the business of the principal.

67.4-9. Certified Survey Map. A map officially filed and approved by the County, Tribal or municipal governments, which provides the legal description of any land in question.

67.4-10. Contested Cases. A proceeding before an Agency in which an opportunity for a hearing before the Agency is required by law prior or subsequent to the determination of the Agency of the legal rights, duties, or privileges of specific parties unless otherwise provided for by tribal law. This includes 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. See Oneida Administrative Procedures Act.

67.4-11. Counseling. Providing clients with competent independent advice based on sound judgment, on such things as alternative courses of action regarding the purchase, use and investment of property.

67.4-12. Development. The construction of improvements on land.

67.4-13. Disclosure. The broker's duty to keep the principal fully informed at all times of all facts or information the broker obtains that could affect the transaction.

67.4-14. Dual Agency. When a broker receives compensation from both buyer and seller in a transaction.

67.4-15. Education. The provision of information to both the real estate practitioner and the consumer.

67.4-16. Fiduciary. One who is placed in a position of trust and confidence and normally is responsible for the money and/or property of another. A broker and a salesperson are both fiduciaries.

- 67.4-17. Financing. Financing is the business of providing funds by means of a mortgage loan.
- 67.4-18. Fixtures. Articles that were once personal property but has been so affixed to land or a building that the law construes it to be part of the real estate.
- 67.4-19. Fraud. The intentional misrepresentation of a material fact in such a way as to harm or take advantage of another person. In addition to false statements about a property, the concept of fraud covers intentional concealment or nondisclosure of important facts.
- 67.4-20. Individual Fee Land. Land held in fee by an individual or group of individuals.
- 67.4-21. Individual Tribal Property. Real property owned by an Oneida Tribal member in fee or held in trust for that member by the United State of America.
- 67.4-22. Individual Trust Land. Land held by the United States of America in trust for the benefit of an individual Tribal member.
- 67.4-23. Intestate. One who dies without having made a will; or property not disposed of by will.
- 67.4-24. Judiciary. The judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- 67.4-25. Law of Agency. The body of law that governs the rights and duties of principal, agent and third persons.
- 67.4-26. Mobile Home. A building which, when originally constructed, was prefabricated and on wheels to allow movement from one location to another with minimal modifications necessary to attach utilities. It is considered to be personal unless it is permanently affixed to the land, at which point it is considered real property.
- 67.4-27. Personal property or Personalty. All property that does not fit the definition of real property, and usually the characteristic of being "movable."
- 67.4-28. Plat Map. Map of a piece of property that may be a part of a larger parcel of real estate or may be composed of several smaller ones which the surveyor resurveys. This new map is called a Plat map, and it creates a new legal description which must be tied to the description on a Certified Survey Map(s), to be considered acceptable for transfer of property.
- 67.4-29. Probate. An official authentication of a will, and/or official administration of an estate of a deceased person.
- 67.4-30. Reservation. That area within the exterior boundaries as set out in the 1838 Treaty with the Oneida 7 Stat. 566, and that land purchased and held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin outside those exterior boundaries
- 67.4-31. Salesperson. A person who receives a fee or commission to work on behalf of the broker, and must be licensed under this Law under certain circumstances.
- 67.4-32. Subsurface Rights. The rights to natural resources lying below the earth's surface.
- 67.4-33. Sun Rights. A solar energy owner's right to access to the sun.
- 67.4-34. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.
- 67.4-35. Tribal Fee Land. Land held in fee by the Oneida Tribe.
- 67.4-36. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.
- 67.4-37. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.
- 67.4-38. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and Onáyote? a·ká.

## **67.5. Interests In Real Estate: Individual Or Tribal.**

67.5-1. Fee Simple Absolute. The greatest interest of ownership or distribution in a parcel of land that it is possible to own i.e. no conditions. Sometimes simply designated as fee. Tribal individuals, non-tribal individuals and tribal government may hold fee interest in land within the Oneida Reservation.

67.5-2. Leasehold. The interest in fee or trust property that is qualified by some future determinant such as time, age, or an act/incident.

67.5-3. Fee or Trust subject to a Condition. An interest which includes a proviso in the deed or will that upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.

67.5-4. Life Lease. A lease of the right of use and occupancy of Tribal Fee or Trust Lands for the life of an individual either Oneida tribal or non-tribal.

67.5-5. Trust. Land held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin, or for a member of this tribe.

67.5-6. Life Use, or Estate. A claim or interest in individual trust property by a non-tribal spouse, not amounting to ownership, and limited by a term of life of the person in whom the right is vested.

#### **67.6. Holding Of Ownership.**

67.6-1. Interests in land by more than one person may be held in the following ways:

(a) Joint tenancy with right of survivorship: Each owner has an equal, undivided interest in the property. As an owner dies, their share is divided among the remaining owners, so the last living owner owns the entire property.

(b) Tenancy in common. Each owner has a percentage interest in the property. As an owner dies, that owner's interest is divided among his or her devisees or heirs. Two or more individuals holding property are tenants in common unless:

(1) a deed, transfer document or marital property agreement specifically states the property is held as joint tenants with rights of survivorship; or

(2) a married couple holds the property without a marital property agreement that specifically states the property is held as tenants in common.

#### **67.7. Legal Descriptions.**

67.7-1. The legal description for any land transferred under this Law will be derived from a Certified Survey Map (CSM) or Plat of Survey completed by a registered Land Surveyor according to currently accepted minimum standards for property surveys. If the Plat of Survey changes the legal description of the CSM for the same piece of property, the CSM legal description will be used on transfer documents along with the Plat of Survey description designated "**Also Known as ...**" Section, Township, Range and Fourth Principal Meridian must be within all tribal legal descriptions.

67.7-2. Every land survey shall be made in accordance with the records of the County Register of Deeds for fee land, and in accordance with the records of the Oneida Division of Land Management for all trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, Title Status Reports from the Bureau of Indian Affairs, Tribal Leases, Tribal Home Purchase Agreements, center line and other boundary line locations.

67.7-3. Legal description defining land boundaries shall be complete providing unequivocal identification of line or boundaries.

67.7-4. In addition to Survey Map requirements outlined in Wisconsin Administrative Code, Chapter A-E7, all surveys prepared for the Oneida Tribe should indicate setbacks, building locations and encroachments.

67.7-5. Legal descriptions will be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer to beneficiaries or trust acquisition and tribal resolutions indicating legislative approval.

67.7-6. When real estate is listed for sale or lease to tribal members, the address is considered an adequate legal description of the property.

### **67.8. Title Transfer.**

67.8-1. General. It is presumed that the intentions of parties to any real property transfer are to act in good faith. For this reason, this shall be liberally construed when faced with conflict or ambiguity in order to effectuate the intentions of the parties.

67.8-2. The Division of Land Management shall use only those title companies duly registered with the Department of Interior and approved by the Division of Land Management to update abstracts or provide Title Insurance on real property scheduled for trust acquisition.

(a) Title Companies must follow general guidelines provided by federal government in terms of form, content, period of search, destroyed or lost records and Abstracter's Certificate.

(b) When researching Land title within the reservation which is being considered for trust acquisition, the Title Company will be requested to search the title back to the original allottee, to assure that patents or Indian Deeds were legally issued.

(c) Any valid liens or encumbrances shown by the Commitment for Title Insurance must be eliminated before the Title is transferred into Trust.

(d) After land is in trust, title search of County records is no longer acceptable. Title Status Reports from Oneida Division of Land Management or the Bureau of Indian Affairs shall be used to verify all valid encumbrances, if any, on the title. A valid encumbrance is one that has been preapproved, in writing, by the Division of Land Management.

67.8-3. The Warranty Deed is the formal document used by the Division of Land Management to transfer title from one party to another. It shall not be considered valid unless it is in writing and:

(a) Identifies the grantor and grantee;

(b) Provides the legal description of the land;

(c) Identifies the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest.

(d) Is signed by or on behalf of each of the grantors;

(e) Is signed by or on behalf of each spouse, and

(f) Is delivered.

67.8-4. A Warranty Deed prepared for Trust Acquisition shall, in addition to that listed in 8-3, include the following:

(a) The federal authority for Trust Acquisition;

(b) Any exceptions or exclusions from State fees or other transfer requirements;

(c) The approximate acreage of the real property being transferred to Trust; and

(d) The authority and signature of the appropriate Department of Interior official who accepts the real property into Trust.

67.8-5. A Warranty Deed transferring fee simple title shall be recorded in the appropriate Register of Deeds office. Once the real property is in trust, the Title shall be recorded with the Oneida

Division of Land Management and the Aberdeen Title Plant for the United States Department of the Interior.

67.8-6. An involuntary Transfer of title may occur in the following ways:

(a) Tribal Eminent Domain is the right of the Tribal Government to acquire private land for public uses without the consent of private owners. Public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing. Attempts must first be made to negotiate an agreeable taking by the Tribal Government; thence provide an offer to purchase based on a tribal appraisal of the property; and provide compensation for the taking. Provision for required hearing on the taking and appeals to the Judiciary can be found in the Judiciary's rules of procedure.

(b) Foreclosures may occur whenever a tribal member ceases payment on a mortgage for leasehold improvements, a tribal home purchase agreement, or home improvement loan. If the loan is through a public lending institution the Tribe may choose to pursue its option to purchase the loan and finalize the foreclosure through the Division of Land Management. A decision to foreclose shall be handled as a Contested Case according to the Oneida Nation Administrative Procedures Act, Section 10. Contested Cases and 11. Appellate Review. Also see 14-5 of this Law.

(c) The Indian Land Consolidation Act was passed by Congress and became effective January 12, 1983 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98 Stat. 3171). Section 207 of said Act is incorporated into this Law, which provides that if it is determined that the decedent's ownership in a given parcel of land is 2 percent or less of the total acreage, and that interest is incapable of earning \$100.00 in any one of the five (5) years from the date of the decedent's death, thence that ownership interest shall escheat, or pass, to the Tribe having jurisdiction over said land, for just compensation, unless the heirs can prove by substantial evidence that the above determination was wrong. This determination will be made through Probate proceedings in 67.9 of this Law.

(d) Upon the Tribe receiving majority consent from heirs, the Land Commission may approve an Order Transferring Inherited Interests under the authority of Section 205 of the Indian Land Consolidation Act provided that none of the Indians owning an undivided interest is willing to purchase or match the tribes offer.

(e) An Involuntary Transfer of Title cannot occur without a hearing in front of the Land Commission, or its designated subcommittee, under procedures of the Oneida Nation Administrative Procedures Act, Section 9. Declaratory Ruling, or Section 10. Contested Cases.

(f) Easements for Landlocked Properties. A procedure for handling a request for an easement will be developed and approved by the Land Commission.

67.8-7. Records. All documents pertaining to trust property within the Oneida Reservation shall be recorded in the United States of America Aberdeen Title Plant as well as the Division of Land Management. See also Section 12.

67.8-8. All Individual and Tribal lands purchased in fee shall be transferred to Trust held by the United States of America through procedures promulgated by the Division of Land Management, and supported by waivers approved by the Secretary of Interior or designate.

### **67.9. Disposition Of Estates Of Deceased Tribal Members.**

67.9-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide

procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

(a) Tribal members holding fee land within the reservation may use the laws and procedures of the State of Wisconsin or those of this Law.

(b) Tribal members holding trust land within the reservation shall use the laws and procedures of this Section.

67.9-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

(a) Sale of interest to the Oneida Tribe or an eligible heir for its fair market value;

(b) Acquire a life estate in the property if an ineligible spouse and/or minor child.

67.9-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

67.9-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

67.9-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

(a) Clothing, furnishings, jewelry, and personal effects of the deceased not valued at more than \$100 per item.

(b) Ceremonial clothing or artifacts, including eagle feathers, beadwork, dance sticks, flutes, drums, rattles, blankets, baskets, pottery, medicines, and animal skins.

67.9-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

(a) Heirs of Oneida members who die without a will (intestate) and possessed of fee or trust property coming under the authority of the Oneida Tribe of Indians of Wisconsin;

(b) Approve or disapprove wills of deceased Oneida members disposing of trust property;

(c) Accept or reject full or partial renunciations of interest;

(d) Allow or disallow creditors' claims against estates of deceased Oneida members;

(e) Decree the distribution of all assets of a deceased Oneida member.

67.9-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

(a) Family history information,

(b) Death certificate,

(c) Personal and Real Property Inventory,

(d) BIA-IIM Account Report,

(e) Creditor Claims,

(f) Original will, if any,

(g) Names, addresses and phone numbers of all parties-in-interest.

67.9-8. Definitions As Used In This Section

(a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.

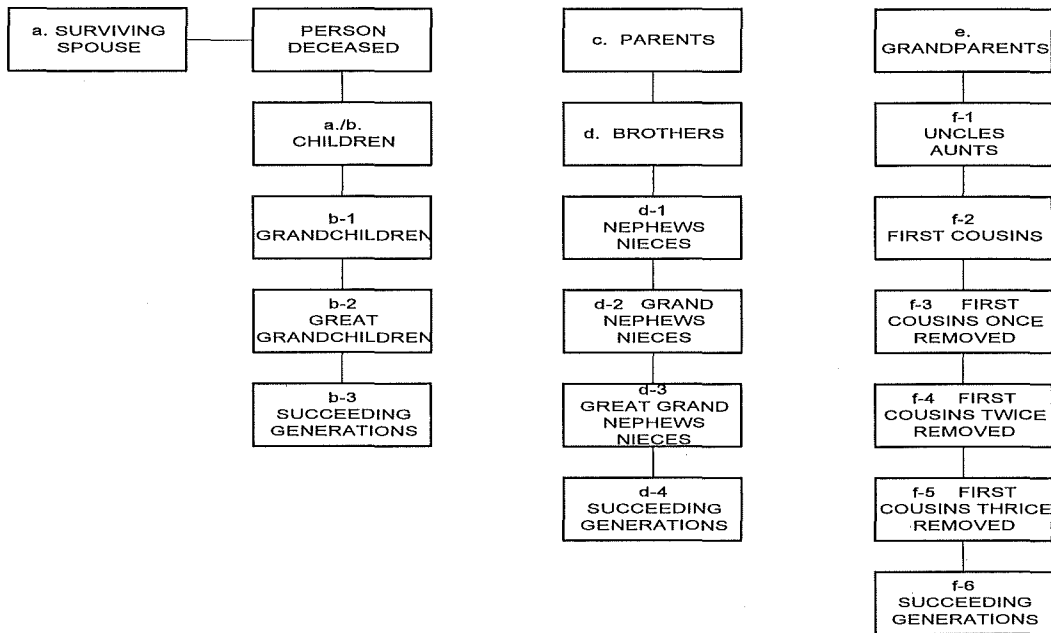
(b) Parties-in-interest: This includes:

- (1) Heirs of the decedent
  - (2) A beneficiary named in any document offered for probate, such as the will of the decedent, land lease or sale agreement for real estate.
  - (3) A person named as administrator or personal representative in any document offered for probate.
  - (4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-committee, whether by receipt of or denial of any property which is a part of the action.
- (c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a decedent.

67.9-9. *Parties-in-interest.* The net estate of a decedent, not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows:

- (a) To the spouse:
  - (1) All Real Property.
  - (2) All other than Real Property if there are no surviving children of the decedent.
  - (3) ½ of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.
- (b) To Surviving Children and children of any deceased child of the decedent by rights of representation;
  - (1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.
- (c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.
- (d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.
- (e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.
- (f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

(g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



(h) Any 2% interests, or less, in land, as defined in 8-6(c) of this Law.

67.9-10. When the Probate File is complete, it will be placed on the agenda for review by the Land Commission, who will first review it for sufficiency. If the Land Commission determines the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate file is determined to be complete, a hearing shall be scheduled at a time when most, if not all, parties can attend.

(a) *Notice*: All parties-in-interest will be sent a certified personal notice of the hearing to their current or last known address. The hearing notice will also be posted at NORBERT HILL CENTER, LITTLE BEAR DEVELOPMENT CENTER and other public places within the reservation, and published in at least two issues of the Kalihwisaks, the Milwaukee Sentinel/Journal, a Green Bay Paper and an Appleton paper. The notice will include time and place for hearing, agenda, approximate length of hearing and contact person. This notice will be provided at least 10 days before the hearing takes place.

(b) The hearing will generally adhere to the following format:

- (1) Rules for an open, nonjudgmental discussion shall be presented and accepted.
- (2) Probate file is reviewed and data added or corrected based on consensus of those present.
- (3) Ample time is provided for full discussion of the process, presentation of additional data for the file, and defining of problems or disputes to be entered into the record.
- (4) All problems or disputes shall be settled in this hearing, with all parties-in-interest present and assisting in this resolution. This includes recommendations for clear partition of any real property held in undivided interest, and full discussion of creditor claims. This hearing shall be continued to another date only if unpredicted circumstances or unavailable information impedes the progress of resolution.
- (5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Director of Land Management, who will notify the Land



Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

67.9-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 9-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

(a) This request must include affidavits, witness list, summary of testimony and other support documents which would provide a justifiable reason why any new information was not available at the original hearing.

(b) If basis for rehearing is alleged procedural irregularities, the request shall include complete documentation of these irregularities.

(c) If basis for rehearing is the constitutionality of the Law or its procedures, a legal brief shall be attached to the request which clearly establishes the legal rationale for this claim.

(d) If basis for rehearing is that the determination is clearly erroneous, arbitrary and/or capricious, a clear statement or legal brief summarizing the party's rationale for believing this to be true shall be attached to the request.

67.9-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

(a) The Land Commission may deny a rehearing if there is insufficient grounds for the petition, or if the petition is not filed in a timely fashion.

(b) The Land Commission may order a rehearing based on the merit of the petition. The petition and supporting papers are then sent to all participants of the first hearing along with the date for the rehearing.

(c) If a rehearing is ordered, the Land Commission will adhere to the same notice requirements as in the first hearing. In addition, the hearing body should be composed of the same individuals responsible for the first hearing. Based on the information presented at the rehearing, the hearing body may adhere to the former Ruling, modify or vacate it, or make such further determinations that are warranted.

67.9-13. Any Declaratory Ruling given under this Section may be appealed to the Judiciary within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 9-6.

67.9-14. A party may petition the Judiciary to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

(a) They were not a participant in the first hearing;

(b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and

(c) They have rights which were erroneously left out of the first probate hearing.

67.9-15. After looking at the record of the first hearing, the Judiciary may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

67.9-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Judiciary shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

(b) If trust land is part of the Ruling, it shall also be recorded at the Department of Interior Aberdeen Title Plant.

#### **67.10. Real Estate Trust Accounts.**

67.10-1. A property trust account or escrow account shall be established by the Division of Land Management to deposit money or property being held for the following purposes:

- (a) To ensure receipt of mortgage satisfaction from seller;
- (b) Tax, insurance and utility payments held in escrow;
- (c) Security deposits on rental property;
- (d) Administrative fee;
- (e) Earnest money;
- (f) Any other receipts pertaining to real property transfer.

67.10-2. Division of Land Management Staff shall deposit all funds received within 48 hours.

67.10-3. The name Real Estate Trust Account and the Division of Land Management's name shall appear on all checks, share drafts or drafts from this account.

67.10-4. Within 10 days of opening or closing the account, the Division of Land Management shall notify the tribe's Internal Auditor of the name and number of the account, person(s) authorized to sign trust account checks and the name of the depository institution.

67.10-5. Receipt of earnest money shall be written on the relevant document pertaining to the transaction.

#### **67.11. Leasing Of Real Property.**

67.11-1. All leasing of tribal land shall be processed through the Division of Land Management.

67.11-2. Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs.

67.11-3. All leases shall include the responsibility of the lessee and lessor regarding the following principles:

- (a) Possession of Leased Premises;
- (b) Improvements,
- (c) Maintenance of Premises,
- (d) Assignment and Subleasing,
- (e) Options to Renew,
- (f) Destruction of Premises,
- (g) Termination of Lease,
- (h) Breach of Lease,
- (i) Use of Premises,
- (j) Term of Lease,
- (k) Security Deposit.

67.11-4. Assignment of leasehold interest for the purpose of financing shall be processed and recorded at the appropriate office by the Division of Land Management. No assignment or related encumbrance to the leasehold interest shall be valid without approval and recordation through procedures established by the Division of Land Management.

67.11-5. In the event of default by the Lessee of the terms of an approved encumbrance, and the Lessee's assignment reaches the point of sale or foreclosure, the Division of Land Management shall have the right to correct the default. If the default is corrected under these circumstances the Lessee will be subject to further proceedings under the Oneida Administrative Procedures Act, Section 10 Contested Cases, which may lead to termination of Lessee's lease, loss of improvements, revised payment schedule and/or Garnishment of Lessee's wages in order to pay the remainder of the default.

#### **67.12. Records.**

67.12-1. *Purpose.* The purpose of recording is to provide evidence of activities that effect land title; preserve a record of the title document; and give constructive notice of changes to the title.

67.12-2. *Types Of Record.* The Division of Land Management shall develop a system for timely recording of Oneida Reservation title documents, including the following:

- (a) Deeds
- (b) Probate orders
- (c) Mortgages and other valid liens
- (d) Easements, covenants, restrictions
- (e) Certified Survey Maps and Plats of survey
- (f) Patents
- (g) Declarations of Involuntary Transfer or Taking
- (h) Satisfactions
- (i) Leases
- (j) Contracts
- (k) Home Purchase Agreements
- (l) Correction of Title defects

67.12-3. *Recordable Documents.* The original, a signed duplicate, or certified copy of the title document listed above shall be submitted for recording.

67.12-4. *Accessibility.* It is the policy of the Division of Land Management to allow access to land records and title documents unless such access would violate the Privacy Act (5 U.S.C. 552a).

67.12-5. *Certification.* Upon request, the Legal Services office will conduct a title examination of a tract of land by a qualified title examiner and provide a title status report to those persons authorized by law to receive such information, along with certification of these findings by the staff attorney.

67.12-6. *Tribal Seal.* The Land Commission is empowered to have made and provided to the Division of Land Management the seal of the Oneida Tribe to be used to authenticate documents which are certified by the staff attorney.

### **67.13. Real Estate Licensing.**

67.13-1. *General.* Any person engaged in the business of buying, selling, advertising, listing or leasing tribal property shall be required to hold a Tribal Property License. A license requirement is established in order to protect the tribe and its members from fraud, dishonesty or incompetence in the negotiation and transfer of real property.

67.13-2. *Who Must Be Licensed.*

(a) *Tribal Property Brokers.* A Tribal Property Broker is defined as any person who has training in all aspects of real property, and acts for another person or the tribe to perform any of the following real property duties:

- (1) selling;
- (2) listing;
- (3) buying;
- (4) leasing;
- (5) renting;
- (6) exchanging;
- (7) negotiating any of above activities.

(b) *Salespersons.* A Tribal Property Salesperson is defined as any person who assists a Broker in accomplishing any of the above real property duties, and has been certified to have received the level of training outlined in this Law.

(c) *Apprentices.* Any person desiring to act as an tribal property salesperson shall file with the Division of Land Management an application for a license. A GED, HSED or high school diploma is required, except for those who write and pass a preliminary examination covering general knowledge including reading, writing, arithmetic and general real estate terminology.

67.13-3. *Exceptions.* This Section does not apply to the following:

- (a) persons who perform real property duties on their own property;
- (b) receivers, trustees, administrators, executors, guardians or persons appointed by or acting under the judgment or order of any judicial system;
- (c) tribal public officers while performing their official duties;
- (d) banks, savings and loan associations and other designated financial institutions when transacting business within the scope of their corporate powers as provided by law;
- (e) any licensed attorney who, incidental to the general practice of law, negotiates loans secured by real estate mortgages or encumbrances or transfers of real estate;
- (f) employees, such as janitors, custodians or other employed by the tribe who show property or accept lease applications as an incidental part of their duties.
- (g) persons who list, sell, or transfer real property for a cemetery association of a church, tribal program or other nonprofit organization.

67.13-4. *Licensing Procedure*

(a) *Education Requirements.* Conference seminars, courses at accredited institutions, and Oneida Career Center classes will be accepted as proof of the hours of education received by an applicant.

(1) Each applicant for a salesperson's license must submit to the Division of Land Management, proof of attendance at 45 classroom hours of educational programs dealing with State, Federal and Tribal transfer of Real Property. At least 25 classroom hours shall cover Tribal and Federal real property law.

(2) Each applicant for a broker's license must submit to the Division of Land Management, proof of attendance at 90 classroom hours of education programs addressing State, Federal and Tribal transfer of Real Property.

(b) *Experience Requirements.* Each applicant for a tribal broker's license must submit to the Division of Land Management, proof of at least one year of experience as a real property salesperson, or as a broker in another jurisdiction.

(c) *Examination.* The Licensing Examination for tribal brokers and salespeople shall be administered through the Oneida Career Center.

(1) Land Commission will create a test which will contain the following materials:

- (A) 50% Tribal Law
- (B) 30% Federal Law
- (C) 20% Wisconsin Law

(2) A score of 75% or better on each portion of the examination is required to pass. If an applicant fails any of the three portions of the exam, that applicant will have six opportunities to retake the failed portion within the following six months. If that applicant cannot pass the failed portion within the following six months, he or she must retake the entire exam to qualify for a license.

(d) *Fees.* The following fees are applicable to tribal licensees. The Land Commission will establish an equitable fee schedule for the following:

- (1) issuance of a tribal salesperson or broker license
- (2) annual renewal fee for a tribal salesperson or broker license
- (3) late penalty for filing within 30 days of expiration

- (4) late penalty for filing within year of expiration
- (5) Test fee

(e) *Licensing.* An applicant who has passed the appropriate license examination and has complied with the necessary requirements will be granted a license by the Oneida Land Commission. The license authorizes the licensee to engage in the activities of a tribal real property broker or salesperson as described in this Law. All licenses shall show the name and business address of the licensee.

67.13-5. *Rules Of Responsibility*

(a) The intent of this section is to establish minimum standards of conduct for real property licensees and to define that conduct which may result in Land Commission action to limit, suspend or revoke the license of a real property broker, salesperson or apprentice, or impose a fine.

(b) Violations of rules in this section may demonstrate that the licensee is incompetent, or has engaged in improper, fraudulent or dishonest dealings.

(1) A licensee has an obligation to treat all parties to a transaction fairly.

(2) In order to comply with Federal and Tribal law, licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against a person because of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, sexual orientation, age or ancestry.

(3) Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent.

(4) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying and selling public based upon these factors.

(5) Licensees shall not advertise in a matter which is false, deceptive, or misleading.

(6) Licensees shall not personally accept any commission, rebate, or profit from any of their real property dealings.

(7) Licensees shall not engage in activities that constitute the unauthorized practice of law.

(8) Licensees shall not discourage any person from retaining an attorney.

(9) Licensees shall not exaggerate, misrepresent or conceal material facts in the practice of real estate.

(10) Licensees shall not knowingly transmit false information.

(11) No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

(12) Licensee shall not disclose any of the terms of one prospective buyer's offer to purchase to any other prospective buyer.

(13) Licensee shall not issue checks upon trust accounts which contain insufficient funds.

(14) Licensees shall notify the Division of Land Management if they are convicted of a crime, except motor vehicle offenses, so that a determination can be made whether the circumstances of the crime are substantially related to the practice of a tribal real property broker or salesperson.

(15) Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

(16) Licensee shall not enter into overlapping agreements that could be construed as dual agency.

**67.13-6. Penalties For Violation Of This Law**

(a) Fines for minor infractions may be imposed by the Land Commission for any amount up to \$50.00. Minor infractions may include the first three infractions of the above listed offenses, or others as defined by the Land Commission.

(b) The Land Commission shall provide a fair hearing, as per Oneida Nation Administrative Procedure Act, Section 10. Contested Cases, for any person alleged to have violated this section, before a penalty is ordered.

(c) Major infractions of this section may lead to an action to limit, suspend or revoke the license of the defendant; disposition of a fine for any amount up to \$500; and/or penalties and judgments authorized by the Oneida Administrative Procedures Act Section 10(e).

**67.13-7. Licensing Fee For Non-tribal Brokers.** The Division of Land Management is empowered to develop a licensing fee schedule and collection procedures for all brokers who enter a consensual agreement to sell property to the Oneida tribe and are not licensed by this Law. These fees will be used for maintenance of services and management of Real Property within the authority of this Law.

**67.14. Real Estate Financing.**

**67.14-1.** The goal of tribal loan programs is to maintain and improve the standard of living for tribal members, while protecting and expanding the Tribal Land base.

**67.14-2.** Consistent with available funds, the Division of Land Management shall provide loan programs for the following purposes:

- (a) Financing the purchase or down payment of existing homes and lands,
- (b) Construction of new homes,
- (c) Repair and improvement to existing homes,
- (d) Refinancing existing mortgages,
- (e) Purchasing or refinancing mobile homes,
- (f) Consolidation of Loans, and
- (g) Real Estate Tax Arrearage.

**67.14-3. Eligibility Requirements For All Loans:**

- (a) All applicants must be 21 years of age.
- (b) Applicant(s) must be an enrolled member of the Oneida Tribe.
- (c) Financed property must be located within the boundaries of the Oneida Reservation.
- (d) Applicants must have an acceptable credit rating.

**67.14-4.** All loan programs are provided only to tribal members in order to respond to the Oneida Tribe's legislative purpose of expanding and maintaining tribal jurisdiction over all land within the boundaries of the Oneida Reservation, while fulfilling basic membership needs for adequate housing.

(a) The applicant for any loan must list one to three Oneida Tribal members who will inherit any interest in Real Property mortgaged by a Tribal loan program, upon death of the applicant.

(b) If the spouse of an applicant is a non-tribal member, he/she may continue to pay off the loan, as long as he/she agrees to list three tribal beneficiaries in case of death. Once the loan is satisfied, the designation of beneficiaries to the mortgaged interest in fee property will lapse.

(c) If the applicant and non-tribal spouse commence divorce proceedings, the Division of Land Management may

- (1) refinance the enrolled member's loan balance so he/she may secure the entire property,
  - (2) provide an offer to purchase the entire property and pay off liens,
  - (3) consider some other financial agreement that would assist the tribal applicant in retaining property within the boundaries of the reservation.
- (d) A non-tribal spouse shall sign an affidavit at the time that a tribal loan is accepted indicating he/she is informed of this regulation and consent to the tribal spouse receiving a mortgage against homestead property, held in fee, with this condition attached.

#### 67.14-5. *Foreclosures*

(a) *Default.* Any Tribal Loan that is in default for three consecutive months is subject to foreclosure proceedings, provided that a Notice of Arrears, showing the increasing amounts payable to cure the default, has been sent to the loan holder(s) each month by the Loan Officer.

(b) *Decision To Foreclose.*

(1) After three notices, the Loan Officer will provide the Director of Land Management, and the Loan Committee, all documents and information necessary to determine whether or not foreclosure proceedings should be started.

(2) Any recommendation to foreclose will be put on the next Land Commission agenda for concurrence, scheduling of a hearing, and designation of a three-person hearing body.

(3) Each member of the three-person hearing body will receive \$150 for being present at the scheduled hearing, reviewing all information presented, and providing a final decision, opinion, order or report based on their deliberations, except for employees of the Oneida Tribe who have permission to be a part of the hearing body as part of their job.

(4) The Director of Land Management will make provisions for necessary clerical support for the three-person hearing body.

#### 67.15. **Tribal Real Estate Taxes.**

67.15-1. Regulations for the promulgation of a Real Estate Tax Code will be developed by the Division of Land Management by October 1, 1996, in order to provide for increasing costs for services provided to occupants of tribal land, such as environmental services, public roads, fire protection, recycling, garbage pick-up, water and sewer, transportation, traffic control, loans, and management of real property.

#### 67.16. **Organization.**

##### 67.16-1. General

(a) The Division of Land Management shall administer all transactions that come under this Law.

(b) All tribal agencies will process any type of real property acquisition, including donations, through the Division of Land Management.

##### 67.16-2. Land Commission

(a) *Number of Commissioners.* The Commission shall be comprised of seven (7) elected Tribal members.

(b) *Term of Office.* The terms of office for the Commissioners shall be three (3) years. Terms shall be staggered with expiring positions elected every year. The first elected

Land Commissioners shall serve according to the following formula, and staggering of terms shall begin thereafter:

- (1) The three (3) candidates receiving the three highest number votes shall serve an initial term of three (3) years.
- (2) The two (2) candidates receiving the next two highest number votes shall serve an initial term of two (2) years.
- (3) The two (2) candidates receiving the next two highest number of votes shall serve an initial term of one (1) year.
- (4) In the event of a tie vote in the first election, a coin toss shall determine which candidate shall serve the longer term.

(c) *Powers and Duties.* The Land Commission shall have the following powers and duties:

- (1) The Land Commission shall set standards of professional competence and conduct for the professions detailed in this Law, review the examination grades of prospective new practitioners, grant licenses, investigate complaints of alleged unprofessional conduct, and perform other functions assigned to it by law.
- (2) Hear and decide, as the original hearing body, contested cases that may arise from this Law.
- (3) Implement and interpret the provisions of this Law.

67.16-3. Administration

(a) Director of Division of Land Management. The Director shall have the following powers and duties:

- (1) Hire, train, and establish operational and objective commitments for support staff needed to implement this Law.
- (2) Supervise staff in accordance with Tribal Personnel Policies and Procedures.
- (3) Provide Declaratory Ruling per procedures in this Law and the Oneida Nation Administrative Procedures Act.
- (4) Implement all aspects of this Law through the Oneida Tribal Planning and Budgeting Process.

*End.*

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Adopted - BC-5-29-96-A  
Amended-BC-3-01-06-D  
Amended-BC-04-28-10-E  
Amended - BC-02-25-15-C



## Social Media Policy

Article I. Purpose and Policy

Article II. Adoption, Amendment, Repeal

Article III. Definitions

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### Article I. Purpose and Policy

1-1. The purpose of this policy is to regulate social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Tribe or a Tribal entity.

1-2. It is the policy of the Tribe to permit entities and persons to administer social networking web pages, blogs, microblogs and other social media accounts on behalf of the Tribe or a Tribal entity in accordance with kalihwiyo, "The use of the Good Words about ourselves, our nation and our future."

1-3. This policy is not intended to provide a right for employees to use the internet or social media while at work for personal use. Supervisors retain discretion to permit or prohibit the personal use of Tribal computers in accordance with Chapter 15, Computer Resources Ordinance.

### Article II. Adoption, Amendment, Repeal

2-1. This policy was adopted by the Oneida Business Committee by resolution BC 06-08-11-C and amended by resolution BC-02-25-15-C.

2-2. This policy may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this policy and a provision of another policy, law, ordinance, regulation, rule, resolution, or motion, the provisions of this policy shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### Article III. Definitions

3-1. This article shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Administrator" shall mean a person(s) designated by an entity, as responsible for adding, changing or removing content from that entity's social media account. This shall not include persons that only submit material to others so that it may be posted to the social media account.

(b) "Blog" shall mean a website maintained with regular entries of commentary, descriptions of events, announcements, news or other material such as graphics or video.

(c) "Entity" shall mean any organization, division, branch, board, committee, commission or office of the Tribal government or a Tribal enterprise that performs specific functions or operations on behalf of the Tribe. "Entity" does not mean Tribally-owned corporate boards and/or corporations.

(d) "Guest" shall mean a party that subscribes to a social media account in order to

receive access to the content of an account and/or leave comments on an account.

(e) "Judiciary" shall mean the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

(f) "Microblog" shall mean a blog that allows administrators to send brief text updates or micromedia, such as photos or audio clips, which are then published, either to be viewed by anyone or by a restricted group which can be chosen by the administrator.

(g) "Profile page" shall mean a web page accessible to the public or to guests, which provides personal information about the entity that created the social media account.

(h) "Social media account" shall mean any social networking web page, blog or microblog, or any chat room, message board or web pages that serve similar functions.

(i) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

(j) "Tribal social media account" shall mean a social media account administered on behalf of the Tribe or a Tribal entity.

#### **Article IV. Establishing a Tribal Social Media Account**

4-1. The entity proposing to maintain a Tribal social media account shall register the social media account with the Tribal Secretary's Office (Secretary's Office). Tribal social media accounts already established on the date this policy becomes effective shall register such social media accounts with the Secretary's Office, in accordance with this policy, within forty-five (45) days of the effective date of this policy.

4-2. In order to register a Tribal social media account, an entity shall submit the following materials to the Secretary's Office:

(a) A description of the social media account.

(b) The user ID and password that provides access to change the content on the social media account.

(c) A list of administrators that are authorized to add, remove or change content on the social media account.

(d) Signed forms from each administrator acknowledging that he or she has read and understands the Computer Resource Ordinance and this policy.

(e) Standard operating procedures governing the maintenance of the Tribal social media account.

(f) Any guidelines created by the entity, in addition to this policy, which will be posted on the Tribal social media account and establish specific protocol for the social media account.

4-3. When an entity submits required materials to the Secretary's Office and other applicable Tribal laws and policies are complied with, a Tribal e-mail address shall be provided for the Tribal social media account.

(a) Entities that have established a social media account prior to the date this policy becomes effective shall have thirty (30) days from receipt of the Tribal e-mail address to transfer the social media account to that e-mail address, except as provided in 4-3(b).

(b) When an entity is unable to transfer its social media account to the provided Tribal e-mail address, the Secretary's Office may either:

(1) permit an entity to continue to operate the social media account utilizing its current e-mail address; or

(2) require the entity to close the current social media account and create a new social media account, using the Tribal e-mail address provided.

4-4. After the Tribal social media account is established, the entity shall provide the Secretary's

Office with any security questions and answers that have been created to gain access to the social media account in the event access by password is denied.

#### **Article V. The Website Steering Team and Secretary's Office**

5-1. There is hereby created a Website Steering Team which shall be an advisory body to the Secretary's Office and shall assist the Secretary's Office with the administration of the Tribe's website and this policy. The Website Steering Team shall consist of representatives from the Tribal Secretary's Office, Communications Department, Management Information Systems (MIS), the General Manager's Office and may also include representatives from other Tribal Departments, including but not limited to, the Kalihwisaks and Marketing.

5-2. *General Duties.* The Website Steering Team shall:

- (a) monitor Tribal social media accounts to ensure they comply with this policy.
- (b) periodically send links for all active Tribal social media accounts to all administrators of Tribal social media accounts and promptly inform all administrators when a Tribal social media account is taken offline.
- (c) receive complaints regarding a Tribal social media account and forward those complaints to the appropriate entity of investigation.

5-3. *Records.*

- (a) The Website Steering Team shall be responsible for maintaining the following records:
  - (1) All reported incidents or complaints.
  - (2) Information on all guests that have been removed or blocked from a Tribal social media account, as detailed in 6-11.
- (b) The Secretary's Office shall be responsible for maintaining the following records:
  - (1) A list of all active and inactive Tribal social media accounts.
  - (2) The current password and user ID for each active Tribal social media account, which shall also be periodically verified by the Secretary's Office.
  - (3) A list of all authorized administrators.
  - (4) The e-mail address used to establish each Tribal social media account.
  - (5) The security questions and answers created for a Tribal social media account.
  - (6) Standard operating procedures and any guidelines submitted by an entity for each Tribal social media account.
  - (7) Dates a Tribal social media account was approved, made inactive and/or removed.

5-4. The Website Steering Team may make recommendations to the Tribal Secretary regarding the removal of a Tribal social media account that is in violation of this policy.

#### **Article VI. Administrators**

6-1. Persons that may be administrators of a Tribal social media account include:

- (a) Elected or appointed members of that Tribal entity; and/or
- (b) Tribal employees; and/or
- (c) External consultants that are hired by the Tribal entity.

6-2. Administrators of Tribal social media accounts shall obey the terms of use and/or the terms of service of the hosting website that provides the social media account.

6-3. Administrators are responsible for ensuring that all content visible on a Tribal social media account or that can be accessed through the social media account is also in compliance with the terms of use and/or terms of service of the hosting website, this policy, applicable standard operating procedures, any guidelines created by the entity and any other applicable Tribal, state

or federal laws. Any non-compliant content shall be removed by the administrator as soon as it is discovered on a Tribal social media account.

6-4. Administrators may adjust the settings of a Tribal social media account such that only administrators may publish regular content, however, if they allow others to post comments on the social media account, only registered guests may post comments on the social media account. Administrators are responsible for reviewing all comments posted by guests.

6-5. Every Tribal social media account shall have a minimum of three (3) administrators, and each entity shall notify the Secretary's Office any time a person is added or removed from a list of authorized administrators and any time a user ID or password for the social media account is changed.

6-6. Administrators are responsible for ensuring that all links in a Tribal social media account are current.

6-7. Administrators of a Tribal social media account shall change the password for the social media account at least:

- (a) Every one hundred eighty days (180) days; and
- (b) Each time an administrator is removed or becomes ineligible to be an administrator for a Tribal social media account in accordance with 6-14 or 8-1.

6-8. Each entity shall ensure that any Tribal social media account for which it is responsible is updated at least once every three (3) months. If the social media account cannot be regularly updated, the entity shall remove the content or take the social media account offline, and shall promptly notify the Secretary's Office and the Website Steering Team that the site is inactive.

6-9. No more than three (3) mass communications to guests, from or for any Tribal social media account, except a microblog, shall be sent in any seven (7) day period. Administrators of a microblog shall post messages on a regular basis, but shall post no more than three (3) messages in any twenty-four (24) hour period. These limits may be altered when both of the following occur:

- (a) An administrator creates an alternative to the mass communication limits set in this section through a standard operating procedure, which is approved by the Website Steering Team.
  - (1) If the standard operating procedure results in mass communication that is harmful to the Tribe's reputation, the standard operating procedure shall be modified at the Website Steering Team's request.
- (b) The administrator posts a link to the approved standard operating procedure on the profile page of the social media account.

6-10. *Adding Guests.* Administrators may "add" guests to a Tribal social media account, either by accepting requests from others, or by sending requests to others. Administrators may only send an "add" request to a specific party once within any twelve (12) month period. Administrators of Tribal social media accounts shall neither add as a guest nor become a guest of:

- (a) a person or organization who is or appears to be falsely representing another person or organization.
- (b) any person or organization that promotes, blatantly demonstrates or advertises sexual or illegal content or behavior.
- (c) political organizations or any group that is recognized for making a specific political statement, except for the following:
  - (1) Other tribes or tribal entities, Native American student or youth organizations and associations, the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI), and the National Indian Gaming

Association (NIGA).

(2) A specific political organization or group not provided for under this policy that receives approval from the Secretary's Office based on a request from an administrator.

6-11. *Removing or Blocking Guests.*

(a) Except as provided in (c), an administrator shall issue a warning to a guest of a Tribal social media account when a guest:

(1) violates any of the hosting website's terms of use in relation to the Tribal social media account, including posting prohibited comments; or

(2) engages in offensive or inappropriate conduct through the Tribal social media account.

(b) Guests who have received a warning under (a) above shall be removed or blocked from a Tribal social media account if they violate (a)(1) or (2) after receiving a warning.

(c) Guests may be removed or blocked without warning for:

(1) Threatening, insulting or harassing the Tribe, Tribal entities, administrators or other guests of the social media account; and/or

(2) Using the Tribal social media account to send out unsolicited information unrelated to the social media account to other guests; and/or

(3) Posting confidential or non-public information that invades the privacy of another.

(d) Where an administrator finds it necessary to remove or block a guest, the administrator shall:

(1) report the incident, along with the following information, to the Website Steering Team:

(A) The screen name, user ID, real name, or any other identifying information, if known, of the offending guest; and

(B) The reason for removing or blocking the guest, including supporting evidence, if possible; and

(C) Any other relevant and available information.

(2) if necessary, report the offending guest to the hosting website or to the Oneida Police Department or other appropriate law enforcement agency.

(e) The Website Steering Team shall notify any employee's supervisor when an employee is blocked or removed as a guest from a Tribal social media account. The employee's supervisor shall determine whether the employee should be disciplined in accordance with the Personnel Policies and Procedures.

6-12. Administrators shall not disclose a guest's identifying information, unless disclosure is necessary to:

(a) comply with applicable law, including 6-11(d) above;

(b) protect the rights of the Tribe or the rights of an individual; or

(c) prevent or respond to an emergency to ensure the safety of an individual or the public.

6-13. *Oneida Gaming.* Oneida Gaming may create additional regulations to govern Tribal social media accounts operated by or on behalf of a Tribal gaming entity, such as restricting the activities of an administrator while on the floor of a casino owned by the Tribe.

6-14. *Ceasing to Be a Tribal Social Media Account Administrator.*

(a) Tribal Employees. When an employee ceases to work for the Tribe, or changes positions such that being the administrator for a specific social media account is no longer reasonably related to his or her job requirements, that person may no longer be an

administrator of that social media account.

(b) Appointed and Elected Members. When an appointed or elected member of a Tribal entity should leave office for any reason, that person may no longer be an administrator of that social media account on behalf of that Tribal entity.

6-15. *Tribe's Official Websites.* The Oneida Business Committee granted the Tribal Secretary the responsibility for oversight of the Tribe's official websites including the Oneida.nation.org and oneida-nsn.gov domains, and for any other domains that represent the Tribe as a whole.

## Article VII. Content of a Tribal Social Media Account

7-1. All content visible on a Tribal social media account or that can be accessed through the social media account shall comply with the terms of use and/terms of service of the hosting website, this policy, applicable standard operating procedures, any guidelines created by the entity and any other applicable Tribal, state or federal laws. Content on a Tribal social media account shall be professional, courteous and respectful.

7-2. The following content shall not be posted on a Tribal social media account, either by an administrator or a guest:

(a) Content that promotes personal purposes, including, but not limited to:

(1) campaigning activities for the purpose of endorsing a political candidate.

(2) soliciting business opportunities, customers, goods or money for personal benefit.

(3) promoting or advertising a company, organization, product or service.

However, this section shall not prohibit the posting of impartial, objective information about a company, organization, product or service.

(b) Content that condones drugs, illegal activity, illegal use of weapons, violence, obscenity or inappropriate nudity.

(c) Content that invades a person's privacy.

(d) Content that is copyrighted, patented or trademarked or that was created by another, unless the proper authorization to post such content has been received.

(e) Content that could be construed as speaking on behalf of the Tribe, except as authorized by the Communications Department.

(f) Content that reveals proprietary, sensitive or confidential information.

7-3. *Comments.* Guests may post comments on a Tribal social media account.

(a) Guidelines for the acceptance and posting of comments from guests shall be posted on the social media account.

(b) Foul language, vulgarity, personal attacks, threats and potentially libelous language shall not be posted on a Tribal social media account.

(c) An administrator shall remove comments that violate this policy or the posted guidelines.

(d) Guests shall be encouraged to report other guests who violate this policy or the Tribal social media account's posted guidelines.

(e) Comments that are, or appear to be, patently untrue shall be removed. However, the veracity of the comment shall also be verified. If it is true, the comment shall be re-posted, if it does not violate the rest of the Tribal social media account.

7-4. Profile pages for a Tribal social media account shall list the entity as the user, and shall provide information only about the entity.

7-5. A logo for the entity or a Tribal seal or logo may be posted on a Tribal social media account's profile page. Other photographs, logos, graphics or depictions posted on a Tribal social media account are subject to review by the Website Steering Team

- (a) The Website Steering Team may provide a copy of a Tribal seal or logo, or other photographs, graphics or depictions, to any administrator that requests such material.
- (b) The Tribal seal, the Tribal flag, and any other depiction or logo that is specifically associated with the Tribe or with a particular Tribal entity shall not be altered in any way.
- (c) The Secretary's Office may direct any administrator to refrain from or cease using any logos, photographs, graphics, depictions or art, if it is found that such are being used inappropriately.

7-6. Each Tribal social media account shall include the following language on the profile page:  
 This [insert type of social media account] is registered with the Tribal Secretary's Office of the Oneida Tribe of Indians of Wisconsin.

7-7. Each Tribal social media account which posts comments from guests shall include the following language on the profile page:  
 The Oneida Tribe of Indians of Wisconsin shall not be responsible for the comments posted to this [insert type of social media account]. Any comments reflected in this [insert type of social media account] are those of the author or authors, and do not necessarily reflect the viewpoints of the Tribe [or the [insert name of the entity, if any]].

**Article VIII. Violations**

8-1. Administrators who violate this policy may be removed as an administrator of a Tribal social media account by the appropriate entity.

8-2. When an administrator, entity or Tribal social media account violates the provisions of this policy, the Secretary's Office shall send written notice to the appropriate entity, notifying that entity of the responsibility to comply with this policy. If this policy is not complied with after the written notice is issued, the Secretary's Office shall request that the entity take the social media account offline. If the entity does not comply the Secretary's Office may take the social media account offline, and shall notify the entity that it must re-register with the Secretary's Office prior to creating another Tribal social media account.

8-3. The Tribe reserves the right to advise the Oneida Police Department or other law enforcement agency of suspected crime documented or referenced on a Tribal social media account, and to provide evidence as necessary. When a realistic threat is issued on a Tribal social media account against any person or entity, the administrator shall forward the information to the Oneida Police Department or other law enforcement agency.

8-4. Any adverse action imposed by the Tribal Secretary or Secretary's Office may be appealed to the Judiciary in accordance with Tribal law.

End.

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Adopted – BC-06-08-11-C  
 Amended – BC-02-25-15-C

## Chapter 32 TATTOOING AND BODY PIERCING LAW

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### 32.1. Purpose and Policy

32.1-1. *Purpose.* The purpose of this law is to regulate tattooists, tattoo establishments, body piercers and body piercing establishments under the jurisdiction of the Tribe in order to protect public health and safety.

32.1-2. *Policy.* It is the policy of this law is to protect the health and safety of the public from unsanitary and unlicensed practice by tattooists and body piercers within the Reservation boundaries.

### 32.2. Adoption, Amendment, Repeal

32.2-1. This law was adopted by the Oneida Business Committee by resolution BG02-11-09-C and amended by resolution BC-02-25-15-C.

32.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

32.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

32.2-4. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.

32.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 32.3. Definitions

32.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Antiseptic" means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

(b) "Autoclave" means an apparatus that is registered and listed with the federal food and drug administration for sterilizing articles by using superheated steam under pressure.

(c) "Body pierce" or "body piercing" means to perforate, or perforating, any human body part or tissue, except an ear, and to place a foreign object in the perforation to prevent the perforation from closing.

(d) "Body piercer" means a person who performs body piercing on another person at that person's request.

(e) "Body piercing establishment" means the premises where a body piercer performs body piercing.

(f) "Cleaning" means the removal of foreign material from objects, normally accomplished with detergent, water and mechanical action.



- (g) “Division” means the Environmental Health and Safety Division of the Tribe, or an agent designated by the Division, which is authorized to make investigations or inspections of tattooists, body piercers, tattoo establishments and body piercing establishments, recommend to the Licensing Department whether an establishment or practitioner be licensed and enforce the requirements of this law.
- (h) “Disinfectant” means a chemical that is capable of destroying disease-causing organisms on inanimate objects, with the exception of bacterial spores.
- (i) “Establishment” means a building, structure, area or location where tattooing and/or body piercing is performed.
- (j) “Hot water” means water at a temperature of 110°F or higher.
- (k) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (l) “Licensing Department” means the department of the Tribe that is responsible for administering and issuing licenses in accordance with Oneida laws.
- (m) “Operator” means the owner or person responsible to the owner for the operation of a tattoo or body piercing establishment.
- (n) “Patron” means a person receiving a tattoo or body piercing.
- (o) “Practitioner” means a tattooist or body piercer.
- (p) “Reservation” means all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (q) “Sharps waste” means waste that consists of medical equipment or clinical laboratory articles that may cause punctures or cuts, such as hypodermic needles, syringes with attached needles and lancets, whether contaminated, unused or disinfected.
- (r) “Single-use” means a product or item that is disposed of after one use, such as a cotton swab, a tissue or paper product, a paper or soft plastic cup, or gauze or other sanitary covering.
- (s) “Sterilization” means the killing of all organisms and spores through use of an autoclave operated at a minimum of 250°F (121°C) at pressure of at least fifteen (15) pounds per square inch for not less than thirty (30) minutes or through use of an autoclave approved by the Division that is operated at different temperature and pressure levels but is equally effective in killing all organisms and spores.
- (t) “Tattoo,” as a verb, means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce a permanent mark or figure through the skin.
- (u) “Tattoo establishment” means the premises where a tattooist applies a tattoo to another person.
- (v) “Tattooist” means a person who tattoos another person at that person’s request.
- (w) “Tempered water” means water ranging in temperature from 85°F to less than 110°F.
- (x) “Temporary establishment” means a single building, structure, area or location where a tattooist or body piercer performs tattooing or body piercing for a maximum of seven (7) consecutive days in conjunction with a single event or celebration.
- (y) “Tribe” or “Tribal” means the Oneida Tribe of Indians of Wisconsin.
- (z) “Universal precautions” means to treat everyone’s blood and other bodily fluids as infectious at all times.

## 32.4. Scope

### 32.4-1. *Applicability.*

(a) This law applies to all tattoo and body piercing establishments within the Reservation boundaries that are located on:

- (1) Tribal land held in trust or fee status;
- (2) fee status land under the control of individual Oneida member or member of another tribe; or
- (3) an individual's land held in trust.

(b) This law applies to all tattooists and body piercers who tattoo or body pierce another person within the Reservation boundaries on:

- (1) Tribal land held in trust or fee status;
- (2) fee status land under the control of individual Oneida member or member of another tribe; or
- (3) an individual's land held in trust.

(c) Establishments and practitioners licensed when this law is adopted shall obtain a Tribal License when their non-Tribal license becomes invalid in order to be able to continue to run an establishment and/or to be a practitioner.

32.4-2. *Approved Comparable Compliance.* When strict adherence to a provision of this law is impractical for a particular tattooist, tattoo establishment, body piercer or body piercing establishment, the Licensing Department may approve a modification in that requirement for that practitioner or establishment if the Division provides the Licensing Department with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

## 32.5. Licenses

32.5-1. Except as provided for under 32.12-2, the Licensing Department shall issue licenses to tattooists, tattoo establishments, body piercers and body piercing establishments, based on the recommendation of the Division. The Division shall conduct investigations and inspections of practitioners and establishments.

(a) The agents of the Division who make recommendations on licenses and conduct investigations or inspections of practitioners and establishments shall be recognized by the National Environmental Health Association as a Registered Environmental Health Specialist, also known as a Registered Sanitarian.

### 32.5-2. *Application for Establishment License.*

(a) **Requirement.** No person may operate an establishment unless he or she has obtained a license for the establishment from the Licensing Department by application made upon a form furnished by the Licensing Department. An application submitted to the Licensing Department shall be accompanied by the fee required under 32.5-2(b) and 32.5-3(a) or (b), if applicable. The annual license fee shall be returned in full if the application is denied.

(b) **Annual Fees** The operator of an establishment shall pay an annual license fee to the Licensing Department as follows:

- (1) For a body piercing establishment, \$100.
- (2) For a tattoo establishment, \$100.
- (3) For a combined tattoo and body piercing establishment, \$150.

(c) **Temporary Establishments.** For a temporary tattoo or body piercing establishment or a temporary combined tattoo and body piercing establishment, the operator of the establishment shall pay a fee of \$100 per application. The fee shall not be returned if the establishment fails the inspection.

32.5-3. *Inspection Fees.*

(a) Pre-Inspection Fee. The operator of a new permanent establishment or a new operator of an existing permanent establishment shall pay a pre-inspection fee for the inspection of the establishment of \$75. The fee shall not be returned if the establishment fails the inspection.

(b) Annual Inspections. All permanent establishments shall pay an annual inspection fee for the inspection of the establishment of \$50.

32.5-4. *Application for Practitioner License.*

(a) Requirement. No person may tattoo or body pierce another person, use or assume the title of tattooist or body piercer or designate or represent himself or herself as a tattooist or body piercer unless the person has obtained practitioner license from the Licensing Department by application made upon a form furnished by the Licensing Department. An application submitted to the Licensing Department shall be accompanied by the fee required under 32.5-4(d). The fee shall be paid in full if the application is denied.

(b) Except as provided in (c) and 32.12-5, in order to be licensed as a practitioner, a tattooist or body piercer shall:

(1) provide proof of successful completion of a Bloodborne Pathogen training or a Universal Precautions training or proof that he or she will be taking the necessary training within ninety (90) days after submitting his or her application for a license; and

(2) provide proof that he or she has received a vaccination against hepatitis B (HBV) or provide a written statement with his or her application stating that he or she declines the vaccination.

(c) A practitioner who has had his or her practitioner license revoked, whether under this law or under another jurisdiction, within the two (2) years immediately preceding the application date may be denied a license.

(d) Annual Fees. A person who wishes to practice as a tattooist or body piercer in a permanent establishment shall pay an annual fee to the Licensing Department as follows:

(1) For a body piercer, \$50.

(2) For a tattooist, \$50.

32.5-5. *Approval of Licenses.*

(a) Except as provided for under 32.12-2, within thirty (30) days after receiving a completed application for a license, whether for an establishment or practitioner, the Division shall recommend the Licensing Department approve the application or deny the application. If the Licensing Department approves an application, a license shall be issued. If the Licensing Department denies an application, the Licensing Department shall:

(1) give the applicant reasons in writing, for the denial;

(2) provide information about how the applicant may appeal the decision under 32.13-4.

(b) The Division shall not recommend the Licensing Department issue a license to a new tattoo or body-piercing establishment or a new operator at an existing establishment without completing a prior inspection of the establishment to ensure that the establishment complies with the requirements of this law.

32.5-6. *Display of License.* The operator of a tattoo or body piercing establishment shall conspicuously display in the establishment the licenses issued by the Licensing Department for the establishment and for all practitioners working in the establishment.

32.5-7. *Change of Operator.* The operator of a tattoo or body piercing establishment shall promptly notify the Licensing Department of his or her intention to cease operations and shall supply the Licensing Department with the name and mailing address of any new operator. An establishment license is not transferable. A new operator shall submit an application under 32.5-2 for a new establishment license.

32.5-8. *Records.* The Licensing Department shall maintain a record pertaining to each application for a license under this law and each holder of a license issued under this law, including temporary licenses. The record shall include all information received by the Licensing Department that is relevant to the approval or denial of the application, the issuance of the license and any limitations, suspensions or revocations of the license(s). The public shall have access to the following information for any person who receives a license under this law:

- (a) Name of the person holding the license, including any former names;
- (b) Type of license the person is issued;
- (c) License number
- (d) Expiration date of the license; and
- (e) Any orders or penalties issued under this law to the license holder and upheld on appeal.

## 32.6. Patrons

### 32.6-1. *Limitations.*

- (a) *Consent.* A tattooist or body piercer may not tattoo or body pierce a patron without first obtaining the signed, informed consent of the person on a form approved by the Division.
- (b) *Minors.*
  - (1) No person under sixteen (16) years of age may be body pierced.
  - (2) No person age sixteen (16) or seventeen (17) may be body pierced unless an informed consent form has been signed by his or her parent or legal guardian in the presence of the operator.
  - (3) No person under eighteen (18) years of age may be tattooed except by a physician in the course of the physician's professional practice.
  - (4) A body piercing establishment shall post a notice in a conspicuous place in the establishment stating that it is illegal to body pierce a person under the age of eighteen (18) without the signed, informed consent of that person's parent or legal guardian.
  - (5) A tattoo establishment shall post a sign in a conspicuous place in the establishment stating that no person under the age of eighteen (18) may be tattooed.
- (c) *Barriers to Procedure.* A tattooist or body piercer may not tattoo or body pierce any of the following:
  - (1) A person who appears to be under the influence of alcohol or a mind-altering drug.
  - (2) A person who has evident skin lesions or skin infections in the area of the procedure.

32.6-2. *Record.* Every tattooist and body piercer shall keep a record of each patron. A patron's record shall include the patron's name, address, age and consent form, the name of the practitioner doing the procedure and any adverse effects arising from the procedure. A patron's record shall be retained for a minimum of three (3) years following completion of the procedure.

## 32.7. Physical Facilities and Environment

32.7-1. *Floors.* Floors in the area where tattoo or body piercing procedures are performed shall be constructed of smooth, durable and non-porous material and shall be maintained in a clean condition and in good repair. Carpeting is prohibited.

32.7-2. *Walls and Ceilings.* Walls and ceilings in the area where tattoo and body piercing procedures are performed shall be light colored, smooth and easily cleanable.

32.7-3. *Lighting.* Tattoo and body-piercing application areas shall maintain a minimum illumination of fifty (50) footcandles.

32.7-4. *Establishments.* The establishment and all facilities used in connection with the establishment shall be maintained in a clean, sanitary and vermin-free condition.

32.7-5. *Living Areas.* Tattoo and body piercing areas shall be completely separated from any living quarters by floor-to-ceiling partitioning and solid doors which are kept closed during business hours. A direct outside entrance to the tattoo or body piercing establishment shall be provided.

32.7-6. *Toilet Rooms.*

(a) All tattoo and body piercing establishments shall have a public toilet and hand washing facility which is separated from any living area.

(b) Toilet room fixtures shall be kept clean and in good repair. An easily cleanable covered waste receptacle shall be provided in the toilet room.

32.7-7. *Hand Washing Facilities.*

(a) At least one (1) hand washing facility shall be conveniently located in the tattoo or body piercing area, in addition to what is provided in the toilet room.

(b) Anti-bacterial soap in dispenser and single-service towels for drying hands shall be provided at all hand washing facilities.

(c) Hot and cold potable water under pressure shall be available at all hand washing facilities, except that tempered water rather than hot water may be provided.

32.7-8. *Refuse.* Easily cleanable waste containers with non-absorbent, durable plastic liners shall be used for disposal of all tissues, towels, gauze pads and other similar items used on a patron. Infectious waste, including sharps waste, shall be stored and disposed of in a manner approved by the Division.

32.7-9. *Equipment Storage.* Instruments, dyes, pigments, stencils and other tattoo and body piercing equipment, shall be stored in closed cabinets exclusively used for that purpose.

32.7-10. *Privacy.* A panel or other barrier of sufficient height and width to effectively separate a patron on whom a procedure is being performed from any unwanted observers or waiting patrons shall be in place or readily available at the patron's request.

32.7-11. *Smoking and Eating Prohibited in Area of Procedure.* No smoking or consumption of food or drink is permitted in the area where a tattoo or body piercing procedure is performed, except that patrons may consume a non-alcoholic beverage during the procedure.

32.7-12. *Animals Prohibited in Establishment.* No animals, except for those that provide services to persons with disabilities, are permitted in a tattoo or body piercing establishment.

## 32.8. Personnel

32.8-1. *Operator.* An operator shall be present at an establishment at all times during its business hours. The operator shall have the following information available at the establishment for review by the Division at any time:

(a) contract or agreement for the disposal of sharps waste and/or other infectious or regulated waste;

(b) spore test log and test results;

- (c) patron records for the preceding three (3) years;
- (d) infection and exposure control written procedures; and
- (e) the practitioners of the establishment, including their names, addresses, phone numbers and licenses.

32.8-2. *Licensed Practitioners.* No operator shall employ a practitioner who does not have a valid license issued by the Licensing Department.

32.8-3. *Absence of Skin Condition.* No tattooist or body piercer with an exposed rash, skin lesion or boil may engage in the practice of tattooing or body piercing.

32.8-4. *Restriction.* No tattooist or body piercer may work while under the influence of alcohol or a mind-altering drug.

32.8-5. *Personal Cleanliness.*

(a) Tattooists and body piercers shall thoroughly wash their hands and the exposed portions of their arms with dispensed soap and tempered water before and after each tattoo or body piercing procedure and more often as necessary to keep them clean.

(b) Tattooists and body piercers shall dry their hands and arms with individual single-service towels.

(c) Tattooists and body piercers shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices during procedures.

32.8-6. *Clothing.* All tattooists and body piercers shall wear clean, washable outer clothing.

32.8-7. *Hygienic Practices.*

(a) When preparing the skin and during a procedure, a tattooist or body piercer shall wear non-absorbent gloves which shall be disposed of after completing the procedure.

(b) If interrupted during a procedure, a tattooist or body piercer shall rewash his or her hands and put on new gloves if the interruption required use of hands.

(c) Tattooists shall use single-use plastic covers to cover spray bottles or other reusable accessories to minimize the possibility of transmitting body fluids or disease during application of tattoos to successive patrons.

(d) If the patron's skin is to be shaved, the skin shall be washed with a cleansing, medicated soap before shaving. Disposable type razors shall be for single-use only and disposed of in a manner approved by the Division. Electric razors used for skin preparation prior to a procedure shall have screens cleaned and disinfected between patron use. Reusable blade holders shall be sterilized after each use. Disposable blade holders shall be for single-use only.

(e) Body piercing needles shall be disposable, sterile and for single-patron use only. Body piercing jewelry shall be cleaned, individually packaged and sterilized prior to use.

(f) Needles, bars and tubes shall be constructed in a manner that permits easy cleaning and sterilizing. Needles shall be used on only one (1) patron and discarded after use. Needles may be reused on the same patron by rinsing them under running tap water followed by rinsing them in an antiseptic.

32.8-8. The Division may require a practitioner to submit to a practicing physician for a physical examination whenever the practitioner is suspected of having any infectious or contagious disease that may be transmitted by tattooing or body piercing. The expense of the physical exam shall be paid by the practitioner.

(a) Any practitioner notified to appear for a physical examination shall immediately cease working as a tattooist and/or body piercer until he or she receives a certificate from a practicing physician that he or she is not afflicted with any infectious or contagious condition that may be transmitted by the practice of tattooing or body piercing.

### 32.9. Equipment

32.9-1. All surfaces, counters and general-use equipment in the tattoo or body piercing area shall be cleaned and disinfected before a patron is seated. The operating table, chair and supply tables shall be constructed of a material capable of being easily and thoroughly cleaned.

32.9-2. All tattoo establishments shall have clean towels, washcloths and disposable paper towels.

(a) A clean towel and washcloth shall be used for each patron.

(b) Clean towels and washcloths shall be stored in a closed, dust-proof container.

(c) Soiled towels and washcloths shall be stored in an approved covered container.

32.9-3. All inks and pigments shall be obtained from sources generally recognized as safe and shall be sterilized before use. Information indicating the sources of all inks and pigments shall be available to the Division upon request. Sterile single-use or sterile individual containers of pigment or ink shall be used for each patron. No pigment or ink in which needles were dipped may be used on another patron. Pigment and ink cups shall be for single-patron use. All bulk materials used for the procedure shall be dispensed with single-use utensils. The remainder of dispensed portions and the cups shall be disposed of after application.

32.9-4. All tattoo establishments shall be equipped with an autoclave which is in good working order and which is manufactured with temperature and pressure gauges marked and visible on the outside of the unit.

32.9-5. *Stencils.* Acetate tattoo stencils shall be single-use. The substance used for applying stencils shall be dispensed from a single-use disposable container or with a sterile tongue blade or sterile applicator stick which shall be discarded after each use.

### 32.10. Cleaning and Sterilization

32.10-1. *Cleaning.*

(a) After each use, tattooing and body-piercing equipment shall be cleaned to remove blood and tissue residue before sterilization. This may be done with an ultrasonic cleaner or with a probe, needles or brush able to enter the smallest opening of the equipment. After cleaning, equipment shall be rinsed under fresh running tap water.

(b) Reusable equipment shall be placed in a covered stainless steel container of cleaning or disinfectant solution until it can be cleaned and sterilized.

(c) All containers holding contaminated needles, tubes, reusable body-piercing equipment and container lids shall be capped and disinfected at least daily.

(d) The tattoo machine shall be cleaned and disinfected before each use.

(e) Gloved personnel shall clean needles and tubes prior to sterilization by doing all of the following:

(1) Manually pre-cleaning the items with care taken to ensure removal of residue; thoroughly rinsing the items with warm water and then draining the water; cleaning the items by soaking them in a protein-dissolving detergent-enzyme cleaner used according to manufacturer's instructions; and cleaning the items further in an ultrasonic cleaning unit which operates at forty (40) to sixty (60) hertz and is used according to the manufacturer's instructions.

(2) Rinsing and drying the items

(f) Prior to autoclaving, all equipment shall be packaged either individually or in quantities appropriate for individual procedures. Packages shall be identifiable and dated.

32.10-2. *Sterilization.*

- (a) Equipment requiring sterilization shall be pressure-sterilized at the establishment in an autoclave and in accordance with the manufacturer's instructions. The equipment may be wrapped with an approved paper or plastic or placed in glass or plastic tubes. All packages or containers shall be marked with temperature recording tape or labels and dated with the date of sterilization.
- (b) Each batch of sterilized equipment shall be monitored during sterilization by use of heat-sensitive indicators capable of indicating approximate time and temperature achieved.
- (c) Autoclaves shall be spore tested at least monthly. Spore kill test effectiveness shall be conducted by an independent laboratory.
- (d) Sterilized equipment shall be wrapped or covered and stored in a manner which will ensure that it will remain sterile until used. All sterilized needles and other equipment not individually wrapped shall be stored in a sterilized and covered glass container or in a stainless steel tray and submerged in an approved sterilizing and disinfecting solution. The Division shall supply all establishments licensed under this ordinance with a list of approved sterilizing and disinfecting solutions.
- (e) Each tattoo or body piercing establishment shall maintain sterilization records including spore tests for at least one (1) year from the date of the last entry, which shall include the following information:
  - (1) Date of sterilization.
  - (2) Name of the person operating the equipment.
  - (3) Result of heat-sensitive indicator.
- (f) Sterilized equipment shall be re-sterilized if the package is opened, damaged or becomes wet.
- (g) Autoclaving is the only allowable method of sterilization.

### 32.11. Preparation and Care of Site.

32.11-1. *Preparation by Practitioner.* Before beginning a procedure, the tattooist or body piercer shall clean the skin area for the tattooing or piercing and then prepare it with an antiseptic. The solution shall be applied with single-use cotton, gauze or toweling.

32.11-2. After a tattooist completes work on any person, the tattooed area shall be washed with antiseptic and covered with a dry, sterile gauze dressing.

32.11-3. *Care Instructions for Patron.* After completing a procedure, the tattooist or body piercer shall provide the patron with oral and written instructions on the care of the tattoo or piercing.

### 32.12. Temporary Establishments

32.12-1. In addition to the requirements under 32.1 to 32.11 that apply to all tattoo and body piercing establishments, the requirements found under this section apply specifically to temporary establishments.

32.12-2. An agent of the Division who is a Registered Sanitarian may issue temporary establishment and temporary practitioner licenses without the approval of the Licensing Department.

32.12-3. No temporary establishment may be operated without a temporary establishment license. An application for a temporary establishment license shall be made under 32.5-2 and shall be accompanied by the fee required under 32.5-2(c).

32.12-4. No temporary establishment license shall be issued without a prior inspection, however, a pre-inspection fee as required under 32.5-3(a) shall not be charged.



32.12-5. A practitioner in a temporary establishment shall not tattoo or body pierce another person without obtaining a temporary practitioner's license, but shall not be required to pay the practitioner license fee under 32.5-4(d).

(a) A practitioner in a temporary establishment may be issued a temporary practitioner license if he or she:

(1) has sufficient proof of a valid permanent license, except as provided for under (b); and

(2) is tattooing and/or body piercing a licensed temporary establishment.

(b) A practitioner in a temporary establishment who is not required to have a license where he or she permanently practices tattooing and/or body piercing may meet the requirements of (a)(1) if he or she demonstrates knowledge of infection control techniques, application of universal precautions and the requirements of this law by:

(1) complying with this law.

(2) providing proof of a valid certificate for the successful completion of a Bloodborne Pathogen training or Universal Precautions training; or

(3) responding correctly to the inspector's questions as they relate to the specific operation of the temporary establishment. This includes explaining:

(A) the significance of universal precautions;

(B) protective actions against bloodborne pathogens, including proper autoclave use; and

(C) the proper use of personal protective equipment

32.12-6. An establishment's temporary license along with the temporary license of each on-staff tattooist or body piercer shall be conspicuously displayed in the temporary establishment.

32.12-7. The Division may deny a temporary establishment license or may revoke the license of a temporary establishment if the Division finds a violation of any provision of this law.

32.12-8. *Water.* A temporary establishment shall have all of the following:

(a) An approved toilet and hand washing facility.

(b) Potable water under pressure.

(c) Hot or tempered water for hand washing and cleaning.

(d) Connection to an approved sewage collection system

### 32.13. Enforcement

32.13-1. *Access.* An authorized employee(s) of the Division, upon presenting proper identification, shall be permitted to enter any tattoo or body-piercing establishment at any reasonable time to determine if the establishment and the practitioners are in compliance with this law. The Division's authorized employee(s) shall be permitted to examine the records of the establishment to obtain information about supplies purchased, received or used and information relating to patrons who received tattoos or body piercings.

32.13-2. *Enforcement Policy.*

(a) Order to Correct Violations. If upon inspection of a tattoo or body piercing establishment, it is discovered that the tattoo or body piercing establishment is not planned, equipped or operated or a practitioner is not licensed as required by this law, the Division shall notify the Licensing Department.

(1) The Licensing Department shall issue a written notice of violation to the operator within five (5) days of receipt of the Division's findings.

(2) This written notice of violation shall include a list of violations, and an order that directs the operator to make specified changes that will bring the

establishment into compliance with standards established in this law and that stipulates the time period within which compliance is to take place.

(3) If the order to correct violations is not carried out by the expiration of the time period stipulated in the order, the Division may direct that the Licensing Department issue an order suspending or revoking the license to operate the tattoo or body piercing establishment or the practitioner's license, or both.

(4) The operator may request, to the Division, an extension of time in order to comply which may be granted if determined reasonable by the agent of the Division. Only one such reasonable extension of time will be granted before 32.13-2(a)(3) may be enforced against the operator.

(5) An operator whose license has been suspended or revoked may reapply for a license after compliance and correction with the original notice of violation has been satisfied, but remains subject to penalties, loss of the original license fee, and must submit a new license fee to begin a license.

(b) Order to Deal with an Immediate Danger to Public Health If there is reasonable cause to believe that any construction, sanitary condition, operation of the establishment or of equipment or a procedural practice creates an immediate danger to health, an authorized employee of the Division may, without written notice, issue a temporary order to remove the immediate danger to health. The order shall take effect upon delivery to the operator or other person in charge of the tattoo or body piercing establishment and shall remain in effect for fourteen (14) days unless it is terminated by the Division or the Licensing Department by notice to the operator within that period or is kept in effect beyond that period. The order shall be limited to prohibiting specific procedures or methods of operation, or a combination of these, except that if a more limited order will not remove the immediate danger to health, the order may direct that all operations authorized by the license cease. If, before the temporary order expires, the Licensing Department determines that the immediate danger to health does in fact exist and continues to exist, the temporary order shall remain in effect, and may be extended, with notification to the operator.

(c) Any order issued by the Division or the Licensing Department under this law shall inform the practitioner and/or operator of his or her right to appeal the order and any time limits associated with an appeal.

32.13-3. *Penalty Provision.* Any person who willfully violates or obstructs the execution of this law for which no other penalty is prescribed, shall be fined not more than \$500. This shall include performing tattooing or body piercing without a license.

32.13-4. *Appeal by the Operator or Practitioner.* Any operator or practitioner aggrieved by an action of the Division or the Licensing Department may appeal to the Judiciary within thirty (30) days after the action is taken.

*End.*

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Adopted-BC-2-11-09-C  
Amended - BC-02-25-15-C

**Chapter 40**  
**Tribal Environmental Response**  
**Latihwatsyahalé·tu kayanl'hsla?**  
**They clean up the earth laws**

40.1. Purpose and Policy	40.7. Discharge of Hazardous Substances
40.2. Adoption, Amendment, Conflicts	40.8. Remedial Actions
40.3. Definitions	40.9. Case Closure or No Further Action
40.4. Jurisdiction	40.10. Enforcement and Penalties
40.5. Tribal Environmental Response Program (TERP)	40.11. Appeals
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**40.1. Purpose and Policy**

40.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

40.1-2. It is the policy of the Tribe to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

**40.2. Adoption, Amendment, Conflicts**

40.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C.

40.2-2. This law may be amended pursuant to the procedures set out in tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

40.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

40.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or action.

40.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**40.3. Definitions**

40.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "All Appropriate Inquiries" means the process of evaluating a property's environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.
- (b) "Contamination" or "contaminated" means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

- (c) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.
- (d) "Dispose" or "disposal" means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.
- (e) "Free product" means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.
- (f) "Groundwater" means any water contained beneath the ground surface.
- (g) "Hazardous substance" means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:
- (1) a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 as amended, as a hazardous substance.
  - (2) those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.
  - (3) petroleum, including crude oil or a fraction thereof that is liquid at standard conditions of temperature and pressure.
- (h) "Immediate action" means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.
- (j) "Judiciary" means the judicial system that was established by Ojibwa General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (k) "Operator" means any person who operates a site.
- (l) "Owner" means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.
- (m) "Person" means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (n) "Practicable" means remedial action is capable of being implemented, taking into account:
- (1) The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and
  - (2) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.
- (o) "Registered pesticide" means a pesticide registered or exempted by the federal Environmental Protection Agency's Office of Pesticide Programs.
- (p) "Remedial action" means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.
- (q) "Responsible party" means any person who, under this law, is required to:

- (1) take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge or
- (2) reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.
- (r) "Restore" or "restoration" means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.
- (s) "Site" means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.
- (t) "Tribal entity" means a board, committee, commission, department, division, or agency of the Oneida Tribe of Indians of Wisconsin.

#### **40.4. Jurisdiction**

40.4-1. *Personal Jurisdiction.* This law shall apply to:

- (a) all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;
- (b) individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and
- (c) individuals who have consented to the jurisdiction of the Tribe or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Tribe:
  - (1) By entering into a consensual relationship with the Tribe, Tribal entities Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Tribe, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

40.4-2. *Territorial Jurisdiction.* This law extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Tribe within the State of Wisconsin.

#### **40.5. Tribal Environmental Response Program (TERP)**

40.5-1. The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

40.5-2. Under the TERP, the Division shall:

- (a) provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.
- (b) conduct and/or oversee assessments and investigations of sites with contamination concerns.
- (c) identify potentially responsible parties to clean up contaminated sites.
- (d) require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.
- (e) oversee and enforce required remedial actions.

(f) develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g) maintain a public record of remedial actions conducted at a contaminated site.

40.5-3. *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a) orders to prevent the discharge of a hazardous substance.

(b) orders to allow the investigation of a site if there is reason to believe it is contaminated or is under threat of contamination.

(c) orders to require a responsible party to take action to prevent and/or abate contamination.

40.5-4. *Emergency Situations.* Chapter 35 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

#### **40.6. Environmental Quality Standards**

40.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

40.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

(1) The notice shall contain a deadline for comments to be received from any person.

(2) The Division shall review and consider comments received before approving the new or revised standards.

40.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

#### **40.7. Discharge of Hazardous Substances**

40.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 40.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

(a) Any person who possesses or controls a hazardous substance which is discharged;

(b) Any person who causes the discharge of a hazardous substance; and

(c) Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

40.7-2. *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

40.7-3. *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any discharge has

caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

- (1) visible soil contamination;
- (2) presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and
- (3) reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) Whether contamination exists shall be based on the level of contamination as compared to Tribally adopted environmental quality standards.

40.7-4. The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

40.7-5. The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be received and published in a document available to the public.

40.7-6. A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

40.7-7. A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

40.7-8. Except as provided in 40.7-10, the following persons are responsible parties:

- (a) The current owner and operator of the site;
- (b) Any owner or operator of the site at the time the discharge or contamination occurred;
- (c) Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;
- (d) Any person who transports the hazardous substance and selects the disposal site; and
- (e) Any person who, by any act or omission, caused or contributed to the discharge or contamination.

40.7-9. *Exemptions.* The following persons are not "responsible parties" under this law:

(a) Any person discharging in accordance with a permit or program approved under federal or Tribal law.

(b) Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) Any person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (1) An act of nature;
- (2) An act of war; or
- (3) An act or omission of a third party, including but not limited to a trespasser, other than:
  - (A) An employee or agent of the person asserting the defense; or
  - (B) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) Any person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

- (1) To establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) Any person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

- (1) the person did not cause the contamination on the property;
- (2) the person establishes that all disposal of hazardous substances occurred before the person acquired the property;
- (3) the person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and
- (4) the person is not affiliated with party liable for any contamination.

40.7-10. Where there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

#### **40.8. Remedial Actions**

40.8-1. A responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

40.8-2. If, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

40.8-3. The Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

- (a) the replacement and/or removal of injured plant and animal life or contaminated soil.
- (b) the treatment of contaminated soils and/or surface and/or groundwater.
- (c) adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.
- (d) the replacement or repair of faulty equipment.



(e) other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

40.8-4. Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

40.8-5. In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

40.8-6. Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

#### **40.9. Case Closure or No Further Action**

40.9-1. The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

40.9-2. Sampling shall be conducted at the completion of the remedial action when:

- (a) The hazardous substance discharges in contact with groundwater.
- (b) The amount, identity or duration of the contamination is unknown.
- (c) Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

40.9-3. The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

40.9-4. If additional remedial action is required for a previously closed case, the Division:

- (a) Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.
- (b) May require the responsible parties to achieve compliance with Tribal public health and environmental laws, within a time period established by the Division.

#### **40.10. Enforcement and Penalties**

40.10-1. If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

- (a) Take remedial action to prevent or abate the discharge of a hazardous substance; and/or
- (b) Allow the investigation of a site believed to be contaminated or under threat of contamination.

40.10-2. The Oneida Business Committee shall adopt a fine schedule, upon recommendation of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a fine in accordance with the fine schedule.

- (a) Each day a violation exists or continues shall constitute a separate offense.

(b) Any person who is a lessee of the Tribe violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Land Commission.

#### 40.11. Appeals

40.11-1. *Appeal of Compliance Orders* A person may appeal a compliance order issued by the Division by filing a written appeal with the Division Director within ten (10) business days after the order is issued.

(a) The Division Director shall uphold, revise or reverse the order, in writing, within five (5) business days after receiving the appeal.

(b) A person may appeal the Division Director's decision by filing a written appeal with the Environmental Resources Board within ten (10) business days after the Division Director's decision.

(1) The Environmental Resources Board shall conduct a hearing on the Division Director's decision and shall uphold, revise or reverse the decision of the Division Director.

(2) The Environmental Resources Board shall post and publish its final decision, within ten (10) business days after the hearing. The Environmental Resources Board shall include in its decision specific facts which are the basis for its decision, and shall forward the decision to the parties of the appeal.

40.11-2. *Contesting the Issuance of a Fine.* Any person issued a fine under this law may contest the fine by attending a hearing before the Environmental Resources Board.

(a) The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued.

(1) If the person does not wish to contest the fine, he or she shall pay the fine by the hearing date specified on the fine.

(b) After the hearing, the Environmental Resources Board shall determine whether the person is responsible for the fine, as was issued by the Division, and may set a new date for when the fine shall be paid.

40.11-3. *Appeals from the Environmental Resources Board Decision.* Any party of interest may appeal a decision of the Environmental Resources Board to the Judiciary in accordance with Tribal law.

*End.*

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Adopted – BC-09-12-12-B

Amended – BC-02-25-15-C