



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
December 4, 2019  
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
  
- II. Minutes to be Approved**  
November 20, 2019 LOC Meeting Minutes (pg. 2)
  
- III. Current Business**
  - 1. Vehicle Driver Certification and Fleet Management Amendments (pg. 4)
  - 2. Oneida Food Service Code Amendments (pg. 44)
  - 3. Sanctions and Penalties Law \*HANDOUT (pg. 74)
  
- IV. New Submissions**
  
- V. Additions**
  
- VI. Administrative Updates**
  
- VII. Executive Session**
  
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
November 20, 2019  
9:00 a.m.

**Present:** David P. Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III

**Excused:** Jennifer Webster

**Others Present:** Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Kristen Hooker, Bonnie Pigman, Rae Skenandore, Lee Cornelius

**I. Call to Order and Approval of the Agenda**

David P. Jordan called the November 20, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

**II. Minutes to be Approved**

Motion by Kirby Metoxen to approve the November 06, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**III. Current Business**

**1. Child Support Amendments (1:04-12:29)**

Motion by Kirby Metoxen to accept the updated public comments review memorandum, draft, and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Ernest Stevens III to approve the Child Support law amendments fiscal impact statement request memorandum and forward to the Finance Department requesting that a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by December 06, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Indian Preference in Contracting Amendments (12:30-15:48)**

Motion by Ernest Stevens III to approve the public meeting packet and forward the Indian Preference in Contracting law amendments to a public meeting on December 19, 2019; seconded by Kirby Metoxen. Motion carried unanimously.

**3. E-Poll Results: Sanction and Penalties Law (15:49-35:36)**

Motion by Kirby Metoxen to enter the November 15, 2019, Sanction and Penalties Law material for the January 20, 2020, GTC Meeting E-Poll results into record; seconded by Daniel Guzman King. Motion carried unanimously.



**IV. New Submissions**

**V. Additions**

**VI. Administrative Items**

**VII. Executive Session**

**VIII. Adjourn**

Motion by Ernest Stevens III to adjourn the November 20, 2019, Legislative Operating Committee meeting at 9:35 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee  
December 4, 2019

# Vehicle Driver Certification and Fleet Management Law Amendments

<b>Submission Date:</b> 2/7/18	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a

**Summary:** *The Human Resources Department and the Law Office have recommended changes to this law since its recent adoption and implementation.*

**2/7/18 LOC:** Motion by Ernest Stevens III to add the Vehicle Driver and Fleet Management amendments to active files list as a medium priority and assign Jennifer Webster as the sponsor. Seconded by Kirby Metoxen. Motion carried unanimously.

**7/15/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Barbara Kolitsch, Robert Keck, Destiny Prendiville. The purpose of this work meeting was to begin discussing potential amendments to the law. The work group reviewed the law line by line and discussed revisions that should be presented to the LOC for consideration.

**7/29/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the law. The work group continued reviewing the law line by line and discussing revisions that should be presented to the LOC for consideration.

**8/13/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Barbara Kolitsch, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the Vehicle Driver Certification and Fleet Management law, as well as review research that was conducted on questions that arose during prior work meetings.

**9/4/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to discuss a plan to move this item forward, as well as begin discussion policy considerations that will affect potential amendments to this law.

**10/2/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster, Rick Fuss. After the previous three work meetings with HRD and Risk Management the LRO took many of their suggestions and recommendations and brought that information to the LOC. The LOC began making policy considerations. The purpose of this work meeting was to review the first draft of the proposed amendments to the

Law and obtain input from the effected entities so that information can be brought back to the LOC.

**10/16/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments and begin making policy considerations.

**10/24/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments, and make decisions as to how to move this item forward. LRO will schedule a work meeting between LOC, HRD, Risk Management, and Fleet Management.

**11/5/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jenifer Falck, Clorissa N. Santiago, Brandon Wisneski, Robert Keck, Wendy Alvarez, Gunladunt Webster, Matthew J. Denny, Leyne Orosco. The purpose of this work meeting was to review the proposed draft and discuss any potential revisions that need to be made before it is placed on the LOC agenda on December 4, 2019.

**Next Steps:**

- Approve the draft and legislative analysis of the amendments to the Vehicle Driver Certification and Fleet Management law and forward to a work meeting for further consideration.

**Title 2. Employment - Chapter 210**

**Lotí'sles Kayanl'ásla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'ásla**  
*they're driving law and a variety of vehicles the responsibility is attached to them*  
**VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT**

210.1. Purpose and Policy  
210.2. Adoption, Amendment, Repeal  
210.3. Definitions  
210.4. Driver Certification

210.5. Responsibilities of a Certified Driver  
210.6. Fleet Vehicles  
210.7. Motor Vehicle Crashes or Damage to Vehicles  
210.8. Suspension of Driver Certification and Other Enforcement

- 
- 1  
2 **210.1. Purpose and Policy**  
3 210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected  
4 and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official  
5 business and regulate the use of all vehicles owned and leased by the Nation.  
6 210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees  
7 of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property  
8 damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness  
9 of the use of vehicles owned by the Nation.  
10  
11 **210.2. Adoption, Amendment, Repeal**  
12 210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C,  
13 and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.  
14 210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
15 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.  
16 210.2-3. Should a provision of this law or the application thereof to any person or circumstances  
17 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
18 to have legal force without the invalid portions.  
19 210.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
20 the provisions of this law shall control.  
21 210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
22  
23 **210.3. Definitions**  
24 210.3-1. This section shall govern the definitions of words and phrases used within this law. All  
25 words not defined herein shall be used in their ordinary and everyday sense.  
26 (a) "Area manager" means an employee's supervisor's supervisor; or, an individual  
27 designated to be the area manager by a General Manager position.  
28 (b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding  
29 the Nation's holidays.  
30 (c) "Employee" means an individual employed by the Nation, but does not include elected  
31 or appointed officials, or employees of a chartered corporation of the Nation.  
32 (d) "Entity" means a department, enterprise, program, board, committee or commission of  
33 the Nation.  
34 (e) "Employee Assistance Program" means a professional counseling program staffed by  
35 clinical social workers licensed by the State of Wisconsin which offers services to the  
36 Nation's employees and family members.  
37 (f) "Fleet vehicle" means a vehicle owned or leased by the Nation.  
38 (g) "Moving violation" means any violation of motor vehicle or traffic law that is  
39 committed by the driver of a vehicle while the vehicle is moving. A moving violation does

40 not include parking violations, equipment violations, or paperwork violations relating to  
41 insurance, registration or inspection.

42 (h) “Nation” means the Oneida Nation.

43 (i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine  
44 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances  
45 included in Schedules I through V, as defined by Section 812 of Title 21 of the United  
46 States Code. Prohibited drugs also includes prescription medication or over-the-counter  
47 medicine when used in an unauthorized or unlawful manner.

48 (j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or  
49 appointed officials, or employees without a direct supervisor, it means the Human  
50 Resources Department or any party who has been designated by the Human Resources  
51 Department as responsible for performing a supervisor’s responsibilities under this law.

52 (k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended  
53 to cause harm to oneself or others.

54

#### 55 **210.4. Driver Certification**

56 210.4-1. An individual shall obtain driver certification from the Human Resources Department  
57 before operating a fleet vehicle or personal vehicle on official business.

58 210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

59 (a) Be eighteen (18) years of age or older;

60 (b) Hold a valid Wisconsin driver’s license;

61 (1) A person who holds a valid driver’s license from a state other than Wisconsin  
62 shall have thirty (30) days after his or her first day of employment or service to  
63 obtain a Wisconsin driver’s license.

64 (c) Have a driving record that does not reflect any of the following conditions:

65 (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in  
66 the past two (2) years; and/or

67 (2) An operating while intoxicated (OWI), driving under the influence (DUI), or  
68 prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

69 (d) Complete all driver training requirements imposed by the Nation or any federal or state  
70 agency regulations;

71 (e) Satisfy any other requirements specific to the job description and/or vehicle that may  
72 be used by or assigned to the person; and

73 (f) Maintain one (1) of the following minimum insurance requirements for a personal  
74 vehicle if the individual may use his or her personal vehicle to conduct official business:

75 (1) the individual’s insurance covers:

76 (A) one hundred thousand dollars (\$100,000) per person;

77 (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for  
78 bodily injury; and

79 (C) twenty-five thousand dollars (\$25,000) property damage; or

80 (2) the individual’s insurance covers two hundred and fifty thousand dollars  
81 (\$250,000) combined single limit.

82 210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether  
83 an individual meets all the qualifications before approving or denying a driver certification.

84 (a) An individual shall provide his or her appropriate license, training certification, and  
85 insurance information to the Human Resources Department.

86 (b) The Human Resources Department shall have the authority to check the driving record  
87 of an individual at any time.

88 (c) The Human Resources Department shall maintain a current list of all certified drivers  
89 and provide the list to Fleet Management, Risk Management, and Central Accounting on a  
90 regular basis.

91 210.4-4. A supervisor shall ensure that an individual has received his or her driver certification  
92 from the Human Resources Department before allowing the individual to drive a fleet vehicle or a  
93 personal vehicle on official business.

94

95 **210.5. Responsibilities of a Certified Driver**

96 210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official  
97 business, an individual shall:

98 (a) Abide by all traffic laws;

99 (b) Wear a seat belt and require any passengers to wear a seat belt at all times;

100 (c) Not drive while under the influence of prohibited drugs and/or alcohol;

101 (d) Not drive if impaired by a medical or physical condition or other factor that affects a  
102 driver's motor skills, reaction time, or concentration;

103 (e) Not carry a weapon, whether in the open or concealed;

104 (1) *Exemption.* An individual who is carrying a weapon in the course of performing  
105 his or her official duties, or is participating in cultural activities or ceremonies is  
106 exempt from this requirement.

107 (f) Not transport prohibited drugs and/or alcohol;

108 (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs  
109 and/or alcohol in the course of performing his or her job duties is exempt from this  
110 requirement.

111 (g) Not deliver goods or services for personal gain, or operate private pools where the  
112 riders pay the driver; and

113 (h) Not use electronic devices in an unlawful manner.

114 210.5-2. *Training Responsibilities.* An individual with driver certification shall:

115 (a) Complete the driver safety training provided for and monitored by the Human  
116 Resources Department every three (3) years; and

117 (b) Maintain compliance with any specialized driver safety training requirements imposed  
118 by state or federal regulatory agencies.

119 210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

120 (a) Complete a vehicle mileage log;

121 (b) Not transport unauthorized passengers;

122 (c) Notify the Fleet Management Department immediately of any problems with a fleet  
123 vehicle that may be a safety or mechanical hazard, or of any incidents that result in the  
124 inability of a fleet vehicle to complete a trip;

125 (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any  
126 similar expense related to vehicle use;

127 (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs  
128 fuel before it can be taken to an Oneida Retail location;

129 (f) Not smoke or use electronic smoking devices or permit others to smoke or use  
130 electronic smoking devices in the fleet vehicle; and

131 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

132 210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official  
133 business, an individual shall:

134 (a) Obtain permission from his or her supervisor to operate a personal vehicle on official  
135 business; and



136 (b) Submit all required documents for mileage reimbursement, if seeking reimbursement  
137 for miles driven while conducting official business, within thirty (30) days of driving the  
138 miles or by the end of the current fiscal year, whichever is sooner.

139 (1) Not seeking mileage reimbursement does not exempt an individual from the  
140 provisions of this law.

141 210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

142 (a) Has his or her driver's license suspended or revoked by the State, or has his or her  
143 driver's license become invalid for any other reason;

144 (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7;  
145 and/or

146 (c) Has any impairment by a medical or physical condition or other factor that affects his  
147 or her motor skills, reaction time, or concentration.

## 148 **210.6. Fleet Vehicles**

149 210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall  
150 purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management  
151 Department's responsibilities shall include, but are not limited to:

152 (a) Maintain a list of all fleet vehicles that are available for use, including vehicles  
153 permanently assigned to specific entities of the Nation;

154 (b) Remove unsafe vehicles from the fleet;

155 (c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

156 (d) Install or remove equipment on fleet vehicles;

157 (e) Ensure the Nation's logo is on all fleet vehicles; and

158 (f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit  
159 which contains forms and instructions for reporting any incident.

160 210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet  
161 vehicles according to factory recommendations, or the maintenance schedule established by the  
162 Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive  
163 Department shall be reported to the Fleet Management Department.

164 210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible  
165 for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities  
166 of the Risk Management Department shall include, but is not limited to:

167 (a) Providing auto insurance identification cards in every fleet vehicle;

168 (b) Processing all submitted vehicle claims and related information; and

169 (c) Submitting claims to the insurance company.

170 210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use  
171 or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official  
172 business of the Nation. When used for travel purposes, a fleet vehicle may also be used for  
173 incidental purposes such as travel to and from lodging and/or meal sites.

174 (a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the  
175 following purposes:

176 (1) Personal use for non-business purposes;

177 (2) Towing cargo for personal reasons;

178 (3) Hauling loads that could structurally damage the vehicle; and/or

179 (4) Jump starting vehicles, other than fleet vehicles.

180 210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may  
181 permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as  
182 established by the Fleet Management Department.  
183

184 (a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may  
185 grant an entity an exception to the minimum mileage criteria.

186 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule  
187 maintenance work and safety checks with the Automotive Department.

188 (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that  
189 any individual who drives the vehicle has his or her driver certification.

190 210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently  
191 assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official  
192 business by submitting a request to the Fleet Management Department.

193 (a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance,  
194 unless urgent circumstances arise.

195 (b) Before determining whether a fleet vehicle is available, or approving the use of a fleet  
196 vehicle, the Fleet Management Department shall confirm that:

197 (1) The individual requesting the fleet vehicle has his or her driver certification;

198 (2) The individual has authorization to use the fleet vehicle from his or her  
199 supervisor, if an employee, or by the individual's entity, if the individual is an  
200 elected or appointed official of the Nation or volunteer; and

201 (3) Any passengers are authorized to travel in a fleet vehicle.

202 (c) The Fleet Management Department may combine vehicle use for travel to the same  
203 destination.

204 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a  
205 timely manner.

206 210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or  
207 volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized  
208 to be a passenger in a fleet vehicle:

209 (a) Individuals being transported as part of a program or service of the Nation;

210 (b) Individuals being transported during the normal and ordinary course of representing  
211 and/or conducting business on behalf of the Nation; and/or

212 (c) Any other individual who is authorized to be a passenger by the Fleet Management  
213 Department.

214 210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are  
215 not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the  
216 approval of the Fleet Management Department.

217 (a) Radar detection devices shall not be installed or used in fleet vehicles.

218 210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a  
219 rental vehicle to conduct official business. An individual shall operate the rental vehicle with the  
220 same responsibilities and restrictions as a fleet vehicle.

221 (a) A vehicle shall be rented in accordance with the Nation's laws and policies governing  
222 travel. Every vehicle rented shall include the purchase of the maximum collision damage  
223 waiver offered by the rental company.

224

## 225 **210.7. Motor Vehicle Crashes or Damage to Vehicles**

226 210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal  
227 vehicle driven on official business, an individual shall be subject to the following reporting  
228 requirements; provided that, if an individual sustains injuries that make it impossible to meet the  
229 reporting deadlines identified herein; the driver shall instead make the required reports as soon as  
230 he or she is able to do so:

231 (a) immediately report the crash or damage to local law enforcement if it results in any of  
232 the following:

- 233 (1) death of a person;  
234 (2) an injury to the driver or another person that requires medical attention;  
235 (3) damage to property that does not belong to the driver or the Nation; or  
236 (4) a vehicle being disabled and/or needing to be towed.

- 237 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and  
238 (c) provide the Fleet Management Department and Risk Management Department with a  
239 completed auto incident report by the end of the next business day immediately following  
240 the motor vehicle crash or damage.

241 210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department  
242 shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash  
243 and/or damage to a vehicle.

244 (a) Fleet Management and Risk Management may recommend whether an individual  
245 should be subject to disciplinary action based on the motor vehicle crash or incident  
246 resulting in damage to a vehicle.

247 (b) The internal review shall be completed as soon as possible after a motor vehicle crash  
248 has been reported.

249 (c) Following an internal review, Fleet Management and Risk Management shall issue a  
250 report. Copies of the report shall be:

251 (1) provided to the driver, the driver's supervisor, and the driver's area manager;  
252 and

253 (2) provided to the Human Resources Department if the Fleet Management  
254 Department and Risk Management Department recommend disciplinary action.  
255

## 256 **210.8. Suspension of Driver Certification and Other Enforcement**

257 210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a  
258 fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of  
259 driver certification is non-appealable.

260 210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver  
261 certification if the individual's driver's license is suspended or revoked by the State or becomes  
262 invalid for any other reason.

263 (a) The suspension of an individual's driver certification based on a violation involving  
264 drugs and/or alcohol shall be accompanied by a referral from the supervisor to the Nation's  
265 Employee Assistance Program for an assessment of the individual.

266 210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a  
267 time in which the individual has obtained a valid driver's license and meets the qualifications for  
268 reinstatement of driver certification.

269 210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources  
270 Department in writing if he or she suspends the driver certification of an individual and shall  
271 provide the basis for the suspension. Once notified of a suspension of driver certification the  
272 Human Resources Department shall remove the individual from the list of current certified drivers.

273 210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver  
274 certification affects the individual's ability to perform his or her job duties, a supervisor may take  
275 one of the following actions:

276 (a) Reassign the individual to a position which does not require driving;

277 (b) Provide non-driving accommodation within the position;

278 (c) Remove the driving requirement from the job description;

279 (d) Place the individual on unpaid leave until the individual obtains his or her driver  
280 certification; or

281 (e) Terminate the individual because a valid driver’s license is an essential requirement of  
282 the position.

283 210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver  
284 certification reinstated upon a review by the Human Resources Department that the individual  
285 again meets all the qualifications for driver certification provided for in section 210.4-2.

286 210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an  
287 individual in accordance with the Nation’s laws and policies governing employment if the  
288 individual is an employee, or in accordance with the laws and policies of the Nation governing  
289 sanctions and penalties if the individual is an elected or appointed official of the Nation, for any  
290 of the following actions:

- 291 (a) Failing to comply with any provision of this law;
- 292 (b) Failing to complete any applicable driver training requirements;
- 293 (c) Driving a fleet vehicle without being certified under the provisions of this law;
- 294 (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle  
295 crash involving vehicle damage, property damage, or personal injury; and
- 296 (e) Not maintaining the minimum insurance requirements for a personal vehicle.

297 *End.*  
298 

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299 Adopted BC-06-28-17-C.  
300 Amended BC-\_\_-\_\_-\_\_-\_\_.

**Title 2. Employment - Chapter 210**

Lotí'sles Kayanl'sla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'sla  
they're driving law and a variety of vehicles the responsibility is attached to them

**VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT**

~~210.1. Purpose and Policy  
210.2. Adoption, Amendment, Repeal  
210.3. Definitions  
210.4. Tribal Department Responsibilities  
210.5. Driver Responsibilities  
210.6. Tribal Vehicle Usage  
210.7. Rental Vehicles  
210.8. Driver Certification  
210.9. Motor Vehicle Crashes, Damage Involving Tribal  
Vehicles~~

~~210.10. Suspension and Revocation of Certification;  
Disciplinary Action  
210.11. Reinstatement of Certification  
210.1. Purpose and Policy  
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210.8. Suspension of Driver Certification and Other Enforcement~~

**210.1. Purpose and Policy**

210.1-1. *Purpose.* The ~~purposes~~purpose of this law ~~are~~is to:

~~(a)~~ establish standards that certify employees, elected and appointed officials, and volunteers to drive a Tribal fleet vehicle or ~~drive a~~ personal vehicle on Tribal official business; and

~~(b)~~ regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to:

~~(a)~~ ensure the safety of the community and employees of the Oneida Nation;

~~(b)~~ minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and

~~(c)~~ improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

**210.2. Adoption, Amendment, Repeal**

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C~~2~~, and amended by resolution BC- - - -.

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. 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.

210.2-4. 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, this law repeals the following:~~

~~(a) BC-09-09-98-A (Amended Vehicle Driver Certification Policy)~~

~~(b) BC-09-24-97-E (Oneida Vehicle Fleet Management Policy)~~

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**210.3. Definitions**

210.3-1. 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)~~(a) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

33 (b) “Business day” means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding  
34 the Nation’s holidays.

35 ~~(b) “Business miles” means miles driven in a vehicle by an individual in order to conduct~~  
36 ~~Tribal business.~~

37 ~~(c) “Certification” or “certified” means that a driver meets the requirements established by~~  
38 ~~this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal~~  
39 ~~business.~~

40 ~~(d) “Driver” means any employee, official and/or volunteer who is certified to operate a~~  
41 ~~Tribal vehicle, or to drive a personal vehicle on Tribal business.~~

42 ~~(e) “Driver’s abstract” means a driver’s official driving record, which includes, but is not~~  
43 ~~limited to, any restrictions or limitations that may be imposed on the driver’s driving~~  
44 ~~privileges.~~

45 ~~(f) “Employee” means an individual who is employed by the Nation and is subject to the~~  
46 ~~direction and control, but does not include elected or appointed officials, or employees of~~  
47 ~~a chartered corporation of the Nation with respect to the material details of the work~~  
48 ~~performed, or who has the status of an employee under the usual common law rules~~  
49 ~~applicable to determining the employer-employee relationship. “Employee” includes, but~~  
50 ~~is not limited to, an individual employed by any program or enterprise of the Nation, and~~  
51 ~~political appointees.~~

52 ~~(g)~~d) “Entity” means a department, enterprise, program, board, committee or commission  
53 of the Nation.

54 (e) “Employee Assistance Program” means a professional counseling program staffed by  
55 clinical social workers licensed by the State of Wisconsin which offers services to the  
56 Nation’s employees and family members.

57 (f) “Fleet vehicle” means a vehicle owned or leased by the Nation.

58 (g) “Moving violation” means any violation of motor vehicle or traffic law that is  
59 committed by the driver of a vehicle while the vehicle is moving. A moving violation does  
60 not include parking violations, equipment violations, or paperwork violations relating to  
61 insurance, registration or inspection.

62 (h) “Nation” means the Oneida Nation.

63 ~~(i) “Non-business miles” means miles driven in a Tribal vehicle that are not business-~~  
64 ~~related, including commuting.~~

65 ~~(j) “Official” means anyone who is serving on the Oneida Business Committee or the~~  
66 ~~Oneida Judiciary, and any other person who is elected or appointed to a board, committee~~  
67 ~~or commission created by the Oneida Business Committee or Oneida General Tribal~~  
68 ~~Council.~~

69 ~~(k)~~(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine  
70 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances  
71 included in Schedules I through V, as defined by Section 812 of Title 21 of the United  
72 States Code. Prohibited drugs also includes prescription medication or over-the-counter  
73 medicine when used in an unauthorized or unlawful manner.

74 (j) “Supervisor” means the direct supervisor of an employee. ~~Provided that, for~~For  
75 volunteers, ~~elected or appointed~~ officials ~~and, or~~ employees without a direct supervisor, it  
76 means the Human Resources Department or any party who has been designated by the  
77 Human Resources Department as responsible for performing a supervisor’s responsibilities  
78 under this law.

79 ~~(l) “Tribal” or “Tribe” means the Oneida Nation.~~

80 ~~(m)~~(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object  
81 intended to cause harm to oneself or others.

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**210.4. Driver Certification**

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle” means a or personal vehicle owned or leased on official business.

210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:

- (a) Be eighteen (18) years of age or older;
- (b) Hold a valid Wisconsin driver’s license;
  - (1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.
- (c) Have a driving record that does not reflect any of the following conditions:
  - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
  - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
- (d) Complete all driver training requirements imposed by the Nation; or any federal or state agency regulations;
- ~~(n) “Volunteer” means a person who provides a service to the Nation without receiving pay.~~
- ~~(o) “Workday” means a regularly scheduled workday or service day for a driver, regardless of whether the day falls on a weekday or weekend.~~
- (e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
- (f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:
  - (1) the individual’s insurance covers:
    - (A) one hundred thousand dollars (\$100,000) per person;
    - (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
    - (C) twenty-five thousand dollars (\$25,000) property damage; or
  - (2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources

**210.4. Tribal Department Responsibilities**

~~210.4-1. Department of Public Works. The shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.~~

- ~~(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department of Public Works.~~
- ~~(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.~~
- ~~(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Automotive Departments Central Accounting on a regular basis.~~

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.



129 **210.assist5. Responsibilities of a Certified Driver**

130 210.5-1. General Responsibilities. While operating a fleet vehicle or a personal vehicle on official  
131 business, an individual shall:

- 132 (a) Abide by all traffic laws;
- 133 (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- 134 (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- 135 (d) Not drive if impaired by a medical or physical condition or other factor that affects a  
136 driver's motor skills, reaction time, or concentration;
- 137 (e) Not carry a weapon, whether in the open or concealed;
  - 138 (1) Exemption. An individual who is carrying a weapon in the course of performing  
139 his or her official duties, or is participating in cultural activities or ceremonies is  
140 exempt from this requirement.
- 141 (f) Not transport prohibited drugs and/or alcohol;
  - 142 (1) Exemption. An employee of the Nation who is transporting prohibited drugs  
143 and/or alcohol in the course of performing his or her job duties is exempt from this  
144 requirement.
- 145 (g) Not deliver goods or services for personal gain, or operate private pools where the  
146 riders pay the driver; and
- 147 (h) Not use electronic devices in an unlawful manner.

148 210.5-2. Training Responsibilities. An individual with ~~the implementation~~ driver certification  
149 shall:

- 150 (a) Complete the driver safety training provided for and monitored by the Human  
151 Resources Department every three (3) years; and
- 152 (b) Maintain compliance with any specialized driver safety training requirements imposed  
153 by state or federal regulatory agencies.

154 210.5-3. Fleet Vehicle Responsibilities. When operating a fleet vehicle, an individual shall:

- 155 (a) Complete a vehicle mileage log;
- 156 (b) Not transport unauthorized passengers;
- 157 (c) Notify the Fleet Management Department immediately of any problems with a fleet  
158 vehicle that may be a safety or mechanical hazard, or of any incidents that result in the  
159 inability of a fleet vehicle to complete a trip;
- 160 (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any  
161 similar expense related to vehicle use;
- 162 (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs  
163 fuel before it can be taken to an Oneida Retail location;
- 164 (f) Not smoke or use electronic smoking devices or permit others to smoke or use  
165 electronic smoking devices in the fleet vehicle; and
- 166 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

167 210.5-4. Personal Vehicle Responsibilities. When operating a personal vehicle on official  
168 business, an individual shall:

- 169 (a) Obtain permission from his or her supervisor to operate a personal vehicle on official  
170 business; and
- 171 (b) Submit all required documents for mileage reimbursement, if seeking reimbursement  
172 for miles driven while conducting official business, within thirty (30) days of driving the  
173 miles or by the end of the current fiscal year, whichever is sooner.
  - 174 (1) Not seeking mileage reimbursement does not exempt an individual from the  
175 provisions of this law.

176 210.5-5. Notification Requirements. An individual shall notify his or her supervisor if he or she:



- 177 (a) Has his or her driver's license suspended or revoked by the State, or has his or her  
178 driver's license become invalid for any other reason;  
179 (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7;  
180 and/or  
181 (c) Has any impairment by a medical or physical condition or other factor that affects his  
182 or her motor skills, reaction time, or concentration.  
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## 184 210.64-2. Fleet Vehicles

185 210.6-1. Fleet Management- Department. The Nation's Fleet Management Department shall:

186 (a) Purchase purchase, manage, and monitor the use of Tribal vehicles; the Nation's fleet vehicles.  
187 The Fleet Management Department's responsibilities shall include, but are not limited to:

188 (a) Maintain a list of all fleet vehicles that are available for use, including the removal of  
189 vehicles permanently assigned to specific entities of the Nation;

190 (b) Remove unsafe vehicles from the fleet;

191 (b)c) Obtain estimates of and schedule Tribal fleet vehicle repairs when necessary;

192 (c) Participate in motor vehicle crash investigations;

193 (d) Participate in situations requiring approval of driver certifications;

194 (e) (d) Install or remove global positioning system monitors on Tribal equipment on fleet  
195 vehicles;

196 (e) Ensure the Nation's logo is on all fleet vehicles; and

197 (f) Ensure that all Tribal fleet vehicles are equipped with a mileage log and an auto incident  
198 kit which contains forms and instructions for reporting any incident; and.

199 (g) Maintain a list of all fleet vehicles that are available for use by drivers; including  
200 vehicles permanently assigned to specific departments.

201 210.4-3-6-2. Automotive Department. The Automotive Department shall service and maintain  
202 Tribal fleet vehicles according to factory recommendations, or the maintenance schedule  
203 established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by  
204 the Automotive Department shall be reported to the Fleet Management Department.

205 210.4-46-3. Risk Management- Department. The Risk Management shall:

206 (a) Secure Department shall be responsible for securing and maintain maintaining insurance  
207 coverage for all Tribal fleet vehicles; or may designate another party to do so; Additional  
208 responsibilities of the Risk Management Department shall include, but is not limited to:

209 (b) Provide (a) Providing auto insurance identification cards in every Tribal fleet vehicle;

210 (c) Process (b) Processing all submitted vehicle claims and related information; and

211 (d) Submit (c) Submitting claims to the insurance company;

212 (e) Participate in motor vehicle crash investigations; and

213 (f) Participate in situations requiring approval of certifications. 210.6-4. Use of a Fleet Vehicle. A  
214 fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary  
215 basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for  
216 travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from  
217 lodging and/or meal sites.

218 (a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the  
219 following purposes:

220 (1) Personal use for non-business purposes;

221 (2) Towing cargo for personal reasons;

222 (3) Hauling loads that could structurally damage the vehicle; and/or

223 (4) Jump starting vehicles, other than fleet vehicles.

224 210.6-5. Permanently Assigned Fleet Vehicles. The Fleet Management Department may  
225 permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as  
226 established by the Fleet Management Department.

227 (a) Exception to Minimum Mileage Criteria. The Fleet Management Department may  
228 grant an entity an exception to the minimum mileage criteria.

229 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule  
230 maintenance work and safety checks with the Automotive Department.

231 (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that  
232 any individual who drives the vehicle has his or her driver certification.

233 210.6-6. Temporary Use

234 ~~210.4 5. Human Resources Department.~~ The Human Resources Department shall:

235 (a) ~~Maintain a current list of drivers and provide the list to Fleet Management and the~~  
236 ~~Central Accounting Department on a regular basis;~~

237 (b) ~~Perform driving record checks and approve or deny certification based on the review~~  
238 ~~of an individual's driving record; and notify the appropriate parties immediately of~~  
239 ~~ineligibility in writing;~~

240 (c) ~~Notify supervisors immediately of~~

241 (1) ~~the certification status of his or her employees or volunteers; and~~

242 (2) ~~of any cancelation or lapse in a personal vehicle driver's insurance coverage.~~

243 (d) ~~Assist supervisors with the administration of suspensions and/or revocations of~~  
244 ~~certification;~~

245 (e) ~~Request and maintain records of proof of insurance on personal vehicles driven on~~  
246 ~~Tribal business;~~

247 (f) ~~Participate in motor vehicle crash investigations;~~

248 (g) ~~Maintain documentation of all required driver training and regulatory compliance;~~

249 (h) ~~Perform, or delegate to another person to perform, the supervisory responsibilities~~  
250 ~~identified in this law, for drivers who do not have a supervisor.~~

251 ~~210.4 6. Environmental Health & Safety Division.~~ The Environmental Health & Safety Division  
252 shall ~~provide driver safety training as included herein, and provide the Human Resources~~  
253 ~~Department with the names of drivers who have completed training after each training session.~~

254 ~~210.4 7. Supervisors.~~ For drivers who do not have a supervisor, the Human Resources Department  
255 shall ~~either assume the supervisor's responsibilities, or shall delegate those responsibilities to~~  
256 ~~another person.~~ Fleet Vehicle. An individual in an entity. Supervisors of drivers shall:

257 (a) ~~Ensure those drivers who report to them are certified before allowing those employees~~  
258 ~~to drive a Tribal vehicle or a personal vehicle on Tribal business.~~

259 (b) ~~Ensure drivers have the appropriate license, training certification(s), and insurance~~  
260 ~~information on file with the Human Resources Department.~~

261 (c) ~~Ensure all motor vehicle crashes and damages are reported in accordance with this law.~~

262 (d) ~~Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management~~  
263 ~~in accordance with requirements established by Fleet Management.~~

264 (e) ~~Approve expense reports submitted for personal vehicle mileage reimbursement.~~

265 (f) ~~Promptly take appropriate action to investigate:~~

266 (1) ~~all infractions of this law of which they become aware, including but not limited~~  
267 ~~to, allegations of alcohol or drug use while using a Tribal vehicle or personal~~ not  
268 permanently assigned a fleet vehicle for Tribal business.

269 (2) ~~allegations of a history of unsafe driving, regardless of whether or not the~~  
270 ~~employee has ever been charged with an offense.~~

271 (g) ~~Ensure that all employees who directly report to them abide by this law.~~

272 ~~(h) Implement disciplinary action against employee drivers who violate this law, in~~  
273 ~~accordance with the Nation's laws governing employment.~~

274 ~~(i) When necessary, refer drivers to:~~

275 ~~(1) the Environmental Health & Safety Division or an appropriate agency or~~  
276 ~~training source for additional driver training; and/or~~

277 ~~(2) the Employee Assistance Program, in accordance with applicable policies and~~  
278 ~~procedures of the Nation.~~

## 280 **210.5. Driver Responsibilities**

281 ~~210.5 1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:~~

282 ~~(a) Abide by all provisions of this law.~~

283 ~~(b) Follow all traffic laws, respect property, be courteous and use good judgment.~~

284 ~~(c) Wear seat belts and require passengers to wear seat belts at all times.~~

285 ~~(d) Not drive while:~~

286 ~~(1) under the influence of controlled substances, intoxicating beverages,~~  
287 ~~prescription drugs or other medications that caution against operating a motor~~  
288 ~~vehicle when taken, or~~

289 ~~(2) impaired by a medical or physical condition or other factor that affects a driver's~~  
290 ~~motor skills, reaction time or concentration.~~

291 ~~(e) Not transport controlled substances, intoxicating beverages, or any passenger that is in~~  
292 ~~possession of controlled substance or intoxicating beverages; without prior written~~  
293 ~~approval from his or her supervisor to do so.~~

294 ~~(1) Exemptions. Employees of the Nation who are transporting such substances,~~  
295 ~~beverages or passengers in the course of performing their job duties are exempt~~  
296 ~~from this requirement.~~

297 ~~(f) Not transport unauthorized passengers.~~

298 ~~(g) Not use devices such as cell phones, whether for talking or texting; notebook or laptop~~  
299 ~~computers; books or book applications; newspapers or magazines; and two way radios~~  
300 ~~unless the vehicle is safely stopped.~~

301 ~~(1) Exemptions. The following are exempt from this requirement:~~

302 ~~(A) Authorized emergency vehicle communication equipment~~

303 ~~(B) Navigation devices~~

304 ~~(C) Communication equipment used while performing services for the~~  
305 ~~Nation.~~

## 307 **210.6. Tribal Vehicle Usage**

308 ~~210.6 1. Drivers who do not have access to a permanently assigned Tribal vehicle and who are~~  
309 ~~unable to use a vehicle assigned to another department, may request to use a Tribal fleet vehicle to~~  
310 ~~conduct Tribal for the purpose of conducting official business by submitting a request to the Fleet~~  
311 ~~Management. Whenever possible, such requests shall be made at least one (1) week in advance.~~  
312 ~~Department.~~

313 ~~(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance,~~  
314 ~~unless urgent circumstances arise.~~

315 ~~(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet~~  
316 ~~vehicle, the Fleet Management Department shall confirm that:~~

317 ~~(1) The individual requesting the fleet vehicle has his or her driver certification;~~

318 ~~(2) The individual has authorization to use the fleet vehicle from his or her~~  
319 ~~supervisor, if an employee, or by the individual's entity, if the individual is an~~  
320 ~~elected or appointed official of the Nation or volunteer; and~~

321 (3) Any passengers are authorized to travel in a fleet vehicle.

322 (c) The Fleet Management Department may combine vehicle use for travel to the same  
323 destination.

324 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a  
325 timely manner ~~and may combine vehicle use for travel to the same destination.~~

326 ~~(b) Before determining whether a Tribal vehicle is available or approving the use of a~~  
327 ~~Tribal vehicle, Fleet Management shall confirm that:~~

328 ~~(1) the driver is certified.~~

329 ~~(2) the driver has written consent to use a Tribal vehicle; provided by the driver's~~  
330 ~~supervisor, if the driver is an employee; or by the driver's entity, if the driver is an~~  
331 ~~official or volunteer.~~

332 ~~(3) any passengers are authorized to travel in a Tribal vehicle, in accordance with~~  
333 ~~210.6-3.~~

334 ~~(c) Before approving the use of a permanently assigned Tribal vehicle by any driver; the~~  
335 ~~department shall be responsible for confirming that the requirements of (b) are met.~~

336 ~~210.6-2.7. Authorized Passengers. In order to have a Tribal vehicle permanently assigned to an~~  
337 ~~entity, the entity shall drive a minimum number of miles annually, as determined by Fleet~~  
338 ~~Management. Exceptions to the mileage criteria may be granted upon request by an entity and~~  
339 ~~with written approval from Fleet Management.~~

340 ~~(a) Entities who have a permanently assigned vehicle shall regularly schedule service~~  
341 ~~work, maintenance work and safety checks with the Automotive Department.~~

342 ~~210.6-3. The following individuals may travel in a Tribal vehicle:~~

343 ~~(a) Employees;~~ addition to the employees, elected or appointed officials, or volunteers who are ~~on~~  
344 ~~Tribal business;~~ authorized to use a fleet vehicle, the following individuals shall be authorized to  
345 be a passenger in a fleet vehicle:

346 ~~(b)~~ a Individuals being transported as part of a program or service of the Nation; ~~;~~

347 ~~(e)~~ b Individuals being transported during the normal and ordinary course of representing  
348 and/or conducting business on behalf of the Nation; and or

349 ~~(d) Individuals~~ (c) Any other individual who ~~are~~ is authorized, ~~by Oneida Business~~  
350 ~~Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may~~  
351 ~~request input from~~ be a passenger by the Fleet Management ~~before making a determination~~  
352 ~~on these requests~~ Department.

353 ~~210.6-4. When a driver uses a Tribal vehicle, he or she shall:~~

354 ~~(a) Complete a vehicle mileage log. Vehicle mileage logs shall be provided in each Tribal~~  
355 ~~vehicle.~~

356 ~~(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may~~  
357 ~~be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal~~  
358 ~~vehicle to complete a trip.~~

359 ~~(c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar~~  
360 ~~expense related to vehicle use.~~

361 ~~(d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel~~  
362 ~~before it can be taken to an Oneida One Stop.~~

363 ~~(e) Not smoke, and not permit others to smoke, in the Tribal vehicle.~~

364 ~~(f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.~~

365 ~~210.6-5. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal~~  
366 ~~vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites.~~  
367 ~~Tribal vehicles shall not be used for any of the following:~~

368 ~~(a) Personal use or non-business miles, except as authorized under the Business Committee~~  
369 ~~Vehicle Policy.~~

- ~~(b) Vacation.~~
- ~~(c) Towing cargo for personal reasons.~~
- ~~(d) Hauling loads that could structurally damage the vehicle.~~
- ~~(e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.~~
- ~~(f) Transporting hitchhikers.~~
- ~~(g) Jump starting vehicles, other than Tribal vehicles.~~

~~210.6-6. Tribal logos shall be placed on all Tribal vehicles.~~

~~210.6-7. Additional Equipment, 210.6-8. Modifications.~~

~~(a) to Fleet Vehicles.~~ Modifications to ~~Tribal~~fleet vehicles for personal reasons are not permitted. Modifications to ~~Tribal~~fleet vehicles for operating purposes may be allowed only with the approval of ~~the~~ Fleet Management- ~~Department~~.

~~(1) Provided that, this shall not be construed to prohibit drivers from making temporary, non permanent modifications, such as adjusting the positions of vehicle seats or mirrors.~~

~~(b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.~~

~~(c)~~(a) Radar detection devices shall not be installed or used in ~~Tribal~~fleet vehicles.

### ~~210.7. Rental Vehicles~~

~~210.7-1. Rental vehicles are considered Tribal vehicles for the purpose of this law. All provisions of this law apply to rental vehicle usage. Vehicles~~210.6-9. Rental Vehicles. An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

~~(a) A vehicle shall be rented in accordance with the Oneida Travel and Expense Policy~~Nation's laws and drivers of rental vehicles shall be certified in accordance with this law.

~~210.7-2. policies governing travel.~~ Every vehicle ~~rental~~rented shall include the purchase of the maximum collision damage waiver offered by ~~the~~ rental ~~companies~~company.

### ~~210.8. Driver Certification~~

~~210.8-1. Certification. All persons shall be certified before operating a Tribal vehicle or personal vehicle on Tribal business. In order to be certified, an individual shall:~~

~~(a) Be eighteen (18) years of age or older.~~

~~(b) Satisfy any additional experience requirements established by law or by rules promulgated by the Human Resources Department, that apply for the vehicle being assigned or used.~~

~~(c) Hold a valid, non probationary Wisconsin driver's license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.~~

~~(1) Drivers with commercial driver's licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.~~

~~(2) An occupational license is a valid, non probationary driver's license if the driver's abstract which accompanies the occupational license allows the driver to operate vehicles for his or her job with the Nation.~~

~~(3) Individuals with a driver's license from a state other than Wisconsin shall obtain a Wisconsin driver's license within thirty (30) days after their first day of actual employment or service and provide a copy to the Human Resources Department.~~



419 ~~(d) Pass a driving record check by the Human Resources Department to verify the driver~~  
420 ~~has a valid, non-probationary driver's license as identified in (c); and to verify the driver~~  
421 ~~has no citation or conviction related to a traffic incident, and no driving citation or~~  
422 ~~conviction involving drugs or alcohol, within the time period(s) that would make the driver~~  
423 ~~ineligible for certification under this law.~~

424 ~~(1) The individual shall have his or her driving record checked by the Human~~  
425 ~~Resources Department prior to his or her hire date or start date.~~

426 ~~(A) State Department of Motor Vehicle reports shall be used to determine~~  
427 ~~whether an individual passes the driving record check.~~

428 ~~(B) An individual with a driver's license from a state other than Wisconsin~~  
429 ~~shall have his or her driving record checked based on that state's license.~~

430 ~~(2) The Nation reserves the right to check driving records of a driver at any time.~~  
431 ~~All drivers shall authorize the Human Resources Department to check his or her~~  
432 ~~driving record.~~

433 ~~(3) The Nation reserves the right to allow insurance carriers or agents to check~~  
434 ~~driving records at any time. This review shall be deemed to be a review by the~~  
435 ~~Nation.~~

436 ~~(e) Complete all driver training requirements imposed by the Nation, an individual entity,~~  
437 ~~or by any federal or state agency regulations.~~

438 ~~(1) Except as provided in (e)(2), drivers who are certified to operate a Tribal vehicle~~  
439 ~~shall complete driver safety training every three (3) years.~~

440 ~~(A) The training program shall be administered, scheduled, and documented~~  
441 ~~by the Environmental Health & Safety Division.~~

442 ~~(B) A break in employment or service of one hundred eighty (180) days or~~  
443 ~~greater requires retraining.~~

444 ~~(C) Drivers shall be paid their regular wage for all required training.~~

445 ~~(2) Tribal vehicle drivers who are subject to specialized driver safety training requirements~~  
446 ~~imposed by state or federal regulatory agencies are exempt from the driver safety training~~  
447 ~~required in (e)(1), provided that, such drivers shall complete all required driver safety training~~  
448 ~~according to the applicable regulations before operating a Tribal vehicle to which the regulations~~  
449 ~~apply.~~

450 ~~210.8 2. Additional Requirements for Personal Vehicle Drivers. In addition to the requirements~~  
451 ~~listed in 210.8 1, the following also apply for drivers of personal vehicles on Tribal business.~~

452 ~~(a) Insurance. Each driver shall provide the Human Resources Department with written~~  
453 ~~proof that he or she carries at least the minimum insurance coverage required by this law.~~  
454 ~~Drivers shall maintain updated proof of vehicle insurance and provide copies to the Human~~  
455 ~~Resources Department. The Human Resources Department may request written proof of~~  
456 ~~insurance from drivers at any time.~~

457 ~~(1) The minimum insurance requirements on a personal vehicle are:~~

458 ~~—— (A) one hundred thousand dollars (\$100,000) per person;~~

459 ~~(B) three hundred thousand dollars (\$300,000) per accident for bodily~~  
460 ~~injury; and~~

461 ~~—— (C) twenty five thousand dollars (\$25,000) property damage.~~

462 ~~(2). A driver shall immediately notify the Human Resources Department of any~~  
463 ~~cancellation or lapse in his or her insurance coverage. No driver may drive a~~  
464 ~~personal vehicle on Tribal business during the time he or she does not have the~~  
465 ~~required minimum personal auto insurance coverage.~~

466 ~~(3) If a personal vehicle driver's required insurance lapses, the Human Resources~~  
467 ~~Department shall immediately remove the driver from the list of certified drivers,~~  
468 ~~and notify the driver's supervisor once this action has been taken.~~

469 ~~(b) Mileage Reimbursement.~~

470 ~~(1) A driver who operates a personal vehicle on Tribal business shall be reimbursed~~  
471 ~~for any business miles driven if he or she:~~

472 ~~(A) was certified at the time and had written proof of required insurance on~~  
473 ~~file with the Human Resources Department.~~

474 ~~(B) had prior consent from his or her supervisor to travel those miles on~~  
475 ~~Tribal business.~~

476 ~~(2) While driving on Tribal business, drivers of personal vehicles shall not use their~~  
477 ~~vehicle for personal gain of any kind.~~

478 ~~(3) All provisions of this law apply to drivers of personal vehicles on Tribal~~  
479 ~~business regardless of whether or not vehicle mileage reimbursement is submitted.~~

480 ~~210.8 3. Additional Requirements~~

481 ~~(a) Individual entities may require stricter certification procedures and standards that do~~  
482 ~~not conflict with these standards; including but not limited to, specialized requirements~~  
483 ~~regarding age, experience, training, and licensing. Such procedures and standards shall be~~  
484 ~~submitted to Fleet Management, Risk Management and the Human Resources Department~~  
485 ~~for review and approval.~~

486 ~~(b) Drivers are subject to all specialized requirements imposed by state or federal~~  
487 ~~regulatory agencies; including but not limited to, regulatory requirements pertaining to the~~  
488 ~~use of drugs and alcohol.~~

489 ~~210.8 4. Drivers shall immediately notify their supervisor; and the supervisor shall immediately~~  
490 ~~notify the Human Resources Department in writing, of any of the following:~~

491 ~~(a) An arrest, charge or conviction for any:~~

492 ~~(1) motor vehicle operation violation involving drugs or alcohol; or~~

493 ~~(2) criminal offense related to a traffic incident.~~

494 ~~(b) Any restriction, suspension, revocation, cancellation or, if applicable, reinstatement of~~  
495 ~~driving privileges related to his or her driver's license.~~

496 ~~210.8 5. Drivers shall immediately notify their supervisor of any impairment by a medical or~~  
497 ~~physical condition or other factor that affects his or her motor skills, reaction time or concentration.~~  
498 ~~Supervisors shall notify the Human Resources Department, in writing, of such information when~~  
499 ~~appropriate.~~

500  
501 **210.9. Motor Vehicle Crashes; or Damage Involving Tribal to Vehicles**

502 ~~210.9 1. This section shall apply in the event a driver is involved in a motor vehicle crash while~~  
503 ~~driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal~~  
504 ~~vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive~~  
505 ~~requirements regarding accident reporting, the provisions of that policy shall apply.~~

506 ~~210.9 2. In the event of a motor vehicle crash or damage involving the vehicle, drivers fleet vehicle~~  
507 ~~or personal vehicle driven on official business, an individual shall be subject to the following~~  
508 ~~reporting requirements; provided that, if a driver an individual sustains injuries that make it~~  
509 ~~impossible to meet the reporting deadlines identified herein; the driver shall instead make the~~  
510 ~~required reports as soon as he or she is able to do so:~~

511 ~~(a) immediately report the crash or damage to local law enforcement if it results in any of~~  
512 ~~the following:~~

513 ~~(1) death of a person;~~

- 514 ~~(2) an injury to the driver or another person that requires medical intervention by~~  
515 ~~law enforcement or emergency personnel, or treatment at a medical facility;~~  
516 ~~or attention;~~  
517 ~~(2) death of a person; or~~  
518 (3) damage to property that does not belong to the driver or the Nation; or  
519 (4) a ~~Tribal~~ vehicle being disabled and/or needing to be towed.

520 (b) immediately report the motor vehicle crash or damage to his or her supervisor; ~~and~~  
521 (c) provide the Fleet Management Department and Risk Management Department with a  
522 completed auto incident report by the end of the next business day immediately following  
523 the motor vehicle crash or damage.

524 ~~(d) comply with any applicable alcohol and drug testing requirements established in other~~  
525 ~~laws of the Nation.~~

526 ~~210.9-3. Drivers shall follow any additional, applicable motor vehicle crash reporting requirements~~  
527 ~~for vehicles regulated by a state or federal agency.~~

528 210.9-4.7-2. Internal Review. ~~Whenever necessary,~~ The Fleet Management Department and Risk  
529 Management Department shall coordinate and conduct an internal ~~reviews~~review of the auto  
530 incident report for a motor vehicle crash and/or damage to a vehicle ~~crashes involving Tribal~~  
531 ~~vehicles. Internal reviews may include other personnel as deemed appropriate by.~~

532 (a) Fleet Management and Risk Management:

533 ~~(a) Fleet Management and Risk Management shall have investigative authority to:~~

534 ~~(1) determine fault, if not determined by law enforcement; and/or~~

535 ~~(2) may recommend whether a driver's certification an individual should be~~  
536 ~~suspended~~subject to disciplinary action based on the motor vehicle crash or incident  
537 resulting in damage to a vehicle.

538 ~~(b) Internal reviews~~ The internal review shall be completed as soon as practicable possible  
539 after a motor vehicle crash has been reported; ~~and shall be conducted in accordance with~~  
540 ~~industry standards of practice.~~

541 (c) Following an internal review, Fleet Management and Risk Management shall issue ~~an~~  
542 investigationa report. Copies of the ~~investigation~~ report shall be:

543 (1) provided to the driver, the driver's supervisor, and the driver's ~~supervisor~~area  
544 manager; and

545 (2) ~~retained by~~ provided to the Human Resources Department if the Fleet  
546 Management Department and Risk Management Department recommend  
547 disciplinary action.

## 549 210.8 for a minimum. Suspension of Driver Certification and Other Enforcement

550 210.8-1. three ~~(Suspension of driver certification is the suspension of an individual's ability to~~  
551 ~~drive a fleet vehicle or personal vehicle on official business and is not a leave from work.~~  
552 Suspension of driver certification is non-appealable.

553 210.8-2. Qualifications for Suspension. A supervisor shall suspend an individual's driver  
554 certification if the individual's driver's license is suspended or revoked by the State or becomes  
555 invalid for any other reason.

556 (a) The suspension of an individual's driver certification based on a violation involving  
557 drugs and/or alcohol shall be accompanied by a referral from the supervisor to the Nation's  
558 Employee Assistance Program for an assessment of the individual.

559 ~~210.8-3) years.~~ Length of Suspension. The individual's driver certification shall be suspended  
560 until a time in which the individual has obtained a valid driver's license and meets the  
561 qualifications for reinstatement of driver certification.



562 ~~210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted~~210.8-4.  
563 Notification of Suspension. The supervisor shall notify the Human Resources Department in  
564 writing if he or she suspends the driver certification of an individual and shall provide the basis  
565 for the suspension. Once notified of a suspension of driver certification the Human Resources  
566 Department shall remove the individual from the list of current certified drivers.

567 210.8-5. Reasonable Accommodations to Suspension. If the suspension of an individual's driver  
568 certification affects the individual's ability to perform his or her job duties, a supervisor may take  
569 one of the following actions:

- 570 (a) Reassign the individual to a position which does not require driving;
- 571 (b) Provide non-driving accommodation within the position;
- 572 (c) Remove the driving requirement from the job description;
- 573 (d) Place the individual on unpaid leave until the individual obtains his or her driver  
574 certification; or
- 575 (e) Terminate the individual because a valid driver's license is an essential requirement of  
576 the position.

577 210.8-6. Reinstatement of Driver Certification. An individual may have his or her driver  
578 certification reinstated upon a review by the Human Resources Department that the individual  
579 again meets all the qualifications for driver certification provided for in section 210.4-2.

580 210.8-7. Other Enforcement Actions. A supervisor may take disciplinary action against an  
581 individual in accordance with the Nation's laws and policies governing employment if the  
582 individual is an employee, or in accordance with the laws and policies of the Nation governing  
583 sanctions and penalties if the individual is an elected or appointed official of the Nation, for any  
584 of the following actions:

- 585 (a) Failing to comply with any provision of this law;
- 586 (b) Failing to complete any applicable driver training requirements;
- 587 (c) Driving a fleet vehicle without being certified under the provisions of this law;
- 588 (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle  
589 crash involving vehicle damage, property damage, or personal injury, ~~the driver may have~~  
590 ~~his or her certification suspended;~~ and

## 591 ~~210.10. Suspension and Revocation of Certification; Disciplinary Action~~

592 ~~210.10-1. Any driver who violates this law may be subject to suspension of his or her vehicle~~  
593 ~~driver certification, and/or driving privileges.~~

594 ~~(a) Driving Privilege Suspensions.~~

595 ~~(1) In certain situations, a supervisor may temporarily suspend a driver's driving~~  
596 ~~privileges without suspending the driver's certification. When a driver's driving~~  
597 ~~privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle~~  
598 ~~or to drive a personal vehicle on Tribal business.~~

599 ~~(A) A supervisor shall temporarily suspend a driver's driving privileges:~~

600 ~~(1) When the driver is unable to provide proof that the driver carries~~  
601 ~~any insurance required by this law, or~~

602 ~~(2) When the driver has not satisfied any driver training~~  
603 ~~requirements as required by this law; but has made arrangements to~~  
604 ~~complete the required driver training within a reasonable period of~~  
605 ~~time.~~

606 ~~(3) Upon request from the Human Resources Department, in~~  
607 ~~conjunction with the Risk Management Department, pending an~~  
608 ~~investigation that appears likely to lead to a suspension of~~  
609 ~~certification.~~

611 ~~(4) In any other situation where the supervisor is unable to determine~~  
612 ~~whether the driver has valid certification and is eligible to drive a~~  
613 ~~Tribal vehicle or a personal vehicle on Tribal business.~~

614 ~~(B) When a supervisor suspends a driver's driving privileges; the supervisor~~  
615 ~~shall promptly notify both the driver and the Human Resources Department,~~  
616 ~~in writing, of the suspension, including the effective date; as well as the~~  
617 ~~conditions that the employee is required to meet before the suspension may~~  
618 ~~be lifted. The supervisor shall also notify both the driver and the Human~~  
619 ~~Resource Department, in writing, once the driver's driving privileges are~~  
620 ~~reinstated.~~

621 ~~(C) A driver's driving privileges shall automatically be reinstated after the~~  
622 ~~driver satisfactorily fulfills the conditions identified by the supervisor when~~  
623 ~~the driving privileges are suspended.~~

624 ~~(b) Certification Suspensions. A driver shall have his or her certification suspended for any~~  
625 ~~of the following:~~

626 ~~(1) Refusing to allow the Nation or an insurance carrier check his or her driving~~  
627 ~~record.~~

628 ~~(2) Failing to immediately notify his or her supervisor of any information as~~  
629 ~~required in 210.8-4 or elsewhere in this law.~~

630 ~~(3) Noncompliance with motor vehicle crash reporting requirements established by~~  
631 ~~this law.~~

632 ~~(4) Failing to complete any applicable driver training requirements.~~

633 ~~(5) Being arrested, charged or convicted of a motor vehicle operation violation~~  
634 ~~involving drugs, alcohol or criminal offense related to a traffic incident.~~

635 ~~(6) Having his or her driver's license restricted, suspended, revoked or cancelled~~  
636 ~~by the state.~~

637 ~~(7) Knowingly driving a Tribal vehicle without being certified under the provisions~~  
638 ~~of this law.~~

639 ~~(8) For a personal vehicle certification, not~~ **(e) Not** ~~maintaining the minimum insurance~~  
640 ~~requirements for a personal vehicle.~~

641 ~~(e) Supervisors who fail to uphold this law may face disciplinary action, in accordance with~~  
642 ~~the laws of the Nation governing employment.~~

643 ~~(d) Regardless of whether a violation results in suspension of certification,~~

644 ~~(1) employees who violate this law may also be subject to disciplinary action, in~~  
645 ~~accordance with laws of the Nation governing employment;~~

646 ~~(2) officials who violate this law may also be subject to sanctions and penalties in~~  
647 ~~accordance with applicable laws of the Nation; including but not limited to, removal~~  
648 ~~from office for elected officials and termination of appointment for appointed~~  
649 ~~officials.~~

650 ~~210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver~~  
651 ~~certification or of driving privileges, is not appealable.~~

652 ~~210.10-3. Suspensions Affecting Employment Status. Suspension of certification is a suspension~~  
653 ~~of driving privileges and is not leave from work. Individuals who have their driving privileges~~  
654 ~~suspended in accordance with 210.10-1(a), or who have their certification suspended and their~~  
655 ~~ability to perform their duties as an employee affected by that suspension may request, in writing,~~  
656 ~~that their supervisor and a Human Resources Department representative determine what, if any,~~  
657 ~~options may be available to them. Options may include, but are not limited to: non-driving~~  
658 ~~accommodation within the home department; reassignment to a position which does not require~~  
659 ~~driving; a leave of absence without pay; or termination of employment.~~

660 210.10 4. The minimum length of a suspension shall be based on the number of prior suspensions  
661 that have occurred within the past three (3) years from the date of the incident that resulted in the  
662 most recent suspension:

663 (a) ~~The first time a driver has his or her vehicle driver certification suspended, the~~  
664 ~~suspension shall last no less than five (5) full time workdays.~~

665 (b) ~~The second time a driver has his or her vehicle driver certification suspended, the~~  
666 ~~suspension shall last no less than ten (10) full time workdays.~~

667 (c) ~~The third time a driver has his or her vehicle driver certification suspended, the~~  
668 ~~suspension shall last no less than fifteen (15) full time workdays.~~

669 (d) ~~Drivers who incur more than three (3) vehicle driver certification suspensions under~~  
670 ~~this law within a three (3) year period shall lose their vehicle driver certification for three~~  
671 ~~(3) years, beginning with the date of the incident that resulted in the most recent suspension.~~

672 210.10 5. ~~Due to the seriousness of a citation for the operation of motor vehicles involving drugs~~  
673 ~~or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation~~  
674 ~~involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation~~  
675 ~~or upon three (3) years passing from the date of citation.~~

676 210.10 6. ~~A break in employment or service of one hundred eighty (180) days or greater shall clear~~  
677 ~~the driver's record of any vehicle driver certification suspensions, except for three (3) year~~  
678 ~~suspensions resulting from a violation that involved drugs or alcohol. However, all prior~~  
679 ~~suspensions may be used in re-employment consideration.~~

680 210.10 7. ~~Notwithstanding any other provision of this law, the Nation reserves the right to suspend~~  
681 ~~an individual's certification or extend a certification suspension. Certification may be suspended;~~  
682 ~~or an existing suspension may be extended, based on the best interests of the Nation and in~~  
683 ~~accordance with the following:~~

684 (a) ~~For officials and volunteers: upon unanimous agreement between the Human Resources~~  
685 ~~Department, Fleet Management and Risk Management.~~

686 (b) ~~For employees: A supervisor may suspend an employee's certification or extend an~~  
687 ~~existing suspension, when the supervisor determines it is appropriate to do so. The~~  
688 ~~employee may appeal this adverse employment action in accordance with the employment~~  
689 ~~laws of the Nation.~~

## 691 **210.11. Reinstatement of Certification**

692 210.11 1. ~~Vehicle driver certifications that are suspended for thirty (30) days or less shall be~~  
693 ~~automatically reinstated upon expiration of the suspension.~~

694 210.11 2. ~~A driver whose certification is suspended for thirty one (31) days or more, may have his~~  
695 ~~or her certification reinstated in accordance with the following:~~

696 (a) ~~The driver may request reinstatement of his or her certification after:~~

697 (1) ~~A certification suspension has concluded or any citation(s) are dismissed or the~~  
698 ~~individual is cleared of any charges alleged in a citation that resulted in a driving~~  
699 ~~certification suspension; and~~

700 (2) ~~Three (3) years have passed since the individual was convicted of a motor~~  
701 ~~vehicle operation citation involving drugs or alcohol; and~~

702 (3) ~~The state removes a driver's license suspension; and~~

703 (4) ~~Written proof has been submitted to the Human Resources Department that the~~  
704 ~~individual has any required insurance coverage.~~

705 (b) ~~Upon receiving a request to reinstate an individual's certification, the Human Resources~~  
706 ~~Department shall:~~

707 (1) ~~check the individual's driving record to ensure the individual has no violations~~  
708 ~~on his or her driving record preventing reinstatement; and~~

709 ~~(2) verify the written proof of insurance submitted by the individual, provided it~~  
710 ~~meets the requirements of this law.~~

711 ~~(e) If the individual passes the driving record check and his or her proof of insurance is~~  
712 ~~verified, the individual's certification shall be reinstated upon approval of the Human~~  
713 ~~Resources Department.~~

714 ~~(1) Exception. For an individual's fourth (4<sup>th</sup>) suspension or a suspension due to a~~  
715 ~~conviction of motor vehicle operation citation involving drugs or alcohol the~~  
716 ~~individual's certification may only be reinstated if the following requirements are~~  
717 ~~met:~~

718 ~~(A) For officials and volunteers: certification may only be reinstated upon~~  
719 ~~unanimous approval of the Human Resources Department, Fleet~~  
720 ~~Management and Risk Management.~~

721 ~~(B) For employees: The supervisor shall notify the Human Resources~~  
722 ~~Department, Area Manager, and Risk Management of the request; and may~~  
723 ~~reinstated the employee's certification if none of those entities object.~~

724 ~~(d) Any official, volunteer or employee may seek review of a decision not to reinstate~~  
725 ~~certification, by filing an appeal with the Judiciary.~~

726  
727 *End.*

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728 Adopted BC-06-28-17-C.

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**AMENDMENTS TO  
 VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT  
 LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<b>REQUESTER:</b> Legislative Reference Office	<b>SPONSOR:</b> Jennifer Webster	<b>DRAFTER:</b> Clorissa N. Santiago	<b>ANALYST:</b> Brandon Wisneski
<b>Intent of the Amendments</b>	<ul style="list-style-type: none"> <li>▪ To revise the qualifications to become a certified driver, including:               <ul style="list-style-type: none"> <li>▪ Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI to twelve (12) months without an OWI;</li> <li>▪ No more than three (3) moving violations or at-fault crashes within a two (2) year period;</li> <li>▪ Allow individuals with probationary licenses to become certified drivers if age 18 or older;</li> </ul> </li> <li>▪ To revise and simplify the process for suspending driver certification:               <ul style="list-style-type: none"> <li>▪ An individual’s driver certification is only suspended if his or her driver’s license has been suspended or revoked by the state of Wisconsin;</li> </ul> </li> <li>▪ To clarify that all other violations of this law that do not result in the suspension or revocation of driver’s license will be handled by disciplinary action;</li> <li>▪ To revise the restriction on driving while using prescription or over the counter medications to increase clarity;</li> <li>▪ To require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles;</li> <li>▪ To require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner;</li> <li>▪ To ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions;</li> <li>▪ To ban the use of e-cigarettes in tribal fleet vehicles;</li> <li>▪ Additional changes to revise and reorganize the law to increase clarity.</li> </ul>		
<b>Purpose</b>	To establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].		
<b>Affected Entities</b>	Human Resources Department (HRD), Risk Management, Fleet Management, Automotive Department, Employee Assistance Program (EAP), All employees, officials, and volunteers of the Nation who drive fleet vehicles or personal vehicles on official business. All supervisors of employees who drive fleet vehicles or personal vehicles on official business.		
<b>Related Legislation</b>	Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.		
<b>Public Meeting</b>	A public meeting has not yet been held.		
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Nation’s Vehicle Driver Certification and Fleet Management law is an employment law that  
3 governs how employees, elected and appointed officials and volunteers may drive personal or tribally-  
4 owned (“fleet”) vehicles on official business. The law does not govern how employees, elected and  
5 appointed officials, or volunteers drive personal vehicles outside of work or when not conducting  
6 official business.
- 7 **B.** The Nation’s Vehicle Driver Certification and Fleet Management law was most recently amended on  
8 June 28, 2017. However, since the adoption of those amendments, the Human Resources Department  
9 and other departments of the Nation encountered challenges implementing the law due to lack of clarity.  
10 In addition, members of the Legislative Operating Committee (LOC) expressed concerns regarding the  
11 impact of driving certification requirements on the Nation’s ability to recruit and hire for positions.
- 12 **C.** This law was added to the LOC’s Active file List on February 7, 2018, by the Legislative Reference  
13 Office after consultation with the Human Resources Department and Oneida Law Office. Beginning in  
14 July 2019, a work group of representatives from relevant entities and departments have met to review  
15 the law. Several of the proposed amendments reflect the feedback and suggestions of this work group.  
16

## SECTION 3. CONSULTATION AND OUTREACH

- 17
- 18 **A.** Representatives from the following departments or entities of the Nation participated in the  
19 development of this law and legislative analysis: Human Resources Department (Equal Employment  
20 Opportunity, Employment and Recruitment, Training and Development, Personnel Services), Risk  
21 Management, and Fleet Management.
- 22 **B.** The following laws of the Nation were reviewed in drafting this analysis: Personnel Policies and  
23 Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.
- 24 **C.** In addition, the following laws or policies of other governments, tribes and organizations were  
25 reviewed:
- 26     ▪ Ho Chunk Nation Fleet Ordinance; and
  - 27     ▪ State of WI Fleet Driver and Management Policies and Procedures
- 28

## SECTION 4. PROCESS

- 29
- 30 **A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 31 **B.** The law was added to the Active Files List on February 7, 2018.
- 32 **C.** At the time this legislative analysis was developed, the following work meetings had been held  
33 regarding developments of these amendments and legislative analysis:
- 34     ▪ July 15, 2019: Work meeting with HRD and Risk Management.
  - 35     ▪ July 29, 2019: Work meeting with HRD and Risk Management.
  - 36     ▪ August 13, 2019: Work meeting with HRD and Risk Management.
  - 37     ▪ September 4, 2019: Work meeting with LOC.
  - 38     ▪ October 2, 2019: Work meeting with HRD, Risk Management and Fleet Management.
  - 39     ▪ October 16, 2019: Work meeting with LOC.
  - 40     ▪ October 24, 2019: Work meeting with LOC
  - 41     ▪ November 5, 2019: Work meeting with LOC, HRD and Risk Management.
- 42
- 43

44 **SECTION 5. CONTENTS OF THE LEGISLATION**

45 A. **Qualifications for Driver Certification.** In order to drive a tribally-owned fleet vehicle or a personal  
 46 vehicle for official business, an employee, official or volunteer must obtain driver certification from  
 47 the Oneida Human Resources Department. Many of the Nation’s job descriptions require employees to  
 48 be certified drivers as a requirement of their job. The law contains a list of requirements that an  
 49 individual must meet in order to be certified. Proposed changes to these requirements include:  
 50  
 51

**Chart 1. Qualifications for Driver Certification – Comparison**

	<b>Current Law</b>	<b>Proposed Law</b>
<i>Age</i>	18 years or older	18 years or older
<i>License Status</i>	Possess valid, <u>non-probationary</u> Wisconsin Driver’s License.	Possess valid Wisconsin Driver’s License. * <i>Probationary license acceptable.</i>
<i>Driving Record Check: Drugs and Alcohol</i>	Disqualified if driving citation involving drugs or alcohol <u>within three (3) years.</u>	Disqualified if OWI, DUI or PAC citation <u>within the past twelve (12) months.</u>
<i>Driving Record Check: Other Driving Convictions</i>	No citation or conviction “related to a traffic incident.” * <i>HRD interprets this to mean no “traffic incident that results in the loss of a valid WI driver’s license.”</i>	Disqualified if three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years. * <i>Moving violation is defined as “any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.”</i>
<i>Additional Requirements</i>	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.

- 52
- 53 ■ **Change to Drug and Alcohol (OWI) Restrictions.** Currently, if an individual has had a drug or  
 54 alcohol conviction within the past three (3) years, such as an OWI, that individual cannot drive for  
 55 the Nation. These amendments reduce this timeframe to twelve (12) months.
- 56 ○ *Current.* An individual cannot become a certified driver if they have had a driving citation  
 57 related to drugs and alcohol within the past three (3) years. This includes OWI (Operating  
 58 While Intoxicated), DUI (Driving Under the Influence), or PAC (Prohibited Alcohol  
 59 Concentration) citations.



- 60           ○ *Proposed.* These amendments reduce this timeframe from three (3) years to twelve (12)  
61           months. This matches the timeframe that the WI State Government and University of  
62           Wisconsin System use for their employees, volunteers and students who drive state-owned  
63           vehicles.
- 64           ○ *Effect.* Individuals who have an OWI, DUI or PAC citation more than twelve (12) months  
65           ago may now become certified drivers for the Nation, provided they meet all other  
66           requirements of this law. The intent is to increase employment opportunities for individuals  
67           who may have had an OWI more than twelve (12) months ago and have complied with  
68           their sentencing and had their driver’s license reinstated by the State of Wisconsin.
- 69           ■ ***Change to Driving Record Restriction:*** Currently, if an individual has had “a citation or conviction  
70           related to a traffic incident,” the law states that they cannot become a certified driver. However, the  
71           law provides no definition for what a “traffic incident” means. Therefore, based on the lack of  
72           clarity, HRD issued an interpretation in 2017 defining traffic incident as “any traffic incident that  
73           results in the loss of an applicant’s and/or employee’s valid Wisconsin driver’s license.”
- 74           ○ *Current.* Under HRD’s interpretation of the current law, HRD only checks driving records  
75           to verify valid driver’s license and to check for drug and alcohol convictions.
- 76           ○ *Proposed.* These amendments now state that an individual cannot have “three or more  
77           moving violations and/or at-fault motor vehicle crashes in the past two (2) years.” The  
78           amendments define a “moving violation” as “any violation of motor vehicle or traffic law  
79           that is committed by the driver of a vehicle while the vehicle is moving. A moving violation  
80           does not include parking violations, equipment violations, or paperwork violations relating  
81           to insurance, registration or inspection.”  
82

### **Moving Violations**

*Examples of Wisconsin motor vehicle/traffic citations that would count as “moving violations” under this law:*

- Speeding (1 to 10 mph over limit)
- Speeding (11 to 19 mph over limit)
- Speeding (20 mph over limit)
- Failure to obey traffic sign or signal
- Illegal turn
- Obstructing traffic
- Failure to give proper signal
- Driving wrong way on one way street
- Inattentive driving
- Failure to yield right of way
- Driving on wrong side of highway
- Driving too fast for conditions
- Failure to stop for school bus with lights flashing
- Attempt to elude an officer
- Reckless driving
- Following Too Closely
- Texting while driving



- 83           ○ *Effect.* Due to the lack of clarity in the current law, HRD does not currently check for any  
84           traffic violations other than drug and alcohol related offenses. Upon adoption of this law,  
85           HRD will now check driving records and will not certify any individuals with three (3) or  
86           more moving violations in the past two (2) years.
- 87       ■ ***Change to Probationary License.*** Under the current law, probationary licenses are not acceptable  
88       as valid driver’s licenses. Under the proposed amendments, probationary licenses will now be  
89       accepted as valid driver’s licenses so long as the individual is eighteen (18) years or older.
- 90           ○ ***What is a Probationary License?*** In Wisconsin, a probationary license is a driver’s license  
91           issued to a new driver, regardless of age. According to WI DMV, “the main difference  
92           between a probationary license and regular license consists of the restrictions listed on the  
93           back of the license. A probationary license is not an instruction permit or learner’s permit.  
94           It is a valid driver’s license for operation within and outside of Wisconsin.” New drivers  
95           hold a probationary license for at least two (2) years after passing their driving test,  
96           regardless of age.
- 97           ○ *Effect.* Individuals age eighteen (18) or older who hold a probationary license may now  
98           become certified drivers so long as they meet all other requirements of this law.
- 99       ■ ***Change to Occupational License.*** Previously, the law stated that an occupational license “is a valid,  
100       non-probationary license if the driver’s abstract which accompanies the occupational license allows  
101       the driver to operate vehicles for his or her job with the Nation.” These amendments delete this  
102       provision and state only that an individual must hold a “valid Wisconsin driver’s license” [2 O.C.  
103       210.4-2(b)]. The term “valid Wisconsin driver’s license” is not defined.
- 104           ○ ***What is an Occupational License?*** An occupational license is a restricted driver’s license.  
105           According to WI DMV, “unlike a regular license, the driver is limited in where and when  
106           they can drive. Individuals may only drive to and from work or other places indicated on  
107           the license and only during specific times of the day.” An example is an individual who  
108           has their license suspended due to an OWI conviction. Such individuals may be eligible to  
109           apply for an occupational license to drive to and from work to maintain their employment.
- 110           ○ ***Required Waiting Periods for Occupational License.*** The required waiting period for an  
111           individual to apply for an occupational license after their driver’s license has been  
112           suspended varies depending on previous driving history and the reason for the current  
113           revocation suspension. A loss of license for demerit points (for example, speeding tickets)  
114           or first OWI has no waiting period. A second or subsequent OWI requires a 45-day waiting  
115           period or longer depending on the circumstances of the OWI.
- 116           ○ *Effect.* The current law clearly states that an occupational license qualifies as a “valid  
117           license” under this law, and that individuals with occupational licenses may be certified as  
118           drivers so long as the occupational license allows them to operate vehicles for his or her  
119           job with the Nation. The proposed amendments lack clarity on this subject and may require  
120           interpretation by HRD as to whether an occupational license can be considered a valid  
121           license. Other provisions of this law, such as the 12-month restriction on OWIs, will also  
122           impact when an individual can be recertified.
- 123       ■ ***Stricter Certification Procedures for Certain Entities.*** Previously, entities had the option to  
124       develop stricter driver certification standards and submit to Fleet Management, Risk Management  
125       and HRD for review and approval. This included specialized requirements regarding age,  
126       experience, training and licensing. This process has been eliminated. However, employees will be

127 required to satisfy “any other requirements specific to the job description and/or vehicle that may  
128 be used by or assigned to the person” as well as “all driver training requirements imposed by the  
129 Nation or any federal or state agency regulations” [2 O.C. 210.4-2(d) and (e)].

- 130 ○ **Effect.** Entities may include stricter driving requirements in job descriptions, department  
131 standard operating procedures (SOPs), and require employees to follow all tribal, state and  
132 federal requirements regarding specific vehicles (such as CDL certifications and required  
133 training for certain vehicles like buses.) However, entities will no longer submit stricter  
134 standards for approval by Fleet Management, Risk Management, and HRD.

135 **B. Employee Vehicle Insurance Requirement.** The Nation requires employees to maintain minimum  
136 insurance on their personal vehicle in order to use their vehicle to conduct official business [2 O.C.  
137 210.4-2(f)].

- 138 ■ **Current Requirement.** The current vehicle insurance requirement is one hundred thousand dollars  
139 (\$100,000) per person, three hundred thousand dollars (\$300,000) per motor vehicle crash for  
140 bodily injury, and (\$25,000) for property damage. These amounts remain unchanged in the  
141 amendments.
- 142 ■ **New Option for Combined Single Limit:** As an alternative, employees of the Nation may instead  
143 opt to carry a “combined single limit” of two hundred and fifty thousand dollars (\$250,000). A  
144 combined single limit is a type of insurance policy with a maximum dollar amount that covers any  
145 combination of injuries or property damage, rather than split limits for each type of coverage as in  
146 a typical policy. This option was added at the recommendation of Risk Management.
- 147 ■ **Effect.** Employees are still required to carry minimum vehicle insurance but may now opt to carry  
148 either split coverage (\$100k/\$300k/\$25k) or a combined single limit coverage (\$250k).

149 **C. Access to List of Certified Drivers.** The Human Resources Department (HRD) is required to maintain  
150 a list of certified drivers. This list is currently provided by HRD to both Fleet Management and  
151 Accounting. Now, HRD will also be required to provide this list to the Risk Management Department  
152 [2 O.C. 210.4-3(c)].

153 **D. Driving While on Prescription Drugs or Medication.** The current law states that while operating a  
154 vehicle on official business, drivers of the Nation shall not drive “while under the influence of  
155 controlled substances, intoxicating beverages, prescription drugs or other medications that caution  
156 against operating a motor vehicle when taken.”

- 157 ■ **Problem with Wording of Medication Restriction.** The wording of the prescription drug and  
158 medication restriction is unclear and has created challenges for HRD to implement. As HRD  
159 explains, many common medications may instruct individuals to “use caution” if driving, such as  
160 medication for seasonal allergies. “Alternatively, some medications have no driving warning yet  
161 create impairment in some people.” This has led to confusion as to whether employees can drive  
162 while using their medications. HRD issued an interpretation in 2017 to clarify this restriction and  
163 presented this concern to the LOC.
- 164 ■ **Proposed Change.** The amendments now state that an individual may not drive while “while under  
165 the influence of prohibited drugs or alcohol.” In addition, drivers may not drive if “impaired by a  
166 medical or physical condition or other factor that affects a driver’s motor skills, reaction time or  
167 concentration” [2 O.C. 210.5-1(d)].

- 168 ○ **Definition or Prohibited Drug.** The amendments define prohibited drug as “marijuana,  
169 cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone,  
170 barbiturates, narcotics, and any other substances included in Schedules I through V, as

171 defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also  
172 includes prescription medication or over-the-counter medicine when used in an  
173 unauthorized or unlawful manner” [2 O.C. 210.3-1(i)].  
174 ○ *Effect.* The amendments clarify that employees may drive while using their prescription  
175 or over-the-counter medications as long as they are using the medication in a lawful  
176 manner and are not impaired while using the medication. Rather than restricting driving  
177 based on the “use caution” label that appears on many medications, the restriction is now  
178 based on the actual effects of that medication on the driver’s motor skills, reaction time or  
179 concentration.

180 **E. *Ban on Weapons in Vehicles While on Official Business.*** A new restriction has been added to the  
181 law stating that an individual cannot carry a weapon while operating a fleet or personal vehicle while  
182 on official business, regardless of whether the weapon is in the open or concealed [2 O.C. 210.5-  
183 1(e)].

- 184 ■ *Exception.* An individual who is carrying a weapon in the course of their official duties (such as a  
185 police officer) or participating in cultural activities or ceremonies (such as Oneida Rites of  
186 Passage) are exempt from this restriction.
- 187 ■ *Definition of Weapon:* A weapon is defined as “a firearm, knife, electric weapon, club, or any  
188 other object intended to cause harm to oneself or others” [2 O.C. 210.3-1(k)].
- 189 ■ *Current Policies and Laws Governing Weapons.*
  - 190 ○ The Nation’s current prohibited weapons policy, adopted by the BC resolution in 2011  
191 (BC-10-26-11-C), states that other than those required to carry weapons for their job, “no  
192 person shall carry a weapon, whether in the open or concealed, on Tribal public property,  
193 including any tribal building, gaming or retail business, facility, construction site, vehicle  
194 or at any Tribally sponsored event.”
  - 195 ○ In addition, the Workplace Violence Policy states that the possession or use of weapons  
196 on any kind of property of the Nation, including parking lots, other exterior premises or  
197 while engaged in activities for the Nation,” is a “prohibited behavior” [2 O.C. 223.5(g)].
  - 198 ○ Finally, the Nation’s Hunting, Fishing and Trapping law prohibits individuals from  
199 transporting a loaded firearm, air rifle or cocked bow or crossbow in a vehicle [4 O.C.  
200 409.9-1(c)].
  - 201 ○ *Conclusion:* Taken together, the Nation’s current laws and policies already restrict  
202 drivers from carrying weapons in their personal vehicles while on tribal property or in  
203 tribal parking lots or from carrying weapons in fleet vehicles under any circumstance.
- 204 ■ *Effect.* These amendments clarify that drivers may not carry weapons in either personal or fleet  
205 vehicles while on official business of the Nation unless required to do so for their job or cultural  
206 activities.

207 **F. *E-Cigarettes in Fleet Vehicles.*** The current law already states that individuals may not smoke or permit  
208 others to smoke in the Nation’s fleet vehicles. Under these amendments, the use of electronic smoking  
209 devices, or “e-cigarettes,” will also be prohibited in the Nation’s fleet vehicles [210.5-3(f)].

210 **G. *Driver Safety Training.*** The current law requires all drivers certified to drive a fleet vehicle to complete  
211 driver safety training every three (3) years. These amendments will now require all certified drivers to  
212 complete this safety training, regardless of whether they drive a fleet vehicle or a personal vehicle on  
213 official business. In addition, rather than Environmental Health and Safety Division, it will now be  
214 HRD’s responsibility to provide and monitor this training [2 O.C. 210.5-2].

215  
 216

**Chart 2. Driver Safety Training Requirements**

	<b>Current Law</b>	<b>Proposed Law</b>
<i>Who is required to attend Driver Safety Training?</i>	Drivers certified to drive a <u>tribal</u> vehicle.	All individuals with driver certification, whether they drive personal or fleet vehicles.
<i>How often attend Driver Safety Training?</i>	Every three (3) years	Every three (3) years.
<i>Who is required to provide the training?</i>	Environmental Health and Safety Division.	Human Resources Department.

217

218 **H. *New 30-Day Deadline to Submit Mileage.*** Employees and officials of the Nation seeking mileage  
 219 reimbursement for miles driven while conducting official business will now be required to submit their  
 220 mileage forms within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is  
 221 sooner [2 O.C. 210.5-4(b)].

222 **I. *Approval of Passengers in Fleet Vehicles.*** Previously, the Oneida Business Committee was  
 223 responsible for authorizing passengers in a fleet vehicle who were not employees, officials, volunteers,  
 224 or individuals being transported as part of a program, service or to conduct business. In order to increase  
 225 efficiency, the Fleet Management department will now be responsible for authorizing these types  
 226 passengers [2 O.C. 210.6-7(c)].

227 **J. *Drug Testing Requirement for Motor Vehicle Crashes.*** When a certified driver is involved in a motor  
 228 vehicle crash or damage involving a fleet vehicle or personal vehicle driven on official business, the  
 229 driver must immediately report the crash and complete an incident report. The current law also states  
 230 that the driver must comply with “any applicable alcohol and drug testing requirements established in  
 231 other laws of the Nation.” This reference to drug testing requirements in other laws has been deleted.

232 

- *Drug and Alcohol Free Workplace law.* Although this reference has been deleted, employees of the  
 233 Nation are still required to follow the Drug and Alcohol Free Workplace law. This policy states  
 234 that if an employee is involved in a work-related accident, he or she must immediately inform their  
 235 supervisor and, as a condition of employment, participate in pre-employment, reasonable suspicion,  
 236 and follow-up testing upon the request of an appropriate authority [2 O.C. 202.8-3 and 8-4].

237 

- *Effect.* Although the reference to alcohol and drug testing is deleted in this particular law,  
 238 employees of the Nation may still be required to participate in alcohol and drug testing in  
 239 accordance with the Drug and Alcohol Free Workplace law as a condition of their employment.

240 **K. *Copy of Internal Reviews.*** When there is a motor vehicle crash or damage involving a fleet vehicle or  
 241 personal vehicle on official business, the Fleet Management Department and Risk Management  
 242 Department coordinate and conduct an internal review of the incident. These departments may  
 243 recommend that an individual receive disciplinary action based on the incident. For example, discipline  
 244 can be recommended if an employee recklessly damages a fleet vehicle.

245 

- *Reports Required for Both Fleet Vehicles and Personal Vehicle Crashes.* The current law states  
 246 that internal reviews are to be conducted “whenever necessary” for motor vehicle crashes involving  
 247 fleet vehicles, specifically. Now, internal reviews will be required for both fleet vehicles and  
 248 personal vehicles driven on official business in the event of a motor vehicle crash or damage [2  
 249 O.C. 210.7-1].

250 

- *Copies of Reports to Area Managers.* Previously, these reports were provided to the driver and  
 251 driver’s supervisor. Now these reports will also be provided to the driver’s area manager. The intent

252 is to ensure that the driver’s area manager is kept informed of incidents and can ensure that issues  
253 are addressed with employees [2 O.C. 210.7-2].

254 **L. *Driving Privileges.*** The current law allows for supervisors to “temporarily suspend” an individual’s  
255 driving privileges without actually suspending their driver certification. In the other words, the  
256 individual is still certified as a driver by HRD, but his or her supervisor temporarily does not give them  
257 permission to drive on official business. This section has been deleted from the law. However, the  
258 amendments state that employees cannot drive fleet vehicles or their personal vehicles on official  
259 business “without obtaining permission from their supervisor” [2 O.C. 210.5-4(a) and 6-6(b)].  
260 Therefore, supervisors will still have the authority to deny permission for an employee to drive on  
261 official business on an individual basis without suspending their driver certification.

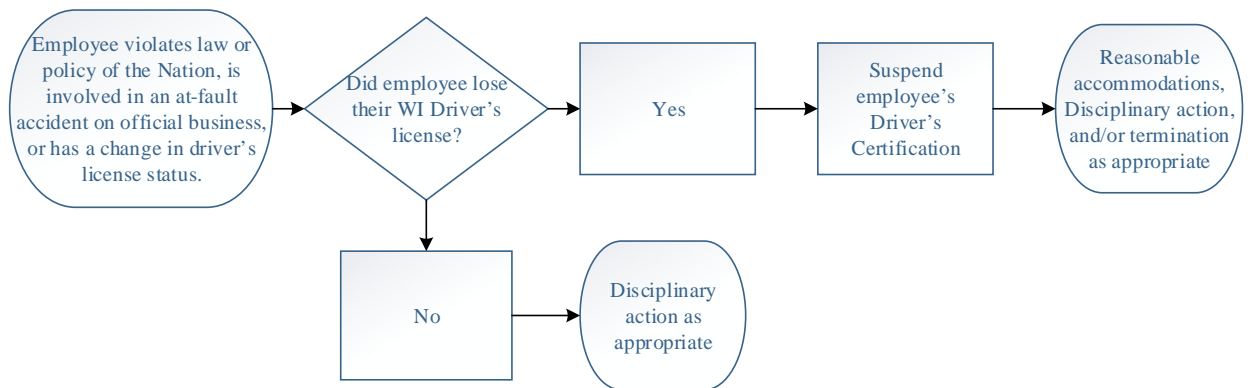
262 **M. *Suspension of Driver Certification.*** The process for a supervisor to officially suspend an employee’s  
263 driver certification has been substantially changed and simplified.

- 264 ■ *Proposed.* Under the proposed amendments, an individual’s driver certification is suspended only  
265 when the individual’s valid drivers license has been suspended or revoked by the state of Wisconsin  
266 or has otherwise become invalid. The length of the suspension lasts until the individual’s driver’s  
267 license is reinstated. In other words, if a person holds a valid Wisconsin driver’s license, that person  
268 can drive for the Oneida Nation assuming he or she meets all other requirements of this law. All  
269 other violations of this law, such as failure to submit insurance or inappropriate use of a fleet  
270 vehicle, will now be handled by disciplinary action in accordance with the Nation’s Personnel  
271 Policies and Procedures.

272

273 ***Chart 3. Proposed Driver Certification Suspension Process.***

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**Chart 4. Suspension of Driver Certification – Comparison.**

	<b>Current Law</b>	<b>Proposed Law</b>
<i>Reason(s) to Suspend Driver Certification</i>	<p>Various violations of the law, including:</p> <ul style="list-style-type: none"> <li>▪ having WI driver’s license suspended or revoked,</li> <li>▪ being arrested or charged or convicted of motor vehicle operation violation involving drugs or alcohol;</li> <li>▪ Not reporting motor vehicle crash while on official business,</li> <li>▪ Not maintaining minimum insurance on personal vehicle</li> </ul>	Suspend driver certification only if Wisconsin Driver’s License has been suspended, revoked or otherwise invalid.
<i>Length of Driver Certification Suspension</i>	<ul style="list-style-type: none"> <li>▪ Minimum length of suspension between five (5) and fifteen (15) days for the first three (3) suspensions.</li> <li>▪ More than three (3) suspensions in a three (3) year period results in a three (3) year suspension.</li> <li>▪ Citation for motor vehicle violation involving drugs or alcohol results in automatic three (3) year suspension.</li> </ul>	Suspended until the individual’s WI Driver’s license is reinstated by the WI Department of Motor Vehicles and the individual meets qualifications for reinstatement under this law.
<i>Supervisor Discretion to Suspend or Extend Driver Certification for any other reason not listed in this law?</i>	Yes, “based on the best interests of the Nation...if the supervisor determines it is appropriate to do so”	No.
<i>Is Driver Certification Suspension Appealable?</i>	No.	No.
<i>Can the supervisor offer reasonable accommodations if driver certification suspension affects an employee’s ability to perform their job?</i>	<p>Yes, the supervisor may:</p> <p>Provide non-driving accommodation within the home department;</p> <p>Reassign to a position that does not involve driving</p> <p>Leave of absence without pay.</p>	<p>Yes, the supervisor may:</p> <p>Reassign the individual to a position that does not require driving;</p> <p>Provide non-driving accommodation within the position;</p> <p>Remove the driving requirement from the job description</p> <p>Place the individual on unpaid leave until the individual obtains his or her driving certification.</p>
<i>Can the Supervisor terminate employment individual’s driver certification is suspended?</i>	Yes.	Yes, if a valid driver’s license “is an essential requirement of the position.”

287 **Chart 5. Reinstating Driver Certification – Comparison.**

	<b>Current Law</b>	<b>Proposed Law</b>
<i>Reinstatement of Driver Certification</i>	<ul style="list-style-type: none"> <li>▪ Automatically reinstated if the suspension was thirty (30) days or less;</li> <li>▪ If the suspension was thirty-one (31) days or more; HRD shall verify insurance and check the driving record to ensure that driver meets eligibility requirements, including no drug or alcohol convictions within three (3) years.</li> </ul>	Upon review of HRD that individual’s Driver’s license has been reinstated and that the driver meets original qualifications for certification, including: <ul style="list-style-type: none"> <li>▪ No OWI, DUI or PAC violation within past 12 months;</li> <li>▪ Less than three (3) moving violations or at fault accidents within the past two (2) years</li> <li>▪ All other training and insurance requirements.</li> </ul>
<i>Failure to Reinstate Driver Certification Appealable?</i>	Yes, any official, volunteer or employee may seek review of a decision not to reinstate certification by filing an appeal with the Judiciary.	No, failure to reinstate driver certification is not appealable.

- 288
- 289 **N. Referral to EAP for Drug & Alcohol Violations.** The current law states that supervisor of drivers
- 290 “shall, when necessary, refer drivers to the Employee Assistance Program in accordance with the
- 291 applicable policies and procedures of the Nation.”
- 292
  - *Proposed.* This has been revised to state that any suspension of an individual’s driver certification
  - 293 based on a violation involving drugs and/or alcohol shall be accompanied by a referral to the
  - 294 Nation’s Employee Assistance Program for an assessment of the individual [2 O.C. 210.8-2(a)].
  - 295
    - *Effect.* In other words, supervisors will be required to refer employees to EAP for an assessment
    - 296 anytime an employee is suspended for a drug or alcohol violation, such as an OWI.

297 **O. Minor Drafting Changes.** Additional minor drafting changes have been made throughout the law for

298 clarity.

299

300 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 301 **A. References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this
- 302 law.
- 303
  - *Personnel Policies and Procedures.* “In addition to the suspension of driver certification, a
  - 304 supervisor may take disciplinary action against an individual in accordance with the Nation’s laws
  - 305 and policies governing employment if an employee...” [2 O.C. 210.8-7].
  - 306
    - *Travel and Expense Policy.* “A vehicle shall be rented in accordance with the Nation’s laws and
    - 307 policies governing travel. Every vehicle rented shall include the purchase of the maximum
    - 308 collision damage waiver offered by the rental company” [2 O.C 210.6-9(a)].
      - 309
        - o *Conflict.* The Travel and Expense Policy states that “insurance on all car rentals is
        - 310 covered by the Oneida Tribe’s insurance policy.” However, this does not reflect current
        - 311 practice. In addition, the Travel and Expense Policy conflicts with both the current

312 Vehicle Driver Certification law and the proposed amendments, which both require the  
313 purchase of maximum collision damage waiver from the rental company, as this is more  
314 cost effective for the Nation.

315 ○ *Recommendation:* The LOC and LRO should note the discrepancy in the Travel and  
316 Expense Policy and identify that section of the Travel and Expense Policy as an area for  
317 future amendments.

318 **B. Other Laws that Reference Vehicle Driver Certification:** The following laws of the Nation reference  
319 Vehicle Driver Certification and Fleet Management. These amendments do not conflict with any of the  
320 referenced laws.

321 ■ *Drug and Alcohol Free Workplace.* This law applies to all applicants for employment, whether  
322 external or internal, and all employees during working hours, when on-call, and when operating a  
323 vehicle owned by the Nation or a vehicle rented by the Nation. An employee is prohibited from  
324 the use of prohibited drugs and alcohol during working hours, when on-call, and when operating  
325 a vehicle owned by the Nation or a vehicle rented by the Nation [2 O.C. 202.4-1 and 4-2].

326 ■ *Clean Air Policy.* “Except as provided in 411.4-1(b)(1) and 411.4-2, no person may smoke... in  
327 any vehicle owned or operated by the Tribe” [4 O.C. 411.4-1(c)].  
328

## 329 **SECTION 7. ENFORCEMENT AND ACCOUNTABILITY**

330 **A. Enforcement.** This law is enforced in the following ways:

331 ■ *Suspension of Driver Certification.* A supervisor shall suspend an individual’s driver certification  
332 if the individual’s driver’s license is suspended or revoked by the State or becomes invalid for any  
333 other reason [2 O.C. 210.8-2].

334 ■ *Disciplinary Action.* In addition to the suspension of a driver certification, a supervisor may take  
335 disciplinary action against an individual in accordance with the Personnel Policies and Procedures  
336 [2 O.C. 210.8-7].  
337

## 338 **SECTION 8. OTHER CONSIDERATIONS**

339 **A. Vehicle Driver & Fleet Management Data.** The following data is provided for information:

340 ■ **Number of Driver Certification Suspensions:**

341 ○ 2017: 3

342 ○ 2018: 13

343 ○ 2019: 6

344 ■ **Number of Employees Separated from Employment Due to Loss of Driver Certification:**

345 ○ 2019: 2

346 ■ **Number of Job Applicants Screened Out Due to OWI or Driving Convictions:**

347 ○ HRD does not currently track this information. However, between July and November of  
348 2019, at least five (5) applicants were screened out for not meeting driver certification  
349 requirements.

350 *Source: Email communications with HRD, 11/5/19.*

351 ■ **Number of Fleet Vehicles**

352 ○ The Nation currently owns 209 fleet vehicles. 200 of these vehicles are permanently  
353 assigned to a department of the Nation.

354 *Source: Email communication with Fleet Management, 10/29/19.*



355       ▪ **Chart 6. Vehicle Incidents Involving Nation-owned Vehicles**

Fiscal Year	# of Incidents	# of Incidents At Fault
2009	11	8
2010	21	13
2011	25	16
2012	7	5
2013	19	13
2014	19	12
2015	12	10
2016	16	15
2017	10	8
2018	20	15

356                   *Source: Email communication w/Risk Management, 10/29/19.*

357

358 **B. Grandfather Clause for Drivers with Three or More Moving Violations or At-Fault Accidents within**  
 359 **Past Two Years.** Under the current law and HRD’s present interpretation, HRD only checks vehicle  
 360 driver records for drug and alcohol related citations and to ensure valid driver’s license. Once these  
 361 amendments are passed, HRD will now check whether drivers had three (3) or more moving violations  
 362 or at-fault accidents within the past two (2) years.

363       ▪ *Need for Grandfather Clause.* Because HRD has not previously checked for moving violations,  
 364 there may employees who are currently certified with three (3) or more accidents on their record  
 365 in the past two (2) years. Since these employees were certified under the previous law, the LOC  
 366 should consider adding a grandfather clause in the adopting resolution to ensure that these  
 367 employees do not lose their driver certification upon adoption of this law.

368       ▪ *Recommendation.* Consider grandfather clause for current certified drivers that have had three  
 369 (3) or more moving violations or at-fault accidents within the past two (2) years. For example,  
 370 the adopting resolution could state that the new restrictions on moving violations shall apply  
 371 only to new applicants, new hires, or transfers that occur after the adoption date of this law.

372 **C. Certification of Drivers Previously Disqualified for OWI in the Last Three (3) Years.** Under the  
 373 current law, applicants or employees who have had a drug or alcohol citation within the past three (3)  
 374 years, such as an OWI, cannot become certified drivers for the Nation. Upon passage of this law, this  
 375 restriction will be lowered to twelve (12) months. Therefore, there may be current employees of the  
 376 Nation who will become eligible for driver certification upon adoption of this law. For example, an  
 377 employee who had an OWI two years ago who is now working under a reasonable accommodation that  
 378 doesn’t involve driving.

379       ▪ *Recommendation.* Upon adoption of this law, HRD may want to communicate this information  
 380 to supervisors and/or impacted employees so that they are aware that they may now be eligible  
 381 for driver certification.

382 **D. Impact of Driving Record Check on Currently Certified Drivers.** In order to become a newly certified  
 383 driver, a driver must not have had an OWI within the past twelve (12) months and not had three (3) or  
 384 more moving violations or at-fault accidents within the past two (2) years. However, an individual who  
 385 has become certified can only have their driver certification suspended if they lose their valid Wisconsin  
 386 driver’s license.

387       ▪ *Example Scenario.* In other words, an individual can be hired with a clean driving record,  
 388 receive driver certification from the Nation, then have three (3) or more moving violations

389 within a 2-year period during their employment, but still keep their driver certification because  
 390 they never lost their valid driver’s license as a result of the moving violations. However, if that  
 391 same individual were to leave their employment with the Nation and later apply for another  
 392 position in the organization, that individual could not become a certified driver, because they  
 393 are now applying as a new driver and must pass the driving record check.  
 394

395 **Chart 7. Driving Record Requirement Comparison**

Scenario	Driving Record Requirements	What happens if driver received three moving violations in a two-year period?
<i>New employee or transfer (New Certification)</i>	Valid Driver’s license; No OWIs in the past 12 months, Not have three or more moving violations within the past 2 years	Three moving violations in 2 years or an OWI in 12 months results in denial of driver certification.
<i>Current employee who already has driver certification (Maintain Certification)</i>	Valid Driver’s license. <i>*Only lose certification if driver’s license suspended or revoked by state of WI.</i>	Three moving violations in a 2 year period does not result in loss of driver certification unless the individual also lost their driver’s license.
<i>Employee who lost certification due to suspended driver’s license and applies to be recertified after getting their license back (Re-Certification)</i>	Valid Driver’s license; No OWIs in the past 12 months; Not have 3 or more moving violations in the past 2 years	Three moving violations or an OWI in the past 12 months results in denial of driver certification.

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397 ■ *Recommendation.* While this discrepancy is not necessarily problematic, it may cause  
 398 confusion for current employees and supervisors who receive three (3) or more traffic citations  
 399 after they have become a certified driver for the nation. HRD and supervisors should be aware  
 400 that a current employee can only lose their driver certification if they lose their WI driver’s  
 401 license – regardless of the number of moving violations on their record since becoming  
 402 certified.

403 **E. Number of Job Descriptions Requiring Drivers License.** During the development of these  
 404 amendments, the LOC expressed interest in learning how many of the Nation’s job descriptions require  
 405 employees to hold a valid driver’s license as a condition of their employment. The LOC was interested  
 406 to know if there may be positions where an employee rarely drives on official business, but their job  
 407 description still requires a valid driver’s license to maintain employment.

- 408 ■ *Data:* HRD estimated that roughly 700 out of 950 program/non-divisional positions require a  
 409 driver’s license. Data for gaming positions was not available at the time this analysis was  
 410 drafted.
- 411 ■ *Recommendation:* During a work meeting, the LOC encouraged HRD to review job  
 412 descriptions and determine whether it is necessary for certain jobs to require a driver’s license.  
 413 If the LOC wishes to formalize this request to HRD, the LOC could send a memo or include in

414 the adopting resolution for this law a timeline or forum for where this information should be  
415 brought back (such as HRD's quarterly report).

416 **F. Training Upon Adoption of Amendments.** Upon the adoption of these amendments, HRD should offer  
417 updated training to supervisors and employees of the Nation on the new provisions of this law.

418     ▪ *Recommendation.* The LOC may wish to include this directive in the adopting resolution of  
419 these amendments and work with HRD to develop a reasonable timeframe for developing and  
420 offering this training.

421 **G. Fiscal Impact.** A fiscal impact statement has not yet been requested.

422     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
423 emergency legislation [1 O.C. 109.6-1].

424     ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating  
425 Committee and may be prepared by any agency who may receive funding if the legislation is  
426 enacted; who may administer a program if the legislation is enacted; who may have financial  
427 information concerning the subject matter of the legislation; or by the Finance Office, upon request  
428 of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].

429



Legislative Operating Committee  
December 4, 2019

## Oneida Food Service Code

<b>Submission Date:</b> 9/19/18	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Earnest Stevens III	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This is a request from the Environmental, Health, Safety & Land Division and Licensing Department to make certain amendments and updates to the Oneida Food Service Code that include fee schedule updates, cottage food sales from home amendments, and requirements for credentialed Food Safety Manager.*

**9/19/18 LOC:** Motion by Jennifer Webster to add the Oneida Food Service Code to the active files list and assign Earnest Stevens III as the sponsor; Seconded by Daniel Guzman King. Motion carried unanimously.

**10/4/18:** *Work Group Meeting.* Present: Kristen M. Hooker, Maureen Perkins, Michelle Myers, Vanessa Miller, Jeff Mears, Jamie Better. The purpose of this work group meeting was to discuss potential amendments to the Oneida Food Service Code (“Law”) with representatives from the following departments and divisions: Environmental, Health, Safety and Land Division; Community Health Nursing; and Internal Services. The next steps are: (1) for the legislative analyst to conduct additional research to be presented back to the work group for consideration and further discussion; (2) for the drafting attorney to provide general updates to the Law based on the LPA and the Federal Food Code; and (3) for the work group to provide any follow up recommendations and/or suggestions to the LRO for amendments to the Law.

**11/29/18:** *Work Group Meeting.* Present: Vanessa Miller, Tonya Webster, Jennifer Falck, Maureen Perkins, Kristen M. Hooker. The purpose of this work group meeting was to go through the revisions and proposed amendments to the Oneida Food Service Code. The next steps are: (1) for EHSLD and/or Licensing Department to contact Risk Management regarding the current insurance requirements for independent food vendors; (2) for EHSLD to share and get input on the proposed “cottage food exemption” with representatives of the Nation that may be interested in its development/application; and (3) to reconvene at another work group meeting to finish going through the amendments and discuss the input received from the above-mentioned groups.

**1/25/19:** *Work Group Meeting.* Present: Jeff Mears, Kristen M. Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was: (1) to discuss Risk Management's stance on the Law's current insurance provisions and consider possible amendments relating thereto; and (2) to continue reviewing the Law to gather suggestion from the work group for amendments that include, but are not limited to, updating the fee schedule and adding an exemption for cottage food sales.

**2/28/19:** *Work Group Meeting.* Present: Jeff Mears, Kristen M. Hooker, Maureen Perkins, Vanessa Miller, Jennifer Falck. The purpose of this meeting was to discuss the addition of a cottage food sales exemption to the Law. The next step is for the drafting attorney to update the Law to include all amendments proposed during the last two meetings and to bring a draft back to a work group meeting for a final review and comment.

**6/6/19:** *Work Group Meeting.* Present: Jeff Mears, Kristen M. Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was to go through the rough draft of the proposed amendments to the Law with the work group for final comments before bringing the draft to a LOC work meeting for review and policy consideration.

**11/6/19:** *LOC Work Meeting.* Present: David P. Jordan, Daniel Guzman-King, Kirby Metoxen, Kristen M. Hooker, Maureen Perkins, Ernest Stevens III, Jennifer Webster (left early), Jameson Wilson. The purpose of this meeting was to review the current draft of the Oneida Food Service Code, go through the proposed amendments suggested by the work group and discuss any further amendments by the LOC. The LOC reviewed the first half of the draft. The next step is for the LRO to address several questions/concerns raised by the LOC during its review and to bring responses back to the LOC work meeting where the second half of the draft is on the agenda.

**11/15/19:** *LOC Work Meeting.* Present: Kristen Hooker, Maureen Perkins, David Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Daniel Guzman King. The purpose of this meeting was to finish going through the draft of the amendments to the Oneida Food Service Code.

**Next Steps:**

- Approve the draft of the amendments to the Oneida Food Service Code and direct a legislative analysis to be completed.

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**Title 3. Health and Public Safety – Chapter 305**  
**Kahkwa’ó·ku**  
*about the food*  
**ONEIDA FOOD SERVICE**

305.1. Purpose and Policy	305.7. Licensing
305.2. Adoption, Amendment, Repeal	305.8. Exemptions
305.3. Definitions	305.9. Inspections
305.4. Jurisdiction	305.10. Violations, Enforcement
305.5. Compliance	305.11. Appeal Rights
305.6. Authority	

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**305.1. Purpose and Policy**

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation’s resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

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**305.2. Adoption, Amendment, Repeal**

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-\_\_-\_\_-\_\_-\_\_.

305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. 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.

305.2-4. 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.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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**305.3. Definitions**

305.3-1. 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) “Close down” means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

- 49 (b) “Consumer” means an individual who is a member of the public; takes possession of  
50 food; is not functioning in the capacity of a food service business, a cottage food operator,  
51 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.  
52 (c) “Cottage food operator” means an individual who, exclusively within the home kitchen  
53 of his or her domestic residence, produces cottage food products for direct sale only.  
54 (d) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
55 residence, that are non-potentially hazardous, including non-perishable baked goods such  
56 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
57 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
58 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
59 the Department characterizes as cottage food products for purposes of this law.  
60 (e) “Department” means the Environmental Health Safety Department within the Nation’s  
61 Environmental Health, Safety and Land Division.  
62 (f) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from  
63 a cottage food operator that does not include purchases through consignment, mail order,  
64 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
65 from using the internet for the sole purpose of advertising his or her cottage food products.  
66 (g) “Domestic residence” means the single-family house or unit in a multiunit residential  
67 structure located at the address that the applicant lists as being his or her primary residence  
68 when applying to the Department for a cottage food exemption under this law.  
69 (h) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
70 immediate attention, the absence of which could endanger the health or safety of others.  
71 (i) “Federal Food Code” means the most current edition of the United States Public Health  
72 Service, Food and Drug Administration Food Code.  
73 (j) “Fine” means a monetary punishment issued to a person for violation of this law.  
74 (k) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient  
75 used or intended for use or for sale in whole or in part for human consumption or chewing  
76 gum.  
77 (l) “Food service business” means, whether individually or collectively, a permanent food  
78 service establishment; a temporary food service establishment; and/or an independent food  
79 service operator. The following shall not qualify as a food service business under this law:  
80 (1) Private rummage sales;  
81 (2) Community sponsored non-profit fund raising and/or charity events;  
82 (3) Cottage food operators who satisfy the requirements of this law; and/or  
83 (4) Prepackaged Restaurants that satisfy the requirements of this law.  
84 (m) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
85 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
86 or lower.  
87 (n) “Independent food service operator” means a person, other than one who qualifies as a  
88 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
89 permanent establishment, at or within a location approved by the Department.  
90 (o) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
91 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
92 the judicial authorities and responsibilities of the Nation.

93 (p) "License" means the tangible proof of authorization from the Department to operate a  
94 permanent food service establishment, operate a temporary food service establishment and/  
95 or function as an independent food service operator.

96 (q) "Nation" means the Oneida Nation.

97 (r) "Penalty" means a punishment, other than a fine, imposed on a person for violation of  
98 this law.

99 (s) "Permanent food service establishment" means a permanent unit or location where  
100 food is processed on site, usually for retail sale, and intended for individual consumption,  
101 whether on or off the premises, including, but not limited to, the following:

102 (1) A restaurant or eating/drinking establishment other than a prepackaged  
103 restaurant;

104 (2) A market or grocery store;

105 (3) A catering business;

106 (4) A bakery or confectionary;

107 (5) A convenience store or gas station store; and/or

108 (6) An Oneida Nation Food Service Program.

109 (t) "Person" means a natural person(s), sole proprietorship, partnership, corporation,  
110 limited liability company or any other form of a legal entity.

111 (u) "Potentially hazardous food" means food that requires time and temperature control  
112 for safety to limit toxin formation or the growth of pathogenic microorganisms.

113 (v) "Prepackaged restaurant" means an establishment that serves or sells only packaged  
114 foods that are prepared and packaged off-premise by a licensed processor with preparation  
115 on the premise limited to heating and serving.

116 (w) "Reservation" means all the property within the exterior boundaries of the Reservation  
117 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
118 and any lands added thereto pursuant to federal law.

119 (x) "Temporary food service establishment" means a non-permanent food service  
120 establishment that operates at a fixed location for a limited number of consecutive days in  
121 conjunction with a single event.

#### 122 **305.4. Jurisdiction**

123 305.4-1. *Personal Jurisdiction*. This law applies to:

124 (a) All members of the Nation; the Nation's entities and corporations; and members of  
125 other federally-recognized tribes;

126 (b) Individuals and businesses leasing, occupying, or otherwise using fee land owned by  
127 the Nation or by individual members of the Nation; and/or lands held in trust on behalf of  
128 the Nation or individual members of the Nation; and

129 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise  
130 consistent with federal law. An individual shall be considered to have consented to the  
131 jurisdiction of the Nation:

132 (1) By entering into a consensual relationship with the Nation, or with the Nation's  
133 entities, corporations, or members, including, but not limited to, contracts or other  
134 agreements; or

135 (2) By other facts which manifest an intent to consent to the authority of the Nation,  
136 including, but not limited to, the failure to raise an objection to the exercise of  
137 personal jurisdiction in a timely manner.  
138



139 305.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by  
140 the Nation and individual trust or fee land of a member of the Nation.

141 305.4-3. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the  
142 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
143 objectives and purposes for which it was enacted.

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### 145 **305.5. Compliance**

146 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
147 the Department.

148 (a) Licenses to operate a food service business are non-transferable.

149 (b) Unless otherwise provided herein, strict compliance with this law is required before a  
150 license may be issued or renewed.

151 305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level  
152 of stringent food and beverage handling safety standards that should apply to all food service  
153 businesses within its jurisdiction.

154 (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food  
155 Code through incorporation by reference into this law.

156 (1) Any additions to or deviations from the Federal Food Code that are included  
157 within this law are designed to be specific to the Nation.

158 (2) Should a provision of this law conflict with a provision of the Federal Food  
159 Code, the provision of this law shall have priority over the Federal Food Code and  
160 govern.

161 (b) The Department shall maintain either an electronic or print copy of the most current  
162 edition of the Federal Food Code at its office location and shall make it available or  
163 accessible for inspection during regular business hours.

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### 165 **305.6. Authority**

166 305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions  
167 contained in this or any other governing law of the Nation, the Department shall be responsible for  
168 the administration and enforcement of this law, including, but not limited to, that the Department  
169 shall have the power to:

170 (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service  
171 businesses and make all other determinations regarding suitability for licensure and  
172 exemption from licensure;

173 (b) Establish licensing fee, fine and penalty schedules;

174 (c) Establish standard operating procedures to govern how it administers and enforces the  
175 provisions of this law;

176 (d) Perform all requisite inspections and conduct investigations when necessary; and/or

177 (e) Issue citations and orders for violations of this law or when necessary to protect the  
178 welfare of the community.

179

### 180 **305.7. Licensing**

181 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to  
182 operate a food service business within the jurisdiction of the Nation:

183 (a) *License Application.* Persons shall be required to apply to the Department to receive or  
184 renew a license to operate a food service business pursuant to the application process

185 established by the Department through adoption of a standard operating procedure that  
186 conforms to this law and includes, at a minimum, the following:

187 (1) That, the applicable licensing fee must accompany the application for licensure  
188 or license renewal; and

189 (2) That, the Department shall be required to issue or deny a license within thirty  
190 (30) days after receiving a complete application for licensure or license renewal, all  
191 applicable fees, and any other information required under the governing standard  
192 operating procedure.

193 (A) The issuance or renewal of a license may be conditioned on the  
194 applicant correcting a violation of this law within a set period of time, which  
195 if not corrected within the set time or after an extension of time approved  
196 by the Department, would render the license null and void.

197 (B) If the Department denies an application for licensure or license renewal,  
198 it shall provide the applicant, in writing, with its reason or reasons for the  
199 denial and information on how to appeal its decision.

200 (b) *License Period.*

201 (1) Licenses for permanent food service establishments and independent food  
202 service operators shall be issued and renewed by the Department for terms of one  
203 (1) year, commencing October 1st and ending September 30th of every year.

204 (2) Licenses for temporary food service establishments shall be granted by the  
205 Department to cover one (1) single event for a period of not more than fourteen  
206 (14) consecutive days.

207 (c) *License Fee.* On an annual basis, the Department shall be required to set a licensing  
208 fee schedule, subject to approval by the Oneida Business Committee through adoption of  
209 a resolution, that is applicable to all food service businesses.

210 (1) The fee amount shall cover the initial license term for permanent food service  
211 establishments and independent food service operators and shall cover a single  
212 event of not more than fourteen (14) consecutive days for temporary food service  
213 establishments.

214 (A) A separate licensing fee shall be required when applying to renew a  
215 license for a permanent food service establishment or independent food  
216 service operator.

217 (B) The licensing fee for a permanent food service establishment license or  
218 independent food service operator license that was issued after October 1st  
219 shall be prorated for that term pursuant to a standard operating procedure  
220 established by the Department.

221 (C) Unless otherwise provided herein, if an application for licensure is  
222 denied by the Department, the licensing fee submitted with the application  
223 shall be returned to the applicant in full.

224 (2) The Department shall post the licensing fee schedule in a prominent area within  
225 its offices and elsewhere as it deems appropriate.

226 (3) *Exemptions.* Non-profit service programs of the Nation shall not be required to  
227 pay a licensing fee to obtain a license under this law.

228 (A) The Department, may within its discretion, waive the licensing fee for  
229 obtaining or renewing a license when justifiable circumstances exist.  
230

231 305.7-2. *License Eligibility.*

232 (a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate  
233 a permanent food service establishment, applicants must:

- 234 (1) Submit the appropriate licensing fee with their application;  
235 (2) Pass an inspection by the Department of the proposed premises for the  
236 permanent food service establishment; and  
237 (3) Satisfy any other provision within or arising out of this law that is a prerequisite  
238 for licensure to operate a permanent food service establishment.

239 (b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate  
240 a temporary food service establishment, applicants must:

- 241 (1) Submit the appropriate licensing fee with their application;  
242 (2) Submit proof of having undergone either:  
243 (A) Certification under the applicable food safety training offered through  
244 the Department; or  
245 (B) Certification or training that the Department, in its discretion, deems  
246 equivalent to the corresponding food safety training offered through the  
247 Department;  
248 (3) Pass an inspection by the Department of the proposed premises for the  
249 temporary food service establishment; and  
250 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
251 for licensure to operate a temporary food service establishment.

252 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as  
253 an independent food service operator, applicants must:

- 254 (1) Submit the appropriate licensing fee with their application;  
255 (2) Submit proof of having undergone either:  
256 (A) Certification under the applicable food safety training offered through  
257 the Department; or  
258 (B) Certification or training that the Department, in its discretion, deems  
259 equivalent to the corresponding food safety training offered through the  
260 Department.  
261 (3) Pass an inspection by the Department of the proposed premises designated in  
262 writing by the applicant as the food preparation site; and  
263 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
264 for licensure to function as an independent food service operator.

265 (d) *Training.* The Department shall provide reasonable opportunities for persons to  
266 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
267 of this law.

268 305.7-3. *License Placement.*

269 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all  
270 times, be posted in a conspicuous area within the premises of every permanent food service  
271 establishment and every temporary food service establishment.

272 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently  
273 displayed on the body of the license holder whenever functioning as an independent food  
274 service operator.

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277 **305.8. Exemptions**

278 305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this  
279 law, except as follows:

280 (a) *Registration.* Before selling any cottage food products, individuals must register with  
281 the Department as a cottage food operator by providing, at a minimum, their:

282 (1) Full name;

283 (2) Address of domestic residence; and

284 (3) Any additional information required by a standard operating procedure that the  
285 Department may establish, consistent with this law, to govern cottage food sales.

286 (A) By registering as a cottage food operator, the individual is confirming  
287 that the information he or she provided is correct and agreeing to operate  
288 within the confines of the exemption.

289 (b) *Labeling.* Cottage food products must be labeled with the following information:

290 (1) The name and address of the cottage food operator;

291 (2) The name of the cottage food product and the date on which it was prepared,  
292 processed or canned; and

293 (3) A clearly legible sign or placard that states: “this product is homemade and not  
294 subject to inspection by the Nation.”

295 (c) *Home-canned foods.* Individuals who intend to sell home-canned foods under the  
296 cottage food operator exemption must first complete the food safety training approved by  
297 the Department.

298 305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of  
299 this law, except as follows:

300 (a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to  
301 the Department for permission to operate as a prepackaged restaurant pursuant to the  
302 process established by the Department through adoption of a standard operating procedure  
303 that conforms to this law and includes, at a minimum, the following:

304 (1) That, the fee established by the Department to operate a prepackaged restaurant,  
305 as set forth in the licensing fee schedule referenced in section 305.7-1 of this law,  
306 must accompany the application;

307 (2) That, the applicant passes an inspection by the Department of the proposed  
308 premises for the prepackaged restaurant; and

309 (3) That, by applying to operate as a prepackaged restaurant, the applicant is  
310 agreeing to serve and/or sell only the prepackaged foods that are approved by the  
311 Department and to not engage in any food processing or preparation on the premises  
312 of the prepackaged restaurant other than the heating and serving of the food.

313 (A) The Department shall provide written notice, accessible to the public,  
314 of the prepackaged foods approved hereunder.

315 (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior  
316 training or certification in food safety.

317 (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order  
318 under section 305.10 of this law that requires food safety training or certification.

319 (c) The Department shall be authorized to conduct a reinspection during reasonable hours  
320 of the prepackaged restaurant premises as often as it deems necessary so long as it does not  
321 exceed more than one (1) time per year, absent cause.

322 305.8-3. *Enforcement.* Violations of this section shall be enforced in accordance with section  
323 305.10 of this law.

324 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with  
325 this section, the Department, in its discretion, may conduct an inspection of a prepackaged  
326 restaurant or a cottage food operator's domestic residence; provided, the inspection of the  
327 cottage food operator's domestic residence is limited to the subject matter of the complaint  
328 or event giving rise to the Department's reasonable suspicion.

329 (b) This section does not preempt the application of any other law of the Nation or other  
330 local governing ordinance to which individuals must comply.

331 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a  
332 cottage food operator for damages that arise out of their sale or service of food hereunder.  
333

### 334 **305.9 Inspections**

335 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
336 (2) times per license term, the Department may, for any reason, enter a food service business to  
337 conduct an inspection, so long as at a reasonable hour.

338 305.9-2. The Department may, at any time during the term of a license, enter a food service  
339 business to conduct an unscheduled inspection based on the following:

340 (a) Receipt of a complaint;

341 (b) Outbreak of a food borne illness; and/or

342 (c) Reasonable suspicion of a violation of this law or an emergency.

343 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
344 this law, will result in an additional fee as set forth in the license fee schedule.  
345

### 346 **305.10. Violations, Enforcement**

347 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following  
348 as determined by the Department:

349 (a) The suspension or revocation of a license or license exemption status;

350 (b) The issuance of an order to close down; and/or

351 (c) The issuance of a citation that may include one or more of the fines, penalties and/or  
352 other corrective orders set forth in the fine and penalty schedule established by the  
353 Department, subject to approval of the Oneida Business Committee through adoption by  
354 resolution.

355 (1) Failure to pass an inspection conducted pursuant to this law may be cause for  
356 the issuance of a citation hereunder.

357 (2) Citations shall be processed in accordance with the procedure contained in the  
358 Nation's laws and policies governing citations.

359 305.10-2. In addition to satisfying any other corrective order issued by the Department under  
360 section 305.10-1 of this law, a food service business, cottage food operator or prepackaged  
361 restaurant that has been closed down due to a violation of this law must pass a reinspection by the  
362 Department before being re-eligible for operation.

363 (a) A food service business that has been closed down may only receive a probationary  
364 license for six (6) months upon evidence of satisfactory compliance with this law.

365 (1) After six (6) months of satisfactory compliance with this law, as determined by  
366 the Department upon a follow-up inspection, the license holder may apply for an  
367 annual license.

368 (b) A food service business or prepackaged restaurant that has had its license or license  
369 exemption status suspended or has become subject to a close down order shall not be  
370 entitled to a reimbursement of all or any portion of the licensing fee or fees.

371 305.10-3. *Emergency*. The Department may order a close down of a food service business, cottage  
372 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
373 of a serious health and/or safety threat to the community.

374 (a) Persons issued a closed down order by the Department as an emergency measure  
375 hereunder must provide evidence of compliance to the Department and pass an inspection  
376 by the Department prior to being allowed to re-open and/or continue operations.  
377

378 **305.11. Appeal Rights**

379 305.11-1. Persons who disagree with the decisions of the Department regarding license or license  
380 exemption eligibility, inspections, orders to close down and/or license or license exemption  
381 suspensions or revocations may appeal to the Trial Court of the Judiciary.

382 (a) Hearings by the Judiciary will be pursuant to the rules established for the Judiciary.

383 305.11-2. Persons who disagree with the issuance of a citation for violations of this law shall  
384 contest the citation in accordance with the procedure contained in the Nation's laws and policies  
385 governing citations.

386  
387 *End.*  
388

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389 Adopted – BC-06-13-01-B  
390 Amended – BC-02-25-15-C  
391 Amended – BC-\_\_-\_\_-\_\_-\_\_  
392

Title 3. Health and Public Safety – Chapter 305

~~ONEIDA FOOD SERVICE CODE~~

Kahkwa’ó’ku

about the food

ONEIDA FOOD SERVICE

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~~305.1.~~ 6. Authority

~~305.~~ Amendment, Repeal

~~305.1-1. 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.~~

~~305.1-2. 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.~~

~~305.1-3. 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.~~

~~305.1-4. 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.)~~

1. Purpose and Policy

305.1-1. Purpose. The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation,

50 control, supervision and enforcement procedures that govern food service businesses within the  
51 jurisdiction of the Nation.

52 305.1-2. Policy. It is the policy of the Nation to protect the health, welfare and safety of the  
53 community and to strengthen the Nation's self-governance by ensuring, through the exercise of its  
54 inherent sovereignty over the Nation's resources and membership, that food provided at retail or  
55 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
56 and honestly presented.

### 57 **305.2. — Adoption, Amendment, Repeal**

58 305.2-1.— This ~~Code is~~law was adopted by the Oneida Business Committee by ~~Resolution#~~  
59 ~~6resolution BC-06-13-01-B~~ and amended by ~~resolution~~resolutions BC-02-25-15-C and ~~is effective~~  
60 ~~ten (10) business days after adoption.~~BC- - - - .

61 305.2-2.— This ~~Code~~law may be amended or repealed by the Oneida Business Committee and/or  
62 Oneida General Tribal Council pursuant to the procedures set out in the Oneida  
63 AdministrativeLegislative Procedures Act ~~by the Oneida Business Committee or by the Oneida~~  
64 ~~General Tribal Council.~~

65 305.2-3.— Should a provision of this ~~Code~~law or the application thereof to any person or  
66 circumstances be held as invalid, such invalidity shall not affect other provisions of this law which  
67 ~~will continue~~are considered to have legal force without the invalid portions.

68 ~~305.2-4.— All previously enacted or adopted Oneida laws, ordinances, policies or other~~  
69 ~~regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted~~  
70 ~~after adoption of this Code.~~

71 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
72 the provisions of this law shall control.

73 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 74 **305.3. Definitions**

75 ~~305.3-1. 305.3.— Definitions~~

76 ~~305.3-1.—~~This section shall govern the definitions of words and phrases used within ~~the~~this law.  
77 All words not defined herein shall be used in their ordinary and everyday sense.—

78 (a) ~~“Oneida Nation” means the Oneida Tribe of Indians of Wisconsin.~~

79 (b) ~~“Tribal Property” means property that is owned by the Oneida Nation in fee or held in~~  
80 ~~trust for the Oneida Nation by the United States of America.~~

81 (c) ~~“Reservation” means that area in Wisconsin within the exterior boundaries as set out in~~  
82 ~~the 1838 Treaty with the United States of America.~~

83 (d) ~~“Federal Food Code” means the most current United States Public Health Service~~  
84 ~~Model Food Code.~~

85 (e) ~~“Food Service Establishment” means a permanent unit or location on tribal property~~  
86 ~~which food is processed on site and intended for individual consumption usually for retail~~  
87 ~~sale. The term includes any such place whether consumption is on or off premises,~~  
88 ~~including, but not limited to the following:~~

89 (1) ~~A restaurant or eating/drinking establishment~~

90 (2) ~~A market or grocery~~

91 (3) ~~A catering business~~

92 (4) ~~A bakery or confectionary~~



- 96 (5) ~~A convenience store or gas station store~~  
97 (f) ~~“Independent Food Service Vendors” are those individuals who sell food on tribal~~  
98 ~~property for profit that prepare food off site independent of a permanent establishment~~  
99 ~~such as \_\_\_\_\_ (a restaurant, at a source that has been approved by the Environment Health~~  
100 ~~and Safety Department.~~  
101 (g) ~~“Temporary Food Service” means a food service establishment that operates at a fixed~~  
102 ~~location on tribal property for a period of not more than 14 consecutive days in conjunction~~  
103 ~~with a single event or celebration.~~  
104 (h) ~~“Environmental Department” means the Oneida Environment Health and Safety~~  
105 ~~Department, hereinafter, EHS.~~  
106 (i) ~~“~~**Compliance**~~” means to operate a food service business, i.e. a food service~~  
107 ~~establishment, an independent food service or a temporary food service in conformity with~~  
108 ~~the requirements of this Code, the Federal Food Code and the EHS standard operating~~  
109 ~~procedures.~~  
110 (j) ~~The “~~**Licensing** ~~Department” means that department within the organizational structure of~~  
111 ~~the Compliance Division of the Oneida Nation responsible for administering and issuing~~  
112 ~~licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and~~  
113 ~~Codes.~~  
114 (k) ~~“The Business Committee” means the Oneida Business Committee~~  
115 (l) ~~“Risk Management” means the Oneida Risk Management Department.~~  
116 (m) ~~“Emergency” means that situation an unforeseen occurrence that requires immediate~~  
117 ~~attention, the absence of which would endanger the health or safety of others due to the~~  
118 ~~imminent nature of the circumstance.~~  
119 (n) ~~“Close down” means that the food service vendor, by an order of the Compliance~~  
120 ~~Division in conjunction with the Business Committee and the Oneida Police Department,~~  
121 ~~based upon the recommendation of the EHS, will be prohibited to be open for business to~~  
122 ~~the public for the protection of the health, safety or welfare of the community.~~  
123 (o) ~~“Judiciary” means the judicial system that was established by Oneida General Tribal~~  
124 ~~Council resolution GTC 01-07-13-B to administer the judicial authorities and~~  
125 ~~responsibilities of the Tribe.~~  
126 (p) ~~Adopt all other definitions as written in the Federal Food Code.~~

#### 127 ~~305.4. Responsibilities and Duties~~

129 ~~305.4 1. The EHS Department shall administer and regulate the requirements of this Code and~~  
130 ~~the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter,~~  
131 ~~“SOP’s”, for Food Service Vendors.~~

132 ~~305.4 2. The EHS Department shall conduct food handling classes that are required for licensing~~  
133 ~~of independent and temporary food vendors. Food service establishment vendors are exempt from~~  
134 ~~this requirement but are to uphold other requirements per the Federal Food Code.~~

135 ~~305.4 3. The EHS Department shall have a copy of the most current Federal Food Code~~  
136 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
137 ~~business hours.~~

138 ~~305.4 4. The EHS Department shall have a copy of their SOP’s for Food Service Vendors~~  
139 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
140 ~~business hours.~~

141 ~~305.4 5.—Risk Management shall make the determination to ensure that the vendor has adequate~~  
142 ~~insurance coverage.~~

143 ~~305.4 6.—The Licensing Department shall issue a Food Service License, Temporary Food~~  
144 ~~Service License, and a badge for Independent Food Vendors upon successful compliance of the~~  
145 ~~requirements of this Code and the Federal Food Code.~~

146 ~~305.4 7.—The Licensing Department, in conjunction with the EHS Department, shall determine~~  
147 ~~the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing~~  
148 ~~Department.~~

149 ~~305.4 8.—The Licensing Department shall determine the monetary fines for noncompliance with~~  
150 ~~this Code as approved by the Business Committee.~~

151  
152 ~~**305.5.—Compliance**~~

153 ~~305.5 1.—Strict compliance with the specific laws found in this Code and the Federal Food~~  
154 ~~Code are required.~~

155 ~~305.5 2.—Additions or modifications to the Federal Food Code found in this Code are designed~~  
156 ~~to be Oneida specific.~~

157 ~~305.5 3.—Non-compliance with this Code or the Federal Food Code will be addressed by the~~  
158 ~~License Department of the Compliance Division upon written complaint and or recommendation~~  
159 ~~from the EHS or Risk Management Departments.~~

160  
161 ~~**305.6.—Requirements for Licensing**~~

162 ~~305.6 1.—No person or person, corporation or firm shall operate a food service establishment~~  
163 ~~either permanent or temporary, or sell food as an independent food service vendor on tribal~~  
164 ~~property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License~~  
165 ~~issued by the License Department.~~

166 ~~305.6 2.—Only a person or persons, corporation or firm that complies with the requirements of~~  
167 ~~this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food~~  
168 ~~Vendors License.~~

169 ~~305.6 3.—A valid license shall be posted in every food service establishment or temporary food~~  
170 ~~service premises; and every independent food vendor shall prominently display the valid badge~~  
171 ~~issued by the EHS Department.~~

172 ~~305.6 4.—A Food Service License will be issued as follows:~~

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

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

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

182 ~~(c) The Licensing Department shall issue a Food Service License pursuant to the~~  
183 ~~recommendations by EHS regarding assurances that the applicant has met the conditions~~  
184 ~~that are required for a satisfactory score pursuant to this Code, the EHS SOP's and the~~  
185 ~~Federal Food Code guidelines with the Hazard Analysis and Critical Control Point,~~  
186 ~~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 discontinue 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 305.10, 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.~~

~~305.6 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.~~

~~305.6 6. Food Service Licenses are non-transferable.~~

### ~~305.7. Insurance~~

~~of a food service business or exempt operation under 305.7 1. Food Service Establishments and Independent Vendors are required to have adequate insurance as determined by the Risk Management Department's Standard Operating Procedures.~~

~~305.7 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.~~

~~305.7 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.~~

~~305.7 4. Temporary Food Service vendors are exempt from the requirement for additional insurance under this section 305.8 of this law in order to protect the health, safety and/or welfare of the community.~~

### ~~305.8. Inspections~~

~~305.8 1. 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.~~

~~305.8 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.~~

~~305.8 3. Inspections of the food service premises by the EHS Department will be scheduled twice a year.~~

233 ~~305.8 4. At any time during the term of the license, either upon receipt of a complaint or upon~~  
234 ~~their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food~~  
235 ~~preparation site.~~

236 ~~305.8 5. A reinspection conducted as a result of a prior violation of this code or the Federal Food~~  
237 ~~Code, will be an additional fee to the vendor and must achieve a satisfactory score under the~~  
238 ~~Federal guidelines to cure the violation.~~

239  
240 **305.9. Fees**

241 ~~305.9 1. The Food Service license fees shall cover a twelve (12) month period and shall be paid~~  
242 ~~in advance with the application for licensure.~~

243 ~~305.9 2. The fee shall be paid annually at the beginning of each fiscal year which is October 1~~  
244 ~~through September 30 of the following year.~~

245 ~~305.9 3. The license fees will be prorated for those applicants who start up their business prior~~  
246 ~~to the beginning of the fiscal year.~~

247 ~~305.9 4. The fee shall be returned in full if the application is denied.~~

248 ~~305.9 5. The licensing agent shall keep fee records.~~

249 ~~305.9 6. Food Service vendors that have had their license suspended or their businesses closed~~  
250 ~~will not be entitled to a refund of their fees.~~

251 ~~305.9 7. The fee for a food service license shall be pursuant to an equitable fee schedule as~~  
252 ~~established by the EHS and License Department as reviewed and approved by the Business~~  
253 ~~Committee and shall be available in the Licensing and EHS Departments for review.~~

254 ~~305.9 8. The fee schedules may be adjusted annually.~~

255 ~~305.9 9. Food Service vendor fees shall be used for the operational budget of the EHS (80%)~~  
256 ~~and administrative budget of the License Department (20%).~~

257 ~~305.9 10. Oneida Tribal Enterprise Units are required to pay the license fees under this code.~~

258 ~~305.9 11. Oneida Tribal Business Units are exempt from the fee requirements.~~

259  
260 **305.10. Independent Food Service Vendors Badge**

261 ~~305.10 1. Upon compliance with the requirements of this Code and the Federal Food Code, the~~  
262 ~~Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS~~  
263 ~~with the vendors/employee's photograph and license number clearly visible.~~

264 ~~305.10 2. The badge must be worn by the licensed Independent Food Service Vendor and~~  
265 ~~employees in a manner that is clearly visible to the public at all times while engaging in the sale~~  
266 ~~of their food product.~~

267 ~~305.10 3. Independent Food Service vendor badges are non-transferable and must be worn only~~  
268 ~~by the individual to whom it was issued.~~

269  
270  
271 **305.11. Exceptions and Exemptions**

272 ~~305.11 1. The following food service vendors will be exempt from the requirements of this Code:~~

273 ~~(a) (b) "Consumer" means an individual who is a member of the public; takes possession of~~  
274 ~~food; is not functioning in the capacity of a food service business, a cottage food operator,~~  
275 ~~a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.~~

276 ~~(c) "Cottage food operator" means an individual who, exclusively within the home kitchen~~  
277 ~~of his or her domestic residence, produces cottage food products for direct sale only.~~

- 278 (d) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
279 residence, that are non-potentially hazardous, including non-perishable baked goods such  
280 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
281 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
282 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
283 the Department characterizes as cottage food products for purposes of this law.  
284 (e) “Department” means the Environmental Health Safety Department within the Nation’s  
285 Environmental Health, Safety and Land Division.  
286 (f) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from  
287 a cottage food operator that does not include purchases through consignment, mail order,  
288 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
289 from using the internet for the sole purpose of advertising his or her cottage food products.  
290 (g) “Domestic residence” means the single-family house or unit in a multiunit residential  
291 structure located at the address that the applicant lists as being his or her primary residence  
292 when applying to the Department for a cottage food exemption under this law.  
293 (h) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
294 immediate attention, the absence of which could endanger the health or safety of others.  
295 (i) “Federal Food Code” means the most current edition of the United States Public Health  
296 Service, Food and Drug Administration Food Code.  
297 (j) “Fine” means a monetary punishment issued to a person for violation of this law.  
298 (k) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient  
299 used or intended for use or for sale in whole or in part for human consumption or chewing  
300 gum.  
301 (l) “Food service business” means, whether individually or collectively, a permanent food  
302 service establishment; a temporary food service establishment; and/or an independent food  
303 service operator. The following shall not qualify as a food service business under this law:  
304 (1) Private rummage sales;  
305 ~~(b)~~ (2) Community sponsored non-profit fund raising and/or charity events;  
306 ~~(c)~~ (e) Official Tribal meetings such as GTC Meetings.  
307 ~~(d)~~ (3) Cottage food operators who satisfy the requirements of this law; and/or  
308 (4) Prepackaged Restaurants that satisfy the requirements of this law.  
309 (m) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
310 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
311 or lower.  
312 (n) “Independent food service operator” means a person, other than one who qualifies as a  
313 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
314 permanent establishment, at or within a location approved by the Department.  
315 (o) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
316 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
317 the judicial authorities and responsibilities of the Nation.  
318 (p) “License” means the tangible proof of authorization from the Department to operate a  
319 permanent food service establishment, operate a temporary food service establishment and/  
320 or function as an independent food service operator.  
321 (q) “Nation” means the Oneida Nation.  
322 (r) “Penalty” means a punishment, other than a fine, imposed on a person for violation of  
323 this law.



324 (s) “Permanent food service establishment” means a permanent unit or location where  
325 food is processed on site, usually for retail sale, and intended for individual consumption,  
326 whether on or off the premises, including, but not limited to, the following:

327 (1) A restaurant or eating/drinking establishment other than a prepackaged  
328 restaurant;

329 (2) A market or grocery store;

330 (3) A catering business;

331 (4) A bakery or confectionary;

332 (5) A convenience store or gas station store; and/or

333 (6) An Oneida Nation Food Service Program.

334 (t) “Person” means a natural person(s), sole proprietorship, partnership, corporation,  
335 limited liability company or any other form of a legal entity.

336 (u) “Potentially hazardous food” means food that requires time and temperature control  
337 for safety to limit toxin formation or the growth of pathogenic microorganisms.

338 (v) “Prepackaged restaurant” means an establishment that serves or sells only packaged  
339 foods that are prepared and packaged off-premise by a licensed processor with preparation  
340 on the premise limited to heating and serving.

341 (w) “Reservation” means all the property within the exterior boundaries of the Reservation  
342 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
343 and any lands added thereto pursuant to federal law.

344 (x) “Temporary food service establishment” means a non-permanent food service  
345 establishment that operates at a fixed location for a limited number of consecutive days in  
346 conjunction with a single event.

347  
348 **305.4~~old on~~. Jurisdiction**

349 305.4-1. Personal Jurisdiction. This law applies to:

350 (a) All members of the Nation; the Nation’s entities and corporations; and members of  
351 other federally-recognized tribes;

352 (b) Individuals and businesses leasing, occupying, or otherwise using fee land ~~other than~~  
353 ~~tribally~~-owned by the Nation or by individual members of the Nation;  
354 and/or lands held in trust on behalf of the Nation or individual members of the Nation; and

355 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise  
356 consistent with federal law. An individual shall be considered to have consented to the  
357 jurisdiction of the Nation:

358 (1) By entering into a consensual relationship with the Nation, or with the Nation’s  
359 entities, corporations, or members, including, but not limited to, contracts or other  
360 agreements; or

361 (2) By other facts which manifest an intent to consent to the authority of the Nation,  
362 including, but not limited to, the failure to raise an objection to the exercise of  
363 personal jurisdiction in a timely manner.

364 305.4-2. Territorial Jurisdiction. This law extends within the Reservation to all land owned by  
365 the Nation and individual trust or fee land of a member of the Nation.

366 305.4-3. Liberal Construction. The provisions of this law shall apply to the fullest extent of the  
367 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
368 objectives and purposes for which it was enacted.

370 **305.5. Compliance**

371 **305.12. Violations, Enforcement**

372 ~~305.12-1. Selling food or food products on tribal property without a license is strictly prohibited~~  
373 ~~and will result in a fine and/or the suspension of the vendor's right to continue to sell food, i.e., the~~  
374 ~~business will be closed down.~~

375 ~~305.12-2. A~~

376 305.5-1. No person shall operate a food service vendor's business without a valid, unexpired  
377 license will be suspended and from the Department.

378 (a) Licenses to operate a food service closed down if the licensed vendor is in business are  
379 non-transferable.

380 (b) Unless otherwise provided herein, strict compliance with the requirements of this  
381 Code, this law is required before a license may be issued or renewed.

382 305.5-2. Federal Food Code. The Nation finds that the Federal Food Code establishes a high level  
383 of stringent food and beverage handling safety standards that should apply to all food service  
384 businesses within its jurisdiction.

385 (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food  
386 Code through incorporation by reference into this law.

387 (1) Any additions to or deviations from the Federal Food Code that are included  
388 within this law are designed to be specific to the Nation.

389 (2) Should a provision of this law conflict with a provision of the Federal Food  
390 Code, the provision of this law shall have priority over the Federal Food Code and  
391 govern.

392 (b) The Department shall maintain either an electronic or print copy of the most current  
393 edition of the Federal Food Code at its office location and shall make it available or  
394 accessible for inspection during regular business hours.

395 ~~305. or for any other reasons related to the protection of the Oneida Nation's~~ **6. Authority**

397 305.6-1. Authority of the Department. Subject to all applicable provisions and/or restrictions  
398 contained in this or any other governing law of the Nation, the Department shall be responsible for  
399 the administration and enforcement of this law, including, but not limited to, that the Department  
400 shall have the power to:

401 (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service  
402 businesses and make all other determinations regarding suitability for licensure and  
403 exemption from licensure;

404 (b) Establish licensing fee, fine and penalty schedules;

405 (c) Establish standard operating procedures to govern how it administers and enforces the  
406 provisions of this law;

407 (d) Perform all requisite inspections and conduct investigations when necessary; and/or

408 (e) Issue citations and orders for violations of this law or when necessary to protect the  
409 welfare of the community public health, safety or welfare.

410 **305.7. Licensing**

412 ~~305.7-1. 12-3. A~~ Licenses. The following shall govern the process for obtaining and renewing a  
413 license to operate a food service vendor's loss of insurance coverage or inadequate coverage for  
414 their entity will be cause for a suspension of license and the business will be closed down

415 ~~until~~within the ~~vendor procures adequate coverage and provides jurisdiction of the documents~~  
416 ~~thereof~~Nation:

417 (a) License Application. Persons shall be required to apply to the Risk Management  
418 Department.

419 ~~305.12-4. Failure to pass an inspection conducted by the EHS will be cause for a penalty,~~  
420 ~~revocation or suspension of the license pursuant to EHS and Federal Code guidelines.~~

421 ~~305.12-5. The vendor's to receive or renew a license to operate a food service business may be~~  
422 ~~closed down pursuant to the application process established by the License Department in~~  
423 ~~conjunction with the Oneida Police~~through adoption of a standard operating procedure that  
424 conforms to this law and includes, at a minimum, the following:

425 (1) That, the applicable licensing fee must accompany the application for licensure  
426 or license renewal; and

427 (2) That, the Department ~~for an uncorrected, critical~~ shall be required to issue or  
428 deny a license within thirty (30) days after receiving a complete  
429 application for licensure or license renewal, all applicable fees, and any other  
430 information required under the governing standard  
431 operating procedure.

432 (A) The issuance or renewal of a license may be conditioned on the  
433 applicant correcting a violation of this law within a set period of time, which  
434 if not corrected within the set time or after an extension of time approved  
435 by the Department, would render the license null and void.

436 (B) If the Department denies an application for licensure or license renewal,  
437 it shall provide the applicant, in writing, with its reason or reasons for the  
438 denial and information on how to appeal its decision.

439 (b) License Period.

440 (1) Licenses for permanent food service establishments and independent food  
441 service operators shall be issued and renewed by the Department for terms of one  
442 (1) year, commencing October 1st and ending September 30th of every year.

443 (2) Licenses for temporary food service establishments shall be granted by the  
444 Department to cover one (1) single event for a period of not more than fourteen  
445 (14) consecutive days.

446 (c) License Fee. On an annual basis, the Department shall be required to set a licensing  
447 fee schedule, subject to approval by the Oneida Business Committee through adoption of  
448 a resolution, that is applicable to all food service businesses.

449 (1) The fee amount shall cover the initial license term for permanent food service  
450 establishments and independent food service operators and shall cover a single  
451 event of not more than fourteen (14) consecutive days for temporary food service  
452 establishments.

453 (A) A separate licensing fee shall be required when applying to renew a  
454 license for a permanent food service establishment or independent food  
455 service operator.

456 (B) The licensing fee for a permanent food service establishment license or  
457 independent food service operator license that was issued after October 1st  
458 shall be prorated for that term pursuant to a standard operating procedure  
459 established by the Department.



460 (C) Unless otherwise provided herein, if an application for licensure is  
461 denied by the Department, the licensing fee submitted with the application  
462 shall be returned to the applicant in full.

463 (2) The Department shall post the licensing fee schedule in a prominent area within  
464 its offices and elsewhere as it deems appropriate.

465 (3) Exemptions. Non-profit service programs of the Nation shall not be required to  
466 pay a licensing fee to obtain a license under this law.

467 (A) The Department, may within its discretion, waive the licensing fee for  
468 obtaining or renewing a license when justifiable circumstances exist.

469 \_\_\_\_\_

470 305.7-2. Code or the Federal Food Code as determined by EHS and License Eligibility.

471 (a) Permanent Food Service Establishments. To be eligible to receive a license to operate  
472 a permanent food service establishment, applicants must:

473 (1) Submit the appropriate licensing fee with their application;

474 (2) Pass an inspection by the Department of the proposed premises for the  
475 permanent food service establishment; and

476 (3) Satisfy any other provision within or arising out of this law that is a prerequisite  
477 for licensure to operate a permanent food service establishment.

478 (b) Temporary Food Service Establishments. To be eligible to receive a license to operate  
479 a temporary food service establishment, applicants must:

480 (1) Submit the appropriate licensing fee with their application;

481 (2) Submit proof of having undergone either:

482 (A) Certification under the applicable food safety training offered through  
483 the Department; or

484 (B) Certification or training that the Department, in its discretion, deems  
485 equivalent to the corresponding food safety training offered through the  
486 Department;

487 (3) Pass an inspection by the Department of the proposed premises for the  
488 temporary food service establishment; and

489 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
490 for licensure to operate a temporary food service establishment.

491 (c) Independent Food Service Operators. To be eligible to receive a license to function as  
492 an independent food service operator, applicants must:

493 (1) Submit the appropriate licensing fee with their application;

494 (2) Submit proof of having undergone either:

495 (A) Certification under the applicable food safety training offered through  
496 the Department; or

497 (B) Certification or training that the Department, in its discretion, deems  
498 equivalent to the corresponding food safety training offered through the  
499 Department.

500 (3) Pass an inspection by the Department of the proposed premises designated in  
501 writing by the applicant as the food preparation site; and

502 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
503 for licensure to function as an independent food service operator.

504 (d) *Training.* The Department shall provide reasonable opportunities for persons to  
505 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
506 of this law.

507 **305.7-3. *License Placement.***

508 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all  
509 times, be posted in a conspicuous area within the premises of every permanent food service  
510 establishment and every temporary food service establishment.

511 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently  
512 displayed on the body of the license holder whenever functioning as an independent food  
513 service operator.

514  
515  
516 **305.8. Exemptions**

517 **305.8-1. *Cottage Food Sales.*** Cottage food operators are exempt from the requirements of this  
518 law, except as follows:

519 (a) *Registration.* Before selling any cottage food products, individuals must register with  
520 the Department as a cottage food operator by providing, at a minimum, their:

521 (1) Full name;

522 (2) Address of domestic residence; and

523 (3) Any additional information required by a standard operating procedure that the  
524 Department may establish, consistent with this law, to govern cottage food sales.

525 (A) By registering as a cottage food operator, the individual is confirming  
526 that the information he or she provided is correct and agreeing to operate  
527 within the confines of the exemption.

528 (b) *Labeling.* Cottage food products must be labeled with the following information:

529 (1) The name and address of the cottage food operator;

530 (2) The name of the cottage food product and the date on which it was prepared,  
531 processed or canned; and

532 (3) A clearly legible sign or placard that states: “this product is homemade and not  
533 subject to inspection by the Nation.”

534 (c) *Home-canned foods.* Individuals who intend to sell home-canned foods under the  
535 cottage food operator exemption must first complete the food safety training approved by  
536 the Department.

537 **305.8-2. *Prepackaged Restaurants.*** Prepackaged restaurants are exempt from the requirements of  
538 this law, except as follows:

539 (a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to  
540 the Department for permission to operate as a prepackaged restaurant pursuant to the  
541 process established by the Department through adoption of a standard operating procedure  
542 that conforms to this law and includes, at a minimum, the following:

543 (1) That, the fee established by the Department to operate a prepackaged restaurant,  
544 as set forth in the licensing fee schedule referenced in section 305.7-1 of this law,  
545 must accompany the application;

546 (2) That, the applicant passes an inspection by the Department of the proposed  
547 premises for the prepackaged restaurant; and

548 (3) That, by applying to operate as a prepackaged restaurant, the applicant is  
549 agreeing to serve and/or sell only the prepackaged foods that are approved by the

550 ~~Business Committee~~ Department and to not engage in any food processing  
 551 or preparation on the premises of the prepackaged restaurant other than the heating  
 552 and serving of the food.

553 ~~305.12-6. The EHS may~~ (A) The Department shall provide written notice,  
 554 accessible to the public, of the prepackaged foods approved  
 555 hereunder.

556 (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior  
 557 training or certification in food safety.

558 (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order  
 559 under section 305.10 of this law that requires food safety training or certification.

560 (c) The Department shall be authorized to conduct a reinspection during reasonable hours  
 561 of the prepackaged restaurant premises as often as it deems necessary so long as it does not  
 562 exceed more than one (1) time per year, absent cause.

563 ~~305.8-3. Enforcement.~~ Violations of this section shall be enforced in accordance with section  
 564 305.10 of this law.

565 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with  
 566 this section, the Department, in its discretion, may conduct an inspection of a prepackaged  
 567 restaurant or a cottage food operator's domestic residence; provided, the inspection of the  
 568 cottage food operator's domestic residence is limited to the subject matter of the complaint  
 569 or event giving rise to the Department's reasonable suspicion.

570 (b) This section does not preempt the application of any other law of the Nation or other  
 571 local governing ordinance to which individuals must comply.

572 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a  
 573 cottage food operator for damages that arise out of their sale or service of food hereunder.

574

### 575 **305.9 Inspections**

576 ~~305.9-1.~~ In addition to the inspections required under section 305.7 of this law, no more than two  
 577 (2) times per license term, the Department may, for any reason, enter a food service business to  
 578 conduct an inspection, so long as at a reasonable hour.

579 ~~305.9-2.~~ The Department may, at any time during the term of a license, enter a food service  
 580 business to conduct an unscheduled inspection based on the following:

581 (a) Receipt of a complaint;

582 (b) Outbreak of a food borne illness; and/or

583 (c) Reasonable suspicion of a violation of this law or an emergency.

584 ~~305.9-3.~~ Any reinspection that must be conducted by the Department as a result of a violation of  
 585 this law, will result in an additional fee as set forth in the license fee schedule.

586

### 587 **305.10. Violations, Enforcement**

588 ~~305.10-1. Non-compliance.~~ Violations of this law may result in any one or more of the following  
 589 as determined by the Department:

590 (a) The suspension or revocation of a license or license exemption status;

591 (b) The issuance of an order to close down; and/or

592 (c) The issuance of a citation that may include one or more of the fines, penalties and/or  
 593 other corrective orders set forth in the fine and penalty schedule established by the  
 594 Department, subject to approval of the Oneida Business Committee through adoption by  
 595 resolution.

596 (1) Failure to pass an inspection conducted pursuant to this law may be cause for  
597 the issuance of a citation hereunder.

598 (2) Citations shall be processed in accordance with the procedure contained in the  
599 Nation's laws and policies governing citations.

600 305.10-2. ~~a business~~ In addition to satisfying any other corrective order issued by the Department  
601 under section 305.10-1 of this law, a food service business, cottage food operator or prepackaged  
602 restaurant that has been closed down due to a violation of this law must pass a reinspection by the  
603 Department before being re-eligible for operation.

604 (a) A food service business that has been closed down may only receive a probationary  
605 license for six (6) months upon evidence of satisfactory compliance with this law.

606 (1) After six (6) months of satisfactory compliance with this law, as determined by  
607 the Department upon a follow-up inspection, the license holder may apply for an  
608 annual license.

609 (b) A food service business or prepackaged restaurant that has had its license or license  
610 exemption status suspended or has become subject to a close down order shall not be  
611 entitled to a reimbursement of all or any portion of the licensing fee or fees.

612 305.10-3. *Emergency.* The Department may order a close down of a food service business, cottage  
613 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
614 of a serious health and/or safety threat to the community ~~due to the imminent nature of the food~~  
615 service violation.

616 ~~305.12-7. Any food service vendor that has been~~ (a) Persons issued a closed down order by  
617 EHSthe Department as an emergency measure due to the evidence of a serious health or safety  
618 threat hereunder must provide evidence of satisfactorily corrected compliance to the  
619 EHSDepartment and pass an inspection by the Department prior to being allowed to reopen  
620 the business.

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

624 (b) Any food service vendor that has been closed down may only receive a probationary license  
625 for six months upon evidence of satisfactory compliance with this Code re-open and the Federal  
626 Food Code, or continue operations.

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

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

635  
636 **305.13.—11. Appeal Rights**

637 305.1311-1.—Parties Persons who disagree with the decisions of the EHS, Licensing or Risk  
638 Management Departments, Department regarding issues of licensing, inspections, license or license  
639 exemption eligibility, inspections, orders to close down and/or license or license exemption  
640 suspensions or insurancerevocations may appeal to the Trial Court of the Judiciary.

641 ~~305.13-2.~~ (a) Hearings by the Judiciary will be pursuant to the rules established for the  
642 Judiciary.

643 305.11-2. Persons who disagree with the issuance of a citation for violations of this law shall  
644 contest the citation in accordance with the procedure contained in the Nation's laws and policies  
645 governing citations.

646  
647 *End.*

648 

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649  
650 Adopted ~~\_BC-10-03~~06-13-01-DB

651 Amended ~~\_BC-02-25-15-C~~

652

**Attachment A.****Food Service License Fees for 2001-2002**~~(To be adjusted annually)~~

- 653  
654  
655  
656  
657  
658 1. ~~Food Service Establishment License~~  
659     a. ~~Restaurants and Eating/Drinking Establishments~~  
660  
661             1. ~~With 0-49 seats~~ ~~\$100.00~~  
662             2. ~~With 50-100 seats~~ ~~\$150.00~~  
663             3. ~~With 101+ seats~~ ~~\$350.00~~  
664  
665     b. ~~Retail Food Market, Grocery Store~~ ~~\$175.00~~  
666  
667     c. ~~Retail Food Market, Grocery Store~~  
668             ~~With restaurant~~ ~~\$225.00~~  
669  
670     d. ~~Bakery/Confectionary~~ ~~\$100.00~~  
671  
672     e. ~~Convenience Store/Gas Station~~ ~~\$100.00~~  
673  
674     f. ~~Catering Business~~ ~~\$100.00~~  
675  
676 2. ~~Independent Food Service License~~  
677     a. ~~\$75.00 annually~~  
678  
679 3. ~~Temporary Food Service License~~  
680     a. ~~\$25.00 for each event, not to exceed fourteen consecutive days~~  
681  
682 4. ~~Tribal Schools~~ ~~No Fee~~  
683  
684

**~~THIS LICENSE IS NOT TRANSFERABLE~~**

685  
686 ~~All licenses expire on September 30<sup>th</sup> annually. A penalty of \$50.00 will be applied to renewal~~  
687 ~~applications postmarked after October 15<sup>th</sup>. Operation in any fiscal year requires a licence.~~  
688

**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 305.12-7(d).~~

~~1<sup>st</sup> Offense, non-critical: \_\_\_\_\_ \$25.00~~

~~2<sup>nd</sup> Offense in Five Years, non-critical: \_\_\_\_\_ \$100.00~~

~~3<sup>rd</sup> Offense in Five Years, non-critical: \_\_\_\_\_ \$200.00~~

~~All Subsequent Non-Critical Offenses in Five Years: \_\_\_\_\_ \$250.00~~

~~1<sup>st</sup> Offense, Critical: \_\_\_\_\_ \$100.00~~

~~2<sup>nd</sup> Offense in Five Years, Critical: \_\_\_\_\_ \$300.00~~

~~3<sup>rd</sup> Offense in Five Years: Critical: \_\_\_\_\_ \$500.00~~

~~All Subsequent Critical Offenses in Five Year: \_\_\_\_\_ \$750.00~~

~~\*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-~~

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.

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~~ONEIDA NATION~~

~~ONEIDA FOOD VENDOR'S LICENSE~~

~~October 1, 2002 through September 30, 2003~~

~~Business: \_\_\_\_\_ Licensee:~~

~~(Name and address of business) \_\_\_\_\_ (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, \_\_\_\_\_ (License fee)  
temporary, market, bakery, caterer, etc.)~~

~~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~~ Amended - BC- - - -

-



# HANDOUT

Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



## Legislative Operating Committee December 4, 2019

# Sanctions and Penalties Law

<b>Submission Date:</b> 9/6/17	<b>Public Meeting:</b> 10/4/18
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a

**Summary:** *This item was carried over from the previous term. The original proposal was to develop a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

**9/6/17 LOC:** Motion by Ernest Stevens III to add Sanctions and Penalties Law to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: David P. Jordan, Jenny Webster Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner. Drafting attorney provided an update on the status of the Sanctions and Penalties law. Next steps will be: 1) pull the current draft back, 2) hold community meetings to understand what sanctions/penalties the community is interested in, 3) meeting with the boards/committees/commissions for input, and 4) holding work meeting with LOC to make policy decisions and choose next steps.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

**11/1/17:** *Work Meeting.* Present: Carol Silva, Bonnie Pigman, Ed Delgado, Rachel Hill, Matthew Denny, Reynold Danforth, Kirby Metoxen, Rosa Laster, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Jennifer Falck. Representatives from all the B/C/C’s were invited to this meeting to provide input on what a Sanctions & Penalties Law might look like.

**12/6/17:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa Santiago, Jennifer Falck. The LOC reviewed and considered comments from the November 1, 2017, work meeting with boards, committees, and commissions. LOC began making policy decisions. Drafter will work on draft, and policy options, and bring materials back to LOC when ready.

**3/9/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Laura Laitinen-Warren. LOC reviewed the first draft of the law, and directed that the LRO schedule a community meeting, with a special invitation to members of boards, committees, and commissions, to discuss the proposed law.

- 3/16/18:** *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. The LOC reviewed the potential date for the community meeting, and directed the drafting attorney to schedule the community meeting for May 3, 2018, and to ensure the notice is published in the Kalihwisaks twice, an appointment is sent to all members of the LOC and boards, committees, and commissions, and that the Communications Department is included in the appointment so they can make efforts to communicate notice of the event.
- 4/2/18 LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a community meeting/potluck be held on May 3, 2018; seconded by Daniel Guzman King. Motion carried unanimously.
- 4/26/18:** *Work Meeting:* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. This was an LRO prep meeting to prepare a plan for the upcoming community meeting.
- 4/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber, Tani Thurner. The purpose of this work meeting was to prepare for the upcoming community meeting.
- 5/2/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Jennifer Webster. The LOC continued to prepare and discuss the upcoming community meeting.
- 5/3/18:** *Community Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins, Carol Silva, Chad Wilson, Janice McLester, Gina Buenrostro, Winnifred Thomas, Brooke Doxtator, Ed Delgado, Oyanolu Adams, Michelle Braaten, Mark Powless, Cathy L. Metoxen, Carole Liggins, Madelyn Genskow. The purpose of this community meeting was to gain input on the proposed Sanctions and Penalties law.
- 5/11/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman, Clorissa Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the comments received during the community meeting, and to determine if any revisions should be made to the law. The drafting attorney will update the draft of the law based on this discussion.
- 5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the revisions to the draft made based on comments collected from the community meeting. Drafting attorney will update the draft.
- 6/6/18/ LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator. The purpose of this work meeting was to review the BCSO's involvement in the Sanctions and Penalties law to ensure their role can be implemented as required by law.
- 7/18/18 LOC:** Motion by Kirby Metoxen to accept the legislative analysis for the Sanctions and Penalties Law and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.
- 8/1/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to review and consider the legislative analysis.

**8/15/18 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Sanctions and Penalties Law to a public meeting to be held on September 20, 2018; seconded by Kirby Metoxen. Motion carried unanimously.

Subsequent Motion by Jennifer Webster to forward the Sanctions & Penalties Law to the Finance Office for a fiscal analysis to be completed; seconded by Kirby Metoxen. Motion carried unanimously.

**9/10/18:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker, Cathy Bachhuber, Maureen Perkins. The purpose of this work meeting was to discuss the fact that the September 20, 2018 public meeting on the proposed law will have to be canceled due to the Kalihwisaks failing to publish the public meeting notice in the September 6, 2018, edition. The LOC determined the next steps for moving the public meeting forward – an e-poll of an updated public meeting notice will be completed and the appointment that was sent out changed to reflect the new date.

E-poll conducted.

**9/19/18 LOC:** Motion by Daniel Guzman King to enter the e-poll results into the record; seconded by Jennifer Webster. Motion carried unanimously.

**10/4/18:** Public Meeting Held.

**10/17/18 LOC:** Motion by Jennifer Webster to accept the public meeting memo comments and public meeting comment review memorandum and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.

**10/17/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Rosa Laster. The purpose of this work meeting was for the LOC to begin reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary.

**10/25/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was for the LOC to continue reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary. LRO will update the draft for the next LOC packet so a fiscal analysis can be requested.

**11/7/18 LOC:** Motion by Jennifer Webster to accept the public comment review memorandum and the updated draft; seconded by Daniel Guzman King. Motion carried unanimously.

**11/30/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and approve the fiscal impact statement request memorandum to the Finance Department, and begin discussing a plan for the completion of this item.

**12/5/18 LOC:** Motion by Jennifer Webster to accept the updated legislative analysis, including the replacement of page 159 in the packet; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to approve the fiscal impact statement memorandum and forward to the Finance Department directing that a fiscal impact statement of the proposed Sanctions and Penalties law be prepared for inclusion on the January 2, 2019 Legislative Operating Committee meeting agenda; seconded by Daniel Guzman King. Motion carried unanimously.

- 12/20/18:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Randall Cornelius. The purpose of this work meeting was to discuss traditional ways Oneida has sanctioned its leaders.
- 1/2/19:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review the adoption packet and discuss any changes that should be made. LRO will update all adoption materials.
- 1/7/19 LOC:** Motion by Kirby Metoxen to approve the adoption packet for the proposed Sanctions and Penalties Law and forward to the Oneida Business Committee for inclusion on the tentatively scheduled February 24, 2019 General Tribal Council meeting agenda for the General Tribal Council's consideration of adoption; seconded by Ernest Stevens III. Motion carried unanimously.
- 1/24/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins. The purpose of this work meeting was to review and discuss an article to be included in the 2/7 Kalihwisaks edition.
- 1/29/19:** E-Poll conducted.
- 2/4/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Nathan Wisneski, Xavier Horkman. The purpose of this work meeting was to discuss the creation of a promotional video for the Sanctions and Penalties law.
- Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the script for the Sanctions and Penalties law PowerPoint presentation. The LOC also discussed filming a promotional video for the Sanctions and Penalties law.
- 2/6/19 LOC:** Motion by Jennifer Webster to enter the results of the January 29, 2019 e-poll entitled "E-poll Request: Sanctions and Penalties Law February 7, 2019 Kalihwisaks Article" into the record; seconded by Kirby Metoxen. Motion carried unanimously.
- 2/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, as well as review and approve the script for the promotional video.
- 2/8/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Phil Wisneski. The purpose of this work meeting was to film the promotional video for the Sanctions and Penalties law.
- 2/14/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Cathy Bachhuber. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, as well as review the "FAQ" sheet.
- 2/20/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, practice responding to potential questions, and review and approve the Sanctions and Penalties law promotional video.
- 3/1/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the engagement with the informational video, practice the LOC's PowerPoint presentation, and prepare to answer potential questions that may be asked at the upcoming GTC meeting.



- 3/15/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to practice the LOC's PowerPoint presentation and prepare to answer potential questions that may be asked at the upcoming GTC meeting.
- 3/17/19 GTC:** Motion by Cathy L. Metoxen to table this item for sixty (60) days. Motion ruled out of order by Vice-Chairman Brandon Stevens; all the materials are available today in order to make a decision
- Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.
- Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.
- 3/20/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to debrief on the 3/17 GTC meeting, and begin discussing a plan for how to move this law forward, and the additional outreach we will conduct.
- 3/28/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Rosa Laster. The purpose of this work meeting was to briefly discuss potential ideas for additional outreach videos that can be made before this item is presented to the GTC again for consideration. Ernie expressed interest in taking a larger role in the creation of development of these videos.
- 5/1/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss a plan for outreach events the LOC can hold, and a plan for when this item might be presented to GTC again. The LRO was directed to move forward with developing a Kalihwisaks article that discusses outreach and provides a schedule of the new outreach dates.
- 6/13/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Laura Laitinen-Warren. The purpose of this work meeting was to review the community outreach notice that will be published in the Kalihwisaks and discuss the outreach plan.
- 6/19/19 LOC:** Motion by Jennifer Webster to approve the community outreach notice for the Sanctions & Penalties law with one noted change, and forward to the Kalihwisaks for publication in the July 3, 2019 Kalihwisaks edition; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/11/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Radisson Hotel and Conference Center. The LOC had a booth set up with a poster of information as well as a flyer, copy of the law, and FAQs. LRO staff members Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville and Maureen Perkins were available to answer questions and take comments. Although flyers and the provided information were taken from the booth or passed out to people, no input as to the law was collected.
- 7/17/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Norbert Hill Center's Business Committee Conference room. The LOC had a booth set up with a poster of information as well as a flyer, copy of the law, and FAQs. LOC member David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King, as well as LRO staff members Jennifer Falck, Clorissa N.

Santiago, Brandon Wisneski, and Destiny Prendiville were available to answer questions and take comments. No one attended this community outreach event.

- 8/9/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Veteran's Breakfast. Staff in attendance included David P. Jordan, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. Kirby gave an introduction and then held discussion with the community members in attendance at the Veteran's Breakfast.
- 8/15/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Oneida Farmer's Market. Staff in attendance included David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The LOC had a booth at the farmer's market with a poster of information as well as a flyer, copy of the law, and FAQs.
- 8/21/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the outreach efforts that have occurred, and determine whether the LOC is interested in holding more outreach events. The LOC determined that two more outreach events will be held.
- 9/4/19 LOC:** Motion by Jennifer Webster to approve the community outreach notice and article for the Sanctions and Penalties Law, and forward to the Kalihwisaks for publication in the September 19, 2019, edition; seconded by Ernest Stevens III. Motion carried unanimously.
- 9/19/19:** Article and community outreach event notice published in the Kalihwisaks.
- 10/7/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Elder Services Congregate Meal Site over the lunch hour. Staff in attendance included: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. Kirby gave an introduction and then opened up for discussion of any questions the community members in attendance had.
- 10/16/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the 10/18/19 outreach event in Milwaukee and begin planning for how the LOC wants to present this item to GTC again. All materials will have to be submitted to the OBC by November 18, 2019, for inclusion on the annual GTC meeting agenda.
- 10/18/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the SEOTS building in Milwaukee. Those in attendance included: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Mike Debraska. Kirby gave an introduction, and then the LOC and Mike Debraska reviewed the law line by line stopping for questions and discussion.
- 10/31/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to strategize how the LOC would like to present this law again to the GTC, and review and discuss the first draft of a memo that can be included in the GTC materials.
- 11/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to provide a brief update that the LRO will be holding a work meeting with the Communications Department on Thursday, November 7, 2019, to discuss the development of the multi-media presentation for the January 2020 GTC meeting.



**11/15/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to finalize the memo that would be presented to the GTC on January 20, 2020. LRO will conduct an e-poll of the memo today so that the materials can be forwarded to the OBC.

**11/15/19:** *E-Poll Conducted.* E-Poll was titled “Approval of the Sanctions and Penalties Law Materials for the January 20, 2020, GTC Meeting.” The requested action of this e-poll was to approve the Sanctions and Penalties law materials and forward to the Oneida Business Committee for inclusion in the January 20, 2020, General Tribal Council meeting packet materials. The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King. Kirby Metoxen did not provide a response to the e-poll during the e-poll time frame.

**11/19/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Xavier Horkman. The purpose of this work meeting was to begin collaborations between the LOC and the Communications Department on the development of a multimedia presentation for the January 2020 GTC meeting.

**11/20/19 LOC:** Motion by Kirby Metoxen to enter the November 15, 2019, Sanction and Penalties Law material for the January 20, 2020, GTC Meeting E-Poll results into record; seconded by Daniel Guzman King. Motion carried unanimously.

**11/20/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to update the LOC on the collaboration with the Communications Department on the development of a multimedia presentation for the January 20, 2020, annual GTC meeting. LOC also discussed potential ideas for a Sanctions and Penalties law promotional video.

**11/26/19 OBC:** Motion by Lisa Summers to approve back to the Legislative Operating Committee, for General Tribal Council consideration, number one (1) as identified in the request [on page 90 of the meeting packet], seconded by David P. Jordan. Motion withdrawn.

Motion by Daniel Guzman King to defer the Sanctions and Penalties law materials back to the Legislative Operating Committee for consideration of today's discussion and reformatting of the request to General Tribal Council, seconded by Ernie Stevens III. Motion carried

**11/26/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, JoAnne House. The purpose of this work meeting was to consider the discussion that occurred at the OBC meeting and determine a new strategy for moving this item forward. The LOC directed that an updated memo, draft, legislative analysis, resolution, and statement of effect be developed for inclusion on the December 4, 2019, special OBC meeting.

**12/2/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the updated draft and memo and determine if there were any other considerations that needed to be made by the LOC before this item moves forward.

#### **Next Steps:**

- Approve the Sanctions and Penalties for Elected Officials law materials and forward to the Oneida Business Committee for inclusion on the January 20, 2020, General Tribal Council meeting agenda.



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



TO: General Tribal Council  
FROM: David P. Jordan, Legislative Operating Committee Chairperson  
DATE: January 20, 2020  
RE: Sanctions and Penalties Law

### Summary

On March 17, 2019, the Legislative Operating Committee (LOC) presented a proposed Sanctions and Penalties law to the General Tribal Council (GTC). GTC was asked to consider the adoption of this Sanctions and Penalties law which would establish a set of sanctions and penalties that may be imposed upon all elected and appointed officials of the Nation for misconduct in office, including the Oneida Business Committee. During the last four (4) years the GTC has discussed sanctioning an official during at least ten (10) GTC meetings, but the requests to sanction an official have been declined often times due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct. After discussion on the proposed Sanctions and Penalties law, the GTC took the following actions:

- *Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.*
- *Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.*



The LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.

### Community Outreach Efforts

Rather than just waiting the sixty (60) days to see if anyone came forward with input, the LOC planned and hosted many opportunities for members of the community to become more informed



about the Sanctions and Penalties law and provide input and suggestions as to what should be addressed in the law.

<b>EFFORTS FOR OUTREACH AND INPUT</b>	
<b><i>Opportunities for Input Prior to the March 17, 2019 GTC Meeting:</i></b>	
November 1, 2017	Work Meeting with all Boards, Committees, and Commissions Invited
May 3, 2018	Community Meeting Potluck
October 4, 2018	Public Meeting*
October 11, 2018	Public Comment Period Closed*
February 7, 2019	Article Published in the Kalihwisaks
February 21, 2019	Informational Video Posted on Facebook
<b><i>Opportunities for Input After the March 17, 2019 GTC Meeting:</i></b>	
July 11, 2019	Community Outreach Event held at the Radisson Hotel and Conference Center prior to GTC Meeting
July 17, 2019	Community Outreach Event held at the Norbert Hill Center
August 9, 2019	Community Outreach Event held during Oneida Veteran's Breakfast
August 15, 2019	Community Outreach Event held during Oneida Farmer's Market
August 31, 2019	First Period for Written Submissions Closed
September 19, 2019	Article Published in the Kalihwisaks
October 7, 2019	Community Outreach Event held at Elder Congregate Meal Site
October 18, 2019	Community Outreach Event held at SEOTS
October 25, 2019	Input Opportunity at Community Budget Meeting
October 31, 2019	Second Period for Written Submissions Closed
November 7, 2019	Article Published in the Kalihwisaks

\* *The public meeting and public comment period are required by the Legislative Procedures Act.*

### *What opportunities for input did the LOC provide before March 17, 2019?*

Before providing what efforts the LOC made after the March 17, 2019, GTC directive to defer this item for GTC to have additional time to consider it and have input, it is important to note the efforts that were already made as the LOC provided various opportunities for members of the community to provide input during the development of the Sanctions and Penalties law.

***Work Meetings and Community Meetings.*** On November 1, 2017, the LOC invited all members of boards, committees, and commissions of the Nation to attend a work meeting to provide input on what the Sanctions and Penalties law should address. The LOC then held a community meeting on the proposed Law on May 3, 2018. This community meeting was a potluck style meeting where those community members in attendance shared input, questions, and concerns regarding the Law.

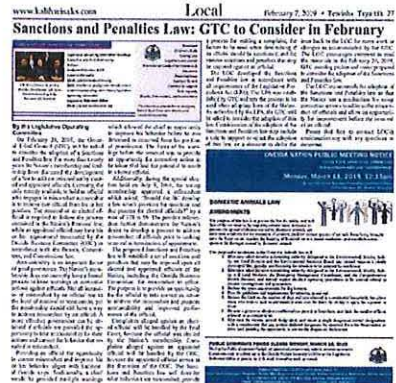
***Public Meeting and Public Comment Period.*** On October 4, 2018, the LOC held a public meeting, as required by the Legislative Procedures Act, where members of the community can provide oral testimony of views or questions on the proposed law. For those who were unable to attend the public meeting in person, the LOC held open a comment period until October 11, 2018, which is a timeframe where written comments on the Law were accepted. Notices for community



meetings and public meetings were published in the Kalihwisaks, on the Nation’s website, and on Facebook.

**LOC Meeting Agendas.** The proposed Sanctions and Penalties law was on eleven (11) LOC meeting agendas prior to the March 17, 2019, GTC meeting. The LOC holds meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room and encourages members of the community to attend and participate by asking questions and/or providing input during those meetings.

**Kalihwisaks Article.** Leading up to the March 17, 2019, GTC meeting the LOC published an informational article in the February 7, 2019, Kalihwisaks edition in an effort to provide the community background on why this Law was created and information on what the Law would do. This was an effort by the LOC to encourage the community to be prepared to discuss and consider this item. The article included the LOC’s email address and encouraged individuals to contact the LOC with any questions or concerns.



Article as it appeared in the February 7, 2019, Kalihwisaks edition.



Behind the scenes look at Councilman Daniel Guzman King filming the Sanctions and Penalties law informational video.

**Informational Video.** The LOC then developed an informational video that was shared on Facebook on February 21, 2019, which provided information on the purpose of the Law and included a link to the Nation’s website for additional information, including “frequently asked questions.” This video was viewed nearly 4,000 times.

*What opportunities for input has the LOC provided since the March 17, 2019, directive?*

Since the March 17, 2019, GTC directive to allow additional time for members of GTC to consider the Law and have input, the LOC has made many additional efforts to provide an opportunity for community engagement with the proposed Sanctions and Penalties law.



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer’s Market.

**Community Outreach Events.** The LOC has held six (6) community outreach events. Notices for these community outreach events were published in the July 3, 2019, and September 19, 2019, Kalihwisaks editions and published on the Nation’s website. At the community outreach events the LOC had informational flyers, drafts of the law, and a frequently asked questions document available for people to take and learn more. At many of the community



outreach events the LOC gave a short presentation on the Sanctions and Penalties law and had open discussion on the proposed law with those in attendance. At one (1) event the LOC even read the Sanctions and Penalties law line by line with the community member in attendance in an effort to educate, answer questions, and collect concerns. The LOC was available during these community outreach events to answer questions and collect input from community members. The community outreach events were held at the following dates and locations:

- July 11, 2019, held at the Radisson hotel and conference center prior to the GTC meeting;
- July 17, 2019, held at the Norbert Hill Center;
- August 9, 2019, held during the Oneida Veteran's Breakfast;
- August 15, 2019, held at the Oneida Farmer's Market;
- October 7, 2019, held at the Elder Congregate Meal Site; and
- October 18, 2019, held in Milwaukee at the South Eastern Oneida Tribal Services (SEOTS) building.



Councilwoman Jennifer Webster and LOC Chairman David P. Jordan at the Oneida Farmer's Market.



LOC members held a community outreach event at the SEOTS building in Milwaukee.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at Oneida Veteran's Breakfast.

***Period for Written Submissions of Comments.*** Understanding that not everyone is available to attend community outreach events in person, the LOC also allowed for written comments on the proposed Sanctions and Penalties law to be submitted from July 3, 2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. Written submissions of comments were received from two (2) individuals.

***Kalihwisaks Articles.*** In addition to the various community outreach events, the LOC also published multiple articles in the Kalihwisaks about the proposed Sanctions and Penalties law. An article was published in the September 19, 2019, Kalihwisaks edition for the purpose of informing the community on the various outreach efforts the Legislative Operating Committee has made for the proposed Sanctions and Penalties law. Another article was then published in the November 7, 2019, Kalihwisaks edition for the purpose of informing the community why the Legislative Operating Committee is the body developing the Sanctions and Penalties law.

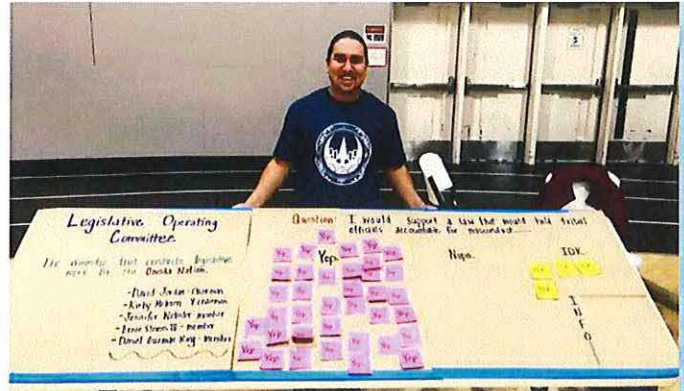
***Community Budget Meeting.*** During the October 25, 2019, Community Budget Meeting the LOC had an interactive display at the Legislative Reference Office's booth which allowed those community members in attendance to provide input by responding to the statement, "I would



support a law that would hold tribal officials accountable for misconduct.” Individuals could respond with either a “Yep,” “No,” or “IDK.” Thirty-seven (37) individuals responded with “Yep,” four (4) individuals responded with “IDK,” and no one responded with “No.”

### ***Input Received from Community Outreach Efforts***

Most of the engagement during the community outreach events that resulted from the March 17, 2019, GTC directive focused on educating the community on the purpose and provisions of the Sanctions and Penalties law and answering questions that community members may have on the Sanctions and Penalties law.



Councilman Daniel Guzman King with the information collected at the Community Budget Meeting held on October 25, 2019. 37 of the 41 people who participated stated they would support a law to hold officials accountable for misconduct.

Some members of the community did take the opportunity to provide input to the LOC on issues they would like to see addressed in the law. Some of the input the LOC has received includes:

- We should eliminate every board, committee, or commission of the Nation that is not required by law or grant. We can have employees of the Nation doing the work instead of elected and appointed officials.
- We cannot fault the misconduct of boards, committees, and commissions when there is no performance outcome associated with boards, committees, and commissions, or any way to ensure that the boards, committees, and commissions are aligned with the vision of the Nation as a whole.
- Internal Audit should be delegated the authority to handle investigations of complaints of appointed officials that come before the Oneida Business Committee.
- Complaints against appointed officials should go to the Judiciary and not go to the Oneida Business Committee.
- The Sanctions and Penalties law should only address complaints against elected officials, and not address appointed officials.
- Verbal and written reprimands should be removed from the law. Political figures should be held to a higher standard and there should be zero tolerance for misconduct.
- Sanctions such as loss of stipend and mandatory participation in training should be a mandatory and immediate sanction for any misconduct.
- There should not be a timeframe for when complaints can be brought forward, you should be able to bring a complaint forward as long as that official is in office.
- To reduce frivolous complaints there should be a requirement that the complainant have standing and was the person aggrieved by the conduct of an official.

Additionally, during the March 17, 2019, GTC meeting the following input was received:

- This law allows for too many people to file a complaint resulting in the official being in court.



- Only members of the Nation should have standing to file a complaint against our officials.
- The Oneida Business Committee should not be a hearing body for appointed officials.
- The Judiciary should not be a hearing body for complaints against elected officials.

The Legislative Operating Committee carefully considered all input that was received during the various outreach events. The most common piece of input that the Legislative Operating Committee received regarding the proposed Sanctions and Penalties law referenced how complaints against appointed officials are handled under the Law. Many people expressed dissatisfaction with the Oneida Business Committee serving as a hearing body for complaints against an appointed official.

### ***Why do we need a Sanctions and Penalties law?***

If an official of the Nation engages in misconduct, the only remedy available today to hold that official accountable is removal from office. Removal from office must be pursued in accordance with the Removal law if an elected official. Although not every instance of misconduct rises to the level of removal from office, that does not mean that we should fail to address or attempt to correct every instance of misconduct. The Nation is currently lacking a process to issue warnings, suspensions, or other corrective actions against an official for his or her misconduct.

The desire for a process to be able to better hold officials accountable for misconduct in office has been discussed within the Nation for more than twenty (20) years. From 2016 to 2019, the GTC has discussed sanctioning an official, whether through suspension or loss of stipend or wage, during at least eleven (11) GTC meetings. The requests to sanction an official have often times been declined due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct while still protecting the due process rights of that official. In November 2018 the GTC even considered a petition regarding “*Rescinding the Removal law*” for the purpose of addressing disciplinary actions such as suspensions or removals of officials through an easier process than what the Removal law provides.

Additionally, during the Special Election held on July 9, 2016, the Nation’s voting membership was asked to consider a referendum question of “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59), requiring this topic to come before the GTC for consideration and discussion.

Most other governments, including tribal, local, state and federal, have some sort of sanctions and penalties process for officials. Through the adoption of the Sanctions and Penalties law the GTC can close the current gap by providing a process to address the misconduct of officials and empower themselves to take action to hold officials accountable.

### ***Conclusion***

The LOC has fulfilled the March 17, 2019, GTC directive to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. The LOC then used the input that was received from community members during the various community outreach efforts to

determine how the proposed Law should be revised to address the concerns of the community.

The LOC determined that the proposed Sanctions and Penalties law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC has updated the Sanctions and Penalties law to remove the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the proposed Sanctions and Penalties law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court.

Additionally, the LOC revised the Law to limit who can file a complaint against an elected official. Previously, the Law allowed any individual at least eighteen (18) years of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct file a complaint. The proposed Law now also requires that an individual be an enrolled member of the Nation or an employee of the Nation in order to file a complaint against an elected official.

Attached to this memorandum for review and consideration are the following updated documents:

- Resolution: Sanctions and Penalties for Elected Officials Law
- Statement of Effect: Sanctions and Penalties for Elected Officials Law
- Sanctions and Penalties for Elected Officials Law Legislative Analysis
- Sanctions and Penalties for Elected Officials Law (Clean Draft)
- Sanctions and Penalties for Elected Officials Law (Redline Draft Demonstrating Changes Since the Draft Presented at the 3/17/19 GTC Meeting)

The fiscal impact statement for the proposed Sanctions and Penalties law provided in the March 17, 2019, General Tribal Council materials identified there would be no fiscal impact as a result of adoption of the Law. The subsequent revisions to the Law proposed by the LOC either eliminate or limit provisions of the proposed Law. Therefore, it is presumed that the fiscal impact statement's original determination of no fiscal impact is still valid, and an updated fiscal impact statement is not included with these materials.

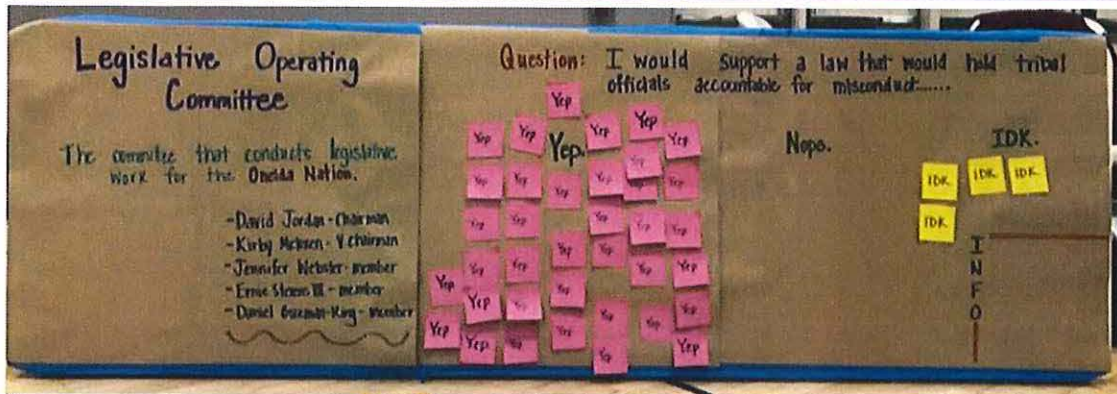
The Legislative Operating Committee is asking the General Tribal Council to consider the adoption of the updated Sanctions and Penalties for Elected Officials law.

### **Requested Action**

Adopt the updated Resolution: Sanctions and Penalties for Elected Officials Law



**PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS**



Interactive display from the Community Budget Meeting where 37 of the 41 participants stated they would support a law that held officials accountable for misconduct.



LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster in Milwaukee discussing the Sanctions and Penalties law with a community member.



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer's Market.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen conversing about the Sanctions and Penalties law with those in attendance at the Oneida Veterans Breakfast.



# PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



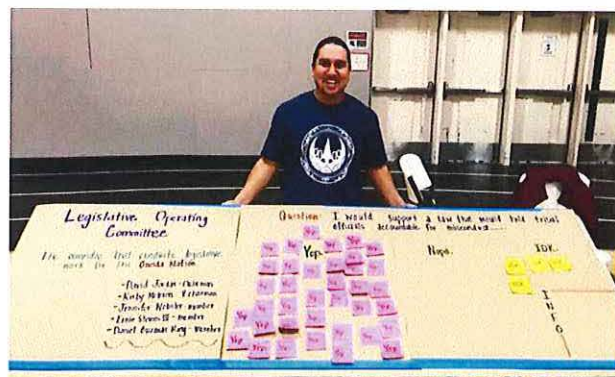
Above: LOC members in Milwaukee holding a community outreach event at the SEOTS building. Below: LOC's materials for the Sanctions and Penalties law outreach events.



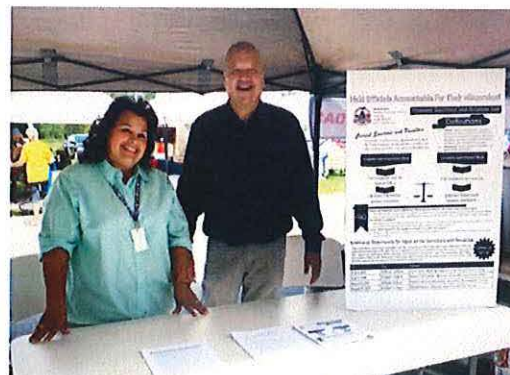
LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at the Oneida Veterans Breakfast community outreach event.



LOC Vice-Chairman Kirby Metoxen presenting on the Sanctions and Penalties law at the Elder Congregate Meal Site.



Left: Councilman Daniel Guzman King collecting input at the Community Budget Meeting.



Right: LOC Chairman David P. Jordan and Councilwoman Jennifer Webster at the Oneida Farmer's Market.



# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## GTC Resolution # \_\_\_\_\_ Sanctions and Penalties for Elected Officials Law

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**WHEREAS,** the Oneida Nation 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 Nation; and

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

**WHEREAS,** the purpose of the Sanctions and Penalties for Elected Officials law (“the Law”) is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official; and

**WHEREAS,** the Law will require an elected official of the Nation to behave in a manner that promotes the highest ethical and moral standard; and

**WHEREAS,** the Law will subject an elected official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct; and

**WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected official, including who may file a complaint, when to file a complaint, where a complaint may be filed, and the necessary contents of a complaint; and

**WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence; and

**WHEREAS,** the Law will require all complaints alleged against an elected official to be handled in a confidential manner; and

**WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected official to the Judiciary - Trial Court; and

**WHEREAS,** the Law will allow an appeal of a decision of the Trial Court to be made to the Nation’s Court of Appeals; and

**WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an elected official, and the factors that shall be used when determining the appropriate sanctions and/or penalties to impose; and

43 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an  
44 official from individual liability for the underlying misconduct, and does not limit any  
45 penalties that may be imposed in accordance with other laws; and  
46

47 **WHEREAS,** the Law will provide for the effect of a resignation by an elected official; and  
48

49 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of  
50 conduct in office for each elected official; and  
51

52 **WHEREAS,** a public meeting on the proposed Law was held on October 4, 2018, in accordance with  
53 the Legislative Procedures Act, and the public comments were reviewed and accepted by  
54 the Legislative Operating Committee on October 17, 2018 and October 25, 2018; and  
55

56 **WHEREAS,** a proposed Sanctions and Penalties law was presented to the General Tribal Council for  
57 consideration on March 17, 2019; and  
58

59 **WHEREAS,** on March 17, 2019 after discussion the General Tribal Council took action to defer this item  
60 for at least at least sixty (60) days for the General Tribal Council to have additional time to  
61 consider it and have input; and  
62

63 **WHEREAS,** after the March 17 directive the Legislative Operating Committee held seven (7) community  
64 outreach events, allowed for the written submission of comments and questions, and  
65 published two (2) articles in the Kalihwisaks regarding the proposed Law and outreach  
66 efforts; and  
67

68 **WHEREAS,** based on the input received during the various community outreach events, the Legislative  
69 Operating Committee decided to revise the Law to eliminate the Oneida Business  
70 Committee as a hearing body for complaints against appointed officials by removing all  
71 references to appointed officials throughout the Law, and well as limit who can file a  
72 complaint to enrolled members of the Nation or employees of the Nation; and  
73

74 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties for Elected Officials law is hereby  
75 adopted and shall become effective ten (10) business days after the date of the adoption of this resolution.  
76  
77





## Statement of Effect

### *Sanctions and Penalties for Elected Officials Law*

#### *Summary*

This resolution adopts a Sanctions and Penalties for Elected Officials law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*  
*Date: December 3, 2019*

#### *Analysis by the Legislative Reference Office*

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties for Elected Officials law (“the Law”), which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis<sup>1</sup>, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Law which will establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties for Elected Officials law will:

- Require an elected official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
  - who may file a complaint [1 O.C. 120.5-1];
  - when a complaint may be filed, [1 O.C. 120.5-2];
  - where a complaint may be filed [1 O.C. 120.5-4]; and
  - the necessary contents of a complaint [1 O.C. 120.5-3];

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<sup>1</sup> The fiscal impact statement provided in the March 17, 2019, GTC meeting materials identified there would be no fiscal impact as a result of adoption of the Law. The subsequent revisions to the Law proposed by the LOC either eliminate or limit provisions of the proposed Law. Therefore, it is presumed that the fiscal impact statement’s original determination of no fiscal impact is still valid, and an updated fiscal impact statement was not included in the January 20, 2020, General Tribal Council meeting materials.

- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [*1 O.C. 120.5-5*];
- Require all complaints alleged against an elected official to be handled in a confidential manner [*1 O.C. 120.6-4*];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [*1 O.C. 120.6-1*];
- Allow for an individual to appeal the decision of the Trial Court to the Nation's Court of Appeals [*1 O.C. 120.6-6*];
- Provide sanctions and penalties that may be imposed against an elected official [*1 O.C. 120.7-2*];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [*1 O.C. 120.7-3*];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [*1 O.C. 120.7-5*];
- Discuss the effect of a resignation by an elected official [*1 O.C. 120.8*]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected official [*1 O.C. 120.9*].

In accordance with the LPA, a public meeting on the proposed Law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Legislative Operating Committee presented a proposed Law to the General Tribal Council for consideration on March 17, 2019. After discussion on the Law, the General Tribal Council took action to defer this item for at least sixty (60) days for the General Tribal Council to have additional time to consider it and have input.

After the March 17, 2019, directive the Legislative Operating Committee held seven (7) community outreach events, allowed for the written submission of comments and questions, and published two (2) articles in the Kalihwisaks regarding the proposed Law and outreach efforts. Based on the input received during the various community outreach events, the Legislative Operating Committee decided to revise the Law to eliminate the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials throughout the Law, as well as limit who can file a complaint to enrolled members of the Nation or employees of the Nation.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

### ***Conclusion***

Adoption of this resolution would not conflict with any of the Nation's laws.



# SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting was held on October 4, 2018.		
Fiscal Impact	A fiscal impact statement was prepared by the Finance Department on December 27, 2018.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, elected officials may be removed in accordance with
- 4 the Removal Law. However, there may be instances of misconduct that do not rise to the level of
- 5 removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 6 appropriate.
- 7 **B.** This law creates a formal complaint process that gives all tribal members, employees and entities an
- 8 opportunity to file complaints against elected officials while ensuring that due process rights for those



9 accused are protected. This law also creates a range of potential sanctions and penalties for officials  
10 who violate the laws of the Nation or commit other forms of misconduct.

11 C. During the Special Election held on July 9, 2016, the following referendum question was approved by  
12 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for  
13 elected officials?” The Election Law requires the Oneida Business Committee to present referendum  
14 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action  
15 [*Election Law 1 O.C. 102.12-9(c)*].

16 D. This law will apply to elected officials of the Nation, including members of the following entities:

**ELECTED BOARDS, COMMITTEES AND COMMISSIONS**

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Trust Enrollment Committee
- GTC Legal Resource Center Advocates and Attorney

17 *\*This law does not apply to appointed boards, members of the Judiciary or corporate entities of the*  
18 *Nation.*

19 **SECTION 3. CONSULTATION AND OUTREACH**

20 A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open  
21 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed  
22 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:

- 23 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
- 24 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
- 25 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
- 26 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
- 27 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
- 28 ▪ Skokomish Code of Ethics S.T.C. 1.05;
- 29 ▪ Pit River Tribal Government Code of Conduct Section 80.

30 B. The Business Committee Support Office, Records Management Department, Human Resources  
31 Department and representatives from the following Boards, Committees and Commissions were  
32 consulted in the development of this law and analysis:

- 33 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
- 34 ▪ Election Board;
- 35 ▪ Environmental Resource Board (ERB);
- 36 ▪ Gaming Commission;
- 37 ▪ Land Commission;
- 38 ▪ Police Commission;
- 39 ▪ Pow-wow Committee;
- 40 ▪ Trust Enrollment Committee;
- 41 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).

- 42 C. *Community Outreach Events*. In addition to the public meeting required by the LPA held on October  
43 4, 2018, the LOC held the following outreach events on this legislation:
- 44     ▪ May 3, 2018: A community pot-luck meeting at Norbert Hill Center to gather community input  
45         on this law.
  - 46     ▪ July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference  
47         Center.
  - 48     ▪ July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
  - 49     ▪ August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
  - 50     ▪ August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
  - 51     ▪ October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
  - 52     ▪ October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.

53

#### 54 **SECTION 4. PROCESS**

- 55 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 56 B. The law was originally added to the Active Files List on October 15, 2014 and was carried over from  
57 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 58 C. At the time this legislative analysis was developed, the following work meetings had been held  
59 regarding the most recent efforts to develop this law and legislative analysis:
- 60     ▪ September 6, 2017: LOC work meeting.
  - 61     ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees  
62         and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land  
63         Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and  
64         committees were invited to attend this work meeting.
  - 65     ▪ December 6, 2017: LOC work meeting.
  - 66     ▪ March 9, 2018: LOC work meeting.
  - 67     ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support  
68         Office, and representatives from the following boards, committees and commissions: Police  
69         Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and  
70         commissions were invited to attend this meeting.
  - 71     ▪ May 11, 2018: LOC work meeting.
  - 72     ▪ July 9, 2018: Work meeting with BC Support Office.
  - 73     ▪ August 1, 2018: LOC work meeting.
  - 74     ▪ October 17, 2018: LOC work meeting.
  - 75     ▪ October 25, 2018: LOC work meeting.
  - 76     ▪ December 20, 2018: Work meeting with Cultural Heritage.
  - 77     ▪ January 2, 2019: LOC Work meeting.
  - 78     ▪ January 24, 2019: LOC Work meeting.
  - 79     ▪ February 4, 2019: LOC Work meeting.
  - 80     ▪ February 6, 2019: LOC work meeting.
  - 81     ▪ February 8, 2019: LOC work meeting.
  - 82     ▪ February 14, 2019: LOC work meeting.
  - 83     ▪ February 20, 2019: LOC work meeting.
  - 84     ▪ March 1, 2019: LOC work meeting.
  - 85     ▪ March 15, 2019: LOC work meeting.

- 86     ▪ March 20, 2019: LOC work meeting
- 87     ▪ March 28, 2019: LOC work meeting.
- 88     ▪ May 1, 2019: LOC work meeting.
- 89     ▪ June 13, 2019: LOC work meeting.
- 90     ▪ August 21, 2019: LOC work meeting.
- 91     ▪ October 16, 2019: LOC work meeting.
- 92     ▪ October 31, 2019: LOC work meeting.
- 93     ▪ November 6, 2019: LOC work meeting.
- 94     ▪ November 15, 2019: LOC work meeting.
- 95     ▪ November 20, 2019: LOC work meeting.
- 96     ▪ November 26, 2019: LOC work meeting.
- 97     ▪ December 2, 2019: LOC work meeting.

98

## 99     **SECTION 5. CONTENTS OF THE LEGISLATION.**

100    **A. *What Qualifies as Misconduct.*** The Oneida Nation expects elected officials to uphold high ethical and  
101    moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This  
102    section describes what behaviors could be considered misconduct [120.4]. Under this law, the  
103    definition of misconduct is very broad and includes any of the following:

- 104    ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
  - 105      ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 106    ▪ Violating the bylaws or standard operating procedures of the board the official serves on.
- 107    ▪ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime  
108    elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 109    ▪ Any other activity that does not uphold the moral and ethical standards expected of the Nation’s  
110    officials.

## 111    **B. *Filing a Complaint.***

- 112    ▪ *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the  
113    Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to  
114    believe that an official has committed misconduct. Entities of the Nation, such as a board,  
115    committee or commission, can also file complaints against elected officials.
- 116    ▪ *When to File Complaint?* The complaint must be filed within 90 days of when the alleged  
117    misconduct occurred or was discovered [120.5-1 & 5-2].
- 118    ▪ *Contents of the Complaint.* Complaints must include the following information [120.5-3]:
  - 119      ○ Information about the official, including the official’s name and the entity they serve on.
  - 120      ○ Information about the alleged misconduct, including date, time, location and specific  
121      details.
  - 122      ○ The specific law, policy, rule or bylaw that the official violated.
  - 123      ○ Information about any witnesses or others with knowledge of the violation.
  - 124      ○ Contact information of the individual filing the complaint.
  - 125      ○ Supporting documents and any other information required by the Rules of Civil Procedure  
126      [8 O.C. 803.5-1].
- 127    ▪ *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with  
128    is located within the Oneida Judiciary [120.5-4].

129       ▪ *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct  
130 investigation is not allowed [120.5-5].

131 **C. *Complaint Procedure.*** Complaints against elected officials, including members of the Oneida Business  
132 Committee, will be heard by the Nation’s Trial Court [120.6-1]. The law outlines the process for how  
133 the Judiciary will hear the complaint:

134       ▪ *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right  
135 to be represented by an attorney or an advocate, at their own expense [120.6-2].

136           ○ *Legal Resource Center.* The Legal Resource Center Law established an office to provide  
137 legal advice and representation to Tribal members and employees in cases before the  
138 Judiciary.

139       ▪ *Burden of Proof.* The burden of proof for allegations made under this law is “clear and convincing  
140 evidence” [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges  
141 in the Oneida Judiciary [8 O.C. 801.12-6(c)].

142           ○ This means that the person filing the complaint must provide evidence “indicating that the  
143 [allegation] to be proved is highly probably or reasonably certain” [Black’s Law  
144 Dictionary]. This is a greater burden than “preponderance of the evidence,” the standard  
145 in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for  
146 criminal trials.

147       ▪ *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with  
148 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will  
149 be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties  
150 imposed against an official will be public information [120.6-4].

151           ○ *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public  
152 except for peacemaking, mediation, proceedings where the judge has safety or  
153 confidentiality concerns, or “if expressly prohibited by law” [8 O.C. 801.4-4].

154 **D. *Hearings Under Rules of Civil Procedure.*** All hearings under this law must follow the Judiciary Rules  
155 of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court  
156 using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see  
157 the Judiciary Rules of Civil of Civil Procedure in the Nation’s Code of Laws.

158       ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a  
159 standard complaint form with instructions to fill out the complaint.

160           ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the  
161 complaint to include the full name and address of the plaintiff and defendant, why the  
162 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,  
163 specifically what relief is sought from the defendant, and a summons [Oneida Judiciary  
164 Rules of Civil Procedure 803.5-1].

165           ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a  
166 general civil case. However, individuals may request a fee waiver from the court for the  
167 following reasons: unemployed, health/medical, or below poverty level.

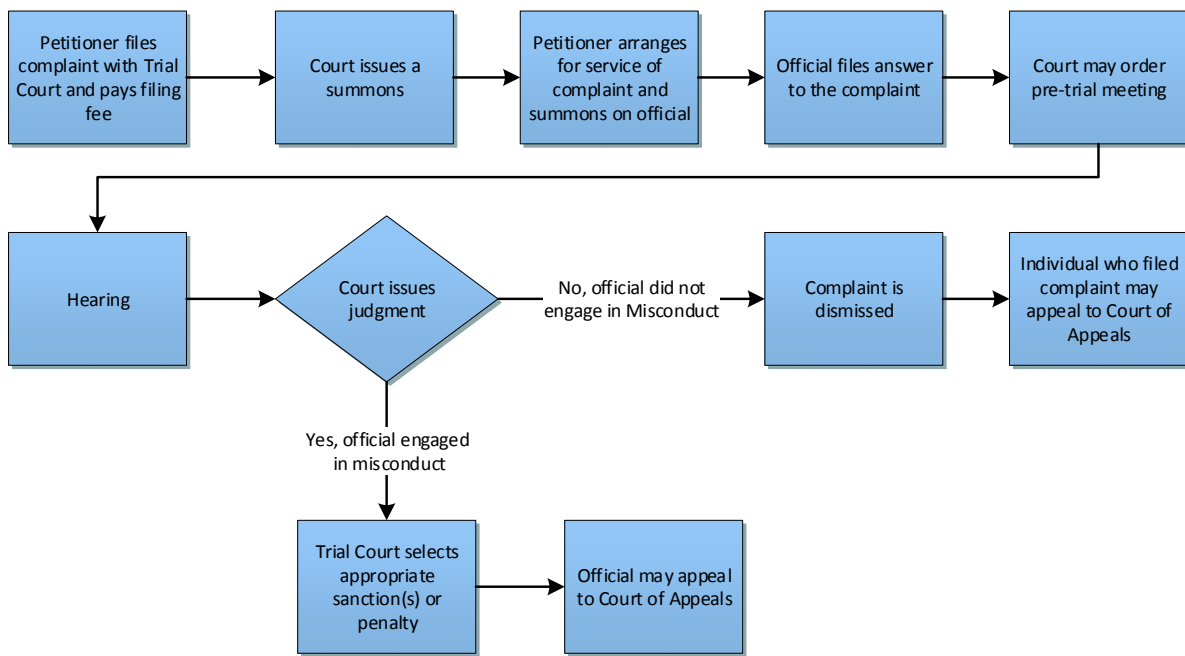
168           ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The  
169 Trial Court has a standard summons form.

170       ▪ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to  
171 the elected official within 30 days after the complaint is filed. In addition, for complaints against  
172 officials, notice must also be served to the Secretary’s office. The petitioner must provide proof to

173 the Court that the complaint and summons were delivered to the defendant within 10 days of  
 174 delivery. If proof of service is not completed, then the case will be dismissed [Rules of Civil  
 175 Procedure 8 O.C. 803.5].

- 176 ■ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official  
 177 can either admit to or deny the allegations made in the complaint and provide defenses to each  
 178 claim made in the complaint [Rules of Civil Procedure 8 O.C. 803.7].
- 179 ■ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and  
 180 defendant. The purpose for this meeting could include preparing for the trial, creating a plan  
 181 regarding discovery, or facilitating a settlement, such as peacemaking [Rules of Civil Procedure  
 182 803.12].
- 183 ■ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may  
 184 include opening statements, presentation of the parties’ cases, rebuttals and closing statements  
 185 [Rules of Civil Procedure 8 O.C. 803.38].
- 186 ■ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough  
 187 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will  
 188 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find  
 189 there is clear and convincing evidence to support the allegations, the complaint will be dismissed  
 190 [120.6-5].
- 191 ■ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have  
 192 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed  
 193 with the Court of Appeals in accordance with the Rules of Appellate Procedure [120.6-6].
  - 194 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court  
 195 of Appeals within 30 days after the judgment was rendered [8 O.C 805.5-2(a)].

197 **Chart 3. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**  
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199  
 200

201 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on  
202 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected  
203 official. Officials may receive one or more of the following penalties. The Trial Court will select  
204 whichever penalty it deems appropriate [120.7].

- 205 ■ *Conditional Penalties.* Sanctions and penalties may be imposed on a conditional basis. For  
206 example, an official could be ordered to make a public apology and attend mandatory training, or  
207 otherwise face suspension [120.7-4].
- 208 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,  
209 that official can face additional sanctions as a result of additional misconduct complaints under this  
210 law. An example would be an official failing to pay a fine, failing to attend mandatory training or  
211 violating the terms of their suspension [120.7-6].

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*Chart 5. List of Potential Sanctions and Penalties*

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Removal, in accordance with Removal Law**

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- 215 ■ *Verbal Reprimand.* During a BC or GTC meeting, the Nation’s chairperson will read a statement  
216 describing the official’s misconduct. The chairperson will also state that the official’s behavior was  
217 unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
- 218 ■ *Public Apology.* An official may be ordered to make a public apology at a BC or GTC meeting.  
219 The apology must include a description of the misconduct, a statement that the actions were wrong,  
220 a description of the harm caused by the misconduct, and a “clear and unambiguous” apology  
221 [120.7-2(b)].
- 222 ■ *Written Reprimand.* The Judiciary Trial Court may publish a written reprimand in the Nation’s  
223 official media outlets. The Nation’s official media outlets are the Oneida Nation website and the  
224 Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same  
225 information as a verbal reprimand [120.7-2(c)].
- 226 ■ *Suspension.* The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time  
227 officials, such as members of the Business Committee or Gaming Commission, may be suspended  
228 for up to fifteen (15) business days. During a suspension, the official cannot attend meetings,  
229 trainings, or conferences. The official also cannot vote or perform work for the entity. In addition,  
230 the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
  - 231 ○ *Multiple Suspensions on One Entity.* If multiple officials on the same entity are suspended  
232 at the same time, the suspensions must be imposed on a staggered basis so that the business  
233 of the Nation is not interrupted. For example, if multiple members of the Business  
234 Committee are suspended, each member will be suspended one at a time on a staggered  
235 basis [120.7-2(d)(3)].

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- **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as returning funds or paying to replace damaged property. The point of restitution is to make someone whole. [120.7-2(e)].
  - **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$2500 [120.7-2(f)].
    - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
    - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting Fishing and Trapping 4 O.C. 406.10-5(a)].
  - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and Commissions law 1 O.C. 105.13-3(b)].
  - **Mandatory Training.** An official can be ordered to complete a mandatory training program to address their behavior. Examples include anger management or sexual harassment training [120.7-2(h)].
  - **Removal.** The Trial Court can recommend that the removal process be initiated for an official in accordance with the Removal Law. However, this would only be a recommendation. The Removal Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
    - **Removal Law Process.** In order to remove an elected official, an eligible voter must file a petition with the Secretary signed by at least 30% of the vote cast in the previous general election. For example, the number of votes cast in the 2017 general election was 1612, so the number of signatures needed to initiate removal is approximately 484. Then, the Judiciary conducts a preliminary review to determine whether there is sufficient grounds for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for removal has been proven, the findings are forwarded to the Nation’s Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- F. **Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the following when deciding which sanction or penalty to apply [120.7-3].
- How severe the misconduct was, whether it was intentional, and how likely the official is to repeat the misconduct.
  - The damage to the finances or reputation of the Nation, the entity, or any person or organization.
  - Whether the official has expressed remorse and is willing to take steps to correct the harm done.
  - Whether any prior complaints have been filed against the official. For example, whether this is the first complaint against the official or represents a pattern of behavior.
- G. **Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an official who commits misconduct may also experience other consequences. These include [120.7-5]:
- Removal from office in accordance with the Removal law.



- 280       ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft  
281       or violent acts.
- 282       ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for  
283       damages.
- 284       ▪ Any other penalties listed in another law of the Oneida Nation.
- 285             ○ For example, a violation of the Computer Resources Ordinance may result in loss of access  
286             to the Nation’s computer resources [*Computer Resources Ordinance 2 O.C. 215.9-1*].
- 287 **H. *Effect of Resignation by an Official.*** If an official resigns from office after a complaint has been filed,  
288 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning  
289 from office does not end or prevent an investigation [*120.8*].
- 290 **I. *Record of Conduct in Office.*** A record of conduct for each official will be maintained by the BC  
291 Support Office, which will include copies of complaints filed against the official, outcome of the  
292 complaints, and any sanctions and penalties the official received. This record will be maintained for at  
293 least seven (7) years [*120.9*].
- 294       ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office  
295 will only be made available for review to the Trial Court. The purpose of the record of conduct is  
296 so that the Trial Court can review previous complaints against the official when determining a  
297 potential sanction or penalty [*120.6-4(b)*].
- 298       ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding  
299 a complaint against an elected official and any sanctions and penalties imposed against an official  
300 will be public information [*120.6-4(c)*].
- 301

## 302 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 303 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this  
304 law. This law does not conflict with any of the referenced laws.
- 305       ▪ *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the  
306 Nation’s Trial Court in accordance with the Rules of Civil Procedure [*120.5-4*].
- 307       ▪ *Rules of Appellate Procedure.* Appeals of the Trial Court’s decision shall be filed pursuant to the  
308 Nation’s Rules of Appellate Procedure.
- 309       ▪ *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not  
310 pay according to the deadline, the Trial Court may seek to collect that fine through the Nation’s  
311 garnishment process [*120.7-2(f)(2)*].
- 312       ▪ *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay  
313 according to the deadline, the Trial Court may seek to collect that fine through the Nation’s per  
314 capita attachment process [*120.7-2(f)(2)*].
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## 316 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 317 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or  
318 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to  
319 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and  
320 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
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324 **SECTION 8. OTHER CONSIDERATIONS**

- 325 **A. *Complaints against Judiciary.*** The Judiciary Law already contains a process for reprimand,  
 326 suspension and removal of judges for willful misconduct in office. The complaint and hearing  
 327 procedure for complaints against judges can be found in the Judiciary law [*Judiciary law 8 O.C.*  
 328 *801.12*]. Therefore, the Judiciary is not included in this law.
- 329 **B. *Judiciary Conflicts of Interest.*** The Oneida Tribal Judiciary Canons of Judicial Conduct requires a  
 330 Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of  
 331 interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for  
 332 reprimand under the Nation’s Judiciary law [*Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2*].
- 333 **C. *Complaints Against Appointed Officials.*** This law applies to elected officials only. Appointed officials  
 334 are appointed by the Oneida Business Committee in accordance with the Boards, Committees and  
 335 Commissions law and serve at BC’s discretion. If an appointed official commits misconduct, the that  
 336 official’s board, committee or commission or a member of the BC may recommend termination of  
 337 appointment. A member of an appointed entity may have their appointment terminated by a 2/3 majority  
 338 vote of the Oneida Business Committee [*Boards, Committees and Commissions 1 O.C. 105.7-4*].
- 339 **D. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within  
 340 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are  
 341 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential  
 342 amendments. Updating the Code of Ethics would provide additional guidance to elected officials,  
 343 individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- 344 **E. *Comparison to Other Nations.*** Research of other tribal nations and municipalities indicate that there  
 345 are many different processes for sanctions and penalties of public officials. There is no uniform standard  
 346 used by all tribal governments. Examples of other sanctions and penalties processes are provided for  
 347 information:  
 348

349 ***Chart 6. Sanctions and Penalties Process of other Tribal Nations***

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
<b>Siletz</b>	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
<b>Ho Chunk</b>	Judiciary	Judiciary	President
<b>Rosebud Sioux</b>	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
<b>Skokomish</b>	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

350 \*Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.  
 351

- 352 **F. *Number of Potential Complaints.*** Since the Nation currently has no formal sanctions and penalties  
 353 process, it is not possible to predict the number of complaints that may be filed against elected officials.

354           ▪ *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary  
355 should be prepared to potentially process a large number of complaints upon passage of this  
356 law.

357 **G. *Impact of Suspension on Full-Time Officials.*** Members of the Oneida Business Committee and  
358 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials  
359 would impact salaries, benefits such as health insurance, and access to workplaces. The Human  
360 Resources Department reports that they have a suspension procedure in place for employees of the  
361 Nation, and that this procedure could be applied or modified for suspension of full-time officials.

362           ▪ *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that  
363 the BC Support Office work with HRD to develop a process should suspensions of full-time  
364 BC members or Gaming Commissioners occur.

365 **H. *Rules of Civil Procedure.*** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules  
366 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on  
367 the LOC's Active Files List and may be amended in the future.

368 **I. *Fiscal Impact.*** Please refer to the fiscal impact statement for any fiscal impacts.

369           ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
370 emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].

371           ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating  
372 Committee and may be prepared by any agency who may receive funding if the legislation is  
373 enacted; who may administer a program if the legislation is enacted; who may have financial  
374 information concerning the subject matter of the legislation; or by the Finance Office, upon request  
375 of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].

376

**Title 1. Government and Finances - Chapter 120**  
**Kalihwahníla:tú: Okhale? Atatlihwá?thlewáhtu Kayanlása**  
*Giving strength to the issues and Forgiving oneself for the issue at hand* Laws  
**SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS**

120.1. Purpose and Policy  
 120.2. Adoption, Amendment, Repeal  
 120.3. Definitions  
 120.4. Misconduct  
 120.5. Filing of a Complaint

120.6. Complaint Procedure  
 120.7. Sanctions and Penalties  
 120.8. Effect of Resignation by an Official  
 120.9. Record of Conduct in Office

1

**120.1. Purpose and Policy**

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

- (a) This law applies to members of the Oneida Business Committee.
- (b) This law does not apply to judges of the Oneida Nation Judiciary.
- (c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by Onlayote?a'ka, which includes:

- (a) Kahletsyalúsíla. The heart felt encouragement of the best in each of us.
- (b) Kanolukhwásíla. Compassion, caring, identity, and joy of being.
- (c) Ka?nikuhlí'yó. The openness of the good spirit and mind.
- (d) Ka?tshatstásíla. The strength of belief and vision as a People.
- (e) Kalihwí'yó. The use of the good words about ourselves, our Nation, and our future.
- (f) Twahwahtsíláyá. All of us are family.
- (g) Yukwatsístáyá. Our fire, our spirit within each one of us.

22

**120.2. Adoption, Amendment, Repeal**

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-\_\_-\_\_-\_\_-\_\_.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. 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.

120.2-4. 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.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

33

**120.3. Definitions**

120.3-1. 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.

36

- 37 (a) “Business Committee Support Office” means the office that provides administrative  
38 support for the Oneida Business Committee and various other governmental operations.  
39 (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding  
40 holidays recognized by the Nation.  
41 (c) “Clear and convincing evidence” means that it is substantially more likely than not that  
42 the facts presented are true.  
43 (d) “Complainant” means an individual who has made a complaint.  
44 (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.  
45 (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.  
46 (g) “Entity” means a board, committee, commission, office, or other group of the Nation  
47 an individual may be elected to serve a position on, including the Oneida Business  
48 Committee.  
49 (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.  
50 (i) “Nation” means the Oneida Nation.  
51 (j) “Official” means any person who is elected to serve a position for the Nation, including,  
52 but not limited to, a position on a board, committee, commission, or office of the Nation,  
53 including the Oneida Business Committee.  
54 (k) “Restitution” means compensation to an individual or entity for an injury, damage or  
55 loss.  
56 (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving  
57 on boards, committees and commissions of the Nation to offset the expenses of being a  
58 member on the board, committee or commission.  
59 (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid  
60 because there is clear and convincing evidence.  
61 (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the  
62 judicial system that was established by Oneida General Tribal Council resolution GTC-01-  
63 07-13-B, and then later authorized to administer the judicial authorities and responsibilities  
64 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.  
65

#### 66 **120.4. Misconduct**

67 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest  
68 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is  
69 essential to the conduct of government.

70 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which  
71 constitutes misconduct. Misconduct includes:

- 72 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;  
73 (b) a violation of the bylaws, standard operating procedures or other internal operating  
74 documents that govern the entity upon which the official serves;  
75 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a  
76 felony under federal law or Wisconsin law; and  
77 (d) any other activity that is incompatible with the high moral and ethical standards that  
78 are expected of the Nation’s officials.  
79

#### 80 **120.5. Filing of a Complaint**

81 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an  
82 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

83 knowledge or reason to believe that an official has committed misconduct, may file a written  
84 complaint.

85 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,  
86 or was discovered to have occurred, within the previous ninety (90) days.

87 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall  
88 include the following information:

89 (a) The name(s) of the official alleged to have committed the misconduct;

90 (b) The entity or entities upon which the official serves;

91 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;

92 (d) The specific details of the official's misconduct;

93 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated  
94 by the official;

95 (f) Names of any witnesses of the alleged misconduct, or individuals who may have  
96 knowledge pertinent to the alleged misconduct;

97 (g) The contact information for the person filing the complaint, which at minimum shall  
98 include the person's name, address, and telephone number;

99 (h) A notarized sworn statement attesting that the information provided in and with the  
100 complaint is true, accurate, and complete to the best of the complainant's knowledge;

101 (i) Any supporting documentation; and

102 (j) Any other information required by the Nation's Rules of Civil Procedure.

103 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court  
104 pursuant to the Nation's Rules of Civil Procedure.

105 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party  
106 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering  
107 testimony or evidence or complying with directives authorized under this law. Retaliation shall  
108 include any form of adverse or punitive action by, or caused by, any official.

109 (a) If an individual alleges that retaliatory action has been threatened or taken based on the  
110 individual's complaint, or cooperation with directives authorized under this law, the  
111 individual may file a complaint for the retaliatory action in accordance with section 120.5  
112 of this law.

113

## 114 **120.6. Complaint Procedure**

115 120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints  
116 of alleged misconduct of officials.

117 120.6-2. Any official who is the subject of a complaint has the right to be represented by an  
118 attorney or advocate, at his or her own expense, for any actions or proceedings related to the  
119 complaint.

120 120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has  
121 the burden of proving by clear and convincing evidence that the official engaged in misconduct.

122 120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled  
123 in a confidential manner.

124 (a) All hearings and/or proceedings related to a complaint shall be closed to the general  
125 public.

126 (b) All records of hearings and/or proceedings shall not be subject to public review or  
127 inspection. An official's record of conduct shall only be made available for review by the  
128 Trial Court.

129 (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an  
130 official, and any sanctions and/or penalties that are imposed against an official, shall be  
131 public information.

132 120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall  
133 determine if there is enough evidence to substantiate the allegations of misconduct by the official  
134 by clear and convincing evidence.

135 (a) If the Trial Court finds that there is clear and convincing evidence that the official  
136 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or  
137 penalties deemed appropriate in accordance with this law.

138 (b) If the Trial Court does not find that there is clear and convincing evidence to support  
139 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

140 120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both  
141 have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's  
142 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial  
143 Court's decision may only be overturned if the Court of Appeals determines that:

144 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,  
145 or made on unreasonable grounds or without any proper consideration of circumstances;  
146 or

147 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

148 120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the  
149 complaint and the determination of the Trial Court for the official's record of conduct in office.

150

## 151 **120.7. Sanctions and Penalties**

152 120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed  
153 upon the Nation's officials for misconduct in office, in accordance with this law.

154 120.7-2. Sanctions and penalties may include:

155 (a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

156 (1) The Trial Court shall submit written notices to both the official and to the  
157 Business Committee Support Office of the specific date, time and location of the  
158 verbal reprimand. The verbal reprimand shall occur at an Oneida Business  
159 Committee meeting and/or a General Tribal Council meeting.

160 (2) To impose the verbal reprimand, the presiding Oneida Business Committee  
161 Chairperson, or another Oneida Business Committee member if the verbal  
162 reprimand is imposed against the presiding Oneida Business Committee  
163 Chairperson, shall read a statement that identifies:

164 (A) The Trial Court's findings regarding the specific actions or inaction  
165 taken by the official that were found to be misconduct;

166 (B) The reasons why the official's actions or inactions amounted to  
167 misconduct;

168 (C) A statement identifying that the misconduct violates the high standards  
169 of behavior expected of the Nation's officials and is not acceptable; and

170 (D) A direction to the official to refrain from engaging in future misconduct.

171 (b) *Public Apology.* The official may be ordered to make a public apology. The Trial  
172 Court shall submit written notices to both the official and to the Business Committee  
173 Support Office of the specific date, time and location of the public apology. The public  
174 apology shall occur at an Oneida Business Committee meeting and/or a General Tribal  
175 Council meeting. The public apology shall:

- 176 (1) identify the specific misconduct committed by the official;  
177 (2) recognize that the official's actions or inactions were wrong;  
178 (3) identify the effects of the official's misconduct; and  
179 (4) include a clear and unambiguous apology from the official.
- 180 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication  
181 on the Nation's official media outlets, as determined by the Oneida Business Committee.  
182 The Trial Court may publish a written reprimand which includes the information required  
183 for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- 184 (d) *Suspension*. An official may be suspended from performing his or her duties as an  
185 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if  
186 the official serves in a full-time capacity.
- 187 (1) During a suspension, the official shall not:
- 188 (A) attend meetings, trainings or any other event as part of the entity;  
189 (B) attend conferences or other events on behalf of, or as a representative  
190 of, the entity;  
191 (C) vote or participate in any activities of the entity;  
192 (D) perform work on behalf of the entity; or  
193 (E) be eligible for any compensation, including regular pay, stipends, or  
194 mileage reimbursement.
- 195 (2) When an official is suspended, the Trial Court shall submit written notices to  
196 both the official and to the Business Committee Support Office of the specific start  
197 and end date of the suspension.
- 198 (3) If a suspension is imposed on multiple officials of the same entity at one time,  
199 the Trial Court shall impose the suspensions of the officials on a staggered basis to  
200 avoid an interruption of the official business and function of the entity.
- 201 (e) *Restitution*. An official may be ordered to pay restitution, which may include the  
202 repayment of any improperly received benefit, or any other payment which is intended to  
203 make another whole after suffering losses as a result of the official's misconduct.
- 204 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five  
205 hundred dollars (\$2,500).
- 206 (1) Fines shall be paid to the Trial Court.  
207 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld  
208 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial  
209 Court may seek to collect the money owed through the Nation's garnishment and/or  
210 per capita attachment process.  
211 (3) Money received from fines shall be deposited into the General Fund.  
212 (4) Community service may be substituted for part or all of any fine at the minimum  
213 wage rate of the Nation for each hour of community service.
- 214 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service  
215 on an entity not to exceed two (2) meetings.
- 216 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and  
217 complete a training class or program that will assist the official in addressing and  
218 improving his or her behaviors and/or actions.
- 219 (1) The mandated training class or program may address a variety of topics  
220 including, but not limited to, anger management, sexual harassment, or other  
221 sensitivity training.



222 (i) *Removal*. The Trial Court may recommend that the process for removing an elected  
223 official as contained in the Nation's laws and/or policies governing removal be initiated.

224 120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the  
225 appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems  
226 relevant, including but not limited to:

- 227 (a) the seriousness or severity of the misconduct;
- 228 (b) whether the conduct was intentional or not;
- 229 (c) the likelihood of repetition;
- 230 (d) the extent of probable damage to the finances or reputation of the Nation, the  
231 complainant, the entity, or to any other person or organization;
- 232 (e) whether the official or his or her family personally profited, financially or otherwise,  
233 from the prohibited conduct;
- 234 (f) the official's remorse, or
- 235 (g) the official's willingness and ability to take steps to mitigate the harm caused by the  
236 violation, and
- 237 (h) any prior complaints filed, including any previous sanctions and penalties imposed  
238 upon the official while serving on an entity.

239 120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas  
240 compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent  
241 or burdensome sanction and/or penalty.

242 120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt  
243 an official from individual liability for the underlying misconduct, and does not limit any penalties  
244 that may be imposed in accordance with other applicable laws. In addition to any sanctions and  
245 penalties that may be imposed in accordance with this law, officials who commit misconduct in  
246 office may be subject to other consequences; including but not limited to:

- 247 (a) removal in accordance with the Nation's laws and/or policies governing removal;
- 248 (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- 249 (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 250 (d) penalties for specific misconduct as authorized by any other law of the Nation.

251 120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed  
252 against him or her by the Trial Court may be subject to the following:

- 253 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed  
254 in accordance with this Law based on the non-compliance;
- 255 (b) removal in accordance with the Nation's laws and policies governing removal.

## 257 **120.8. Effect of Resignation by an Official**

258 120.8-1. The resignation of an official after a complaint has been filed against the official shall  
259 not affect the status of the hearing and determination by the Trial Court.

260 120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion  
261 of the Trial Court.

## 263 **120.9. Record of Conduct in Office**

264 120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for  
265 each official.

266 120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- 267 (a) a copy of each complaint filed against the official;
- 268 (b) recording and/or transcript from any hearings and/or proceedings;

269 (c) the outcome of the complaint, and  
270 (d) any sanctions or penalties imposed upon an official.  
271 120.9-3. The record of conduct in office for each official shall be maintained for a period of no  
272 less than seven (7) years.

273  
274 *End.*

275  
276 \_\_\_\_\_  
277 Adopted – GTC-\_\_-\_\_-\_\_-\_\_

## Title 1. Government and Finances - Chapter 120

### ~~SANCTIONS AND PENALTIES~~

#### Kalihwahníla·tú· Okhale? Atatlihwá?thlewáhtu Kayanlása

*Giving strength to the issues and Forgiving oneself for the issue at hand* Laws

### SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~ 120.1. Purpose and Policy

120.2. Adoption, Amendment, Repeal

120.3. Definitions

120.4. Misconduct

120.5. Filing of a Complaint

120.6. Complaint Procedure

120.7. Sanctions and Penalties

120.8. Effect of Resignation by an Official

120.9. Record of Conduct in Office

~~120.5. Filing of a Complaint~~

~~120.6. Complaint Alleged Against an Appointed Official~~

~~120.7. Complaint Alleged Against an Elected Official~~

~~120.8. Sanctions and Penalties~~

~~120.9. Effect of Resignation by an Official~~

~~120.10. Record of Conduct in Office~~

1

#### 2 **120.1. Purpose and Policy**

3 120.1-1. *Purpose*. The purpose of this law is to establish a consistent set of sanctions and penalties  
4 that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office  
5 for the purpose of providing an opportunity for the official to take corrective action to address the  
6 misconduct and promote accountability and improved performance of the official.

7 (a) This law applies to members of the Oneida Business Committee.

8 (b) This law does not apply to judges of the Oneida Nation Judiciary.

9 (c) This law does not apply to members of corporate entities of the Nation.

10 120.1-2. *Policy*. It is the policy of the Nation to ensure that elected ~~and appointed~~ officials who  
11 commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure  
12 that there is a fair process in place that enables officials to fairly respond to allegations of  
13 misconduct.

14 120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and  
15 uphold the Nation's core values of The Good Mind as expressed by Onlayote'a'ka, which includes:

16 (a) Kahletsyalása. The heart felt encouragement of the best in each of us.

17 (b) Kanolukhwása. Compassion, caring, identity, and joy of being.

18 (c) Ka?nikuhli·yó. The openness of the good spirit and mind.

19 (d) Ka?tshatstása. The strength of belief and vision as a People.

20 (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.

21 (f) Twahwahtsílawayá. All of us are family.

22 (g) Yukwatsístayá. Our fire, our spirit within each one of us.

23

#### 24 **120.2. Adoption, Amendment, Repeal**

25 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-\_\_-\_\_-\_\_-\_\_.

26 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the  
27 procedures set out in the Legislative Procedures Act.

28 120.2-3. Should a provision of this law or the application thereof to any person or circumstances  
29 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
30 to have legal force without the invalid portions.

31 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
32 the provisions of this law shall control.

33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

34

### 35 **120.3. Definitions**

36 120.3-1. This section shall govern the definitions of words and phrases used within this law. All  
37 words not defined herein shall be used in their ordinary and everyday sense.

38 ~~(a) “Affirmative defense” means a fact or set of facts other than those alleged by the~~  
39 ~~complainant which, if proven by the official, defeats or mitigates the consequences of the~~  
40 ~~official’s otherwise unlawful conduct.~~

41 ~~(b) “Answer” means a formal written statement addressing the dispute on the merits~~  
42 ~~and presents any defenses and counterclaims.~~

43 ~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative  
44 support for the Oneida Business Committee and various other governmental operations.

45 ~~(d)~~b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding  
46 holidays recognized by the Nation.

47 ~~(e)~~c) “Clear and convincing evidence” means that it is substantially more likely than not  
48 that the facts presented are true.

49 ~~(f)~~d) “Complainant” means an individual who has made a complaint.

50 ~~(g)~~e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 ~~(h)~~f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 ~~(i)~~g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or  
53 other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on,  
54 including the Oneida Business Committee.

55 ~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be~~  
56 ~~supported by a good faith argument. Most often frivolous complaints are intended to~~  
57 ~~merely harass, delay, or embarrass the opposition.~~

58 ~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 ~~(l)~~i) “Nation” means the Oneida Nation.

60 ~~(m)~~j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the  
61 Nation, including, but not limited to, a position on a board, committee, commission, or  
62 office of the Nation, including the Oneida Business Committee.

63 ~~(n)~~k) “Restitution” means compensation to an individual or entity for an injury, damage or  
64 loss.

65 ~~(o)~~l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving  
66 on boards, committees and commissions of the Nation to offset the expenses of being a  
67 member on the board, committee or commission.

68 ~~(p)~~m) “Substantiate” means to find that the complaint or allegation in the complaint is valid  
69 because there is clear and convincing evidence.

70 ~~(q)~~n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the  
71 judicial system that was established by Oneida General Tribal Council resolution GTC-01-  
72 07-13-B, and then later authorized to administer the judicial authorities and responsibilities  
73 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

74

#### 75 **120.4. Misconduct**

76 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest  
77 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is  
78 essential to the conduct of government.

79 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which  
80 constitutes misconduct. Misconduct includes:

- 81 (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- 82 (b) a violation of the bylaws, standard operating procedures or other internal operating  
83 documents that govern the entity upon which the official serves;
- 84 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a  
85 felony under federal law or Wisconsin law; and
- 86 (d) any other activity that is incompatible with the high moral and ethical standards that  
87 are expected of the Nation's officials.

#### 88 89 **120.5. Filing of a Complaint**

90 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an  
91 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has  
92 knowledge or reason to believe that an official has committed misconduct, may file a written  
93 complaint.

94 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,  
95 or was discovered to have occurred, within the previous ninety (90) days.

96 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall  
97 include the following information:

- 98 (a) The name(s) of the official alleged to have committed the misconduct;
- 99 (b) The entity or entities upon which the official serves;
- 100 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- 101 (d) The specific details of the official's misconduct;
- 102 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated  
103 by the official;
- 104 (f) Names of any witnesses of the alleged misconduct, or individuals who may have  
105 knowledge pertinent to the alleged misconduct;
- 106 (g) The contact information for the person filing the complaint, which at minimum shall  
107 include the person's name, address, and telephone number;
- 108 (h) A notarized sworn statement attesting that the information provided in and with the  
109 complaint is true, accurate, and complete to the best of the complainant's knowledge;
- 110 (i) Any supporting documentation; and
- 111 (j) Any other information required by the Nation's Rules of Civil Procedure ~~if the~~  
112 complaint is alleging misconduct of an elected official.

113 120.5-4. *Where to File.*

114 ~~(a) Appointed Official.~~ Complaints against an ~~appointed official shall be filed with the~~  
115 ~~Business Committee Support Office.~~

116 ~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation's Trial  
117 Court pursuant to the Nation's Rules of Civil Procedure.

118 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party  
119 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering  
120 testimony or evidence or complying with directives authorized under this law. Retaliation shall  
121 include any form of adverse or punitive action by, or caused by, any official.

(a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

## **120.5-6. Complaint Procedure**

120.6-1. Jurisdiction of the Trial Court. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

120.6-2. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

120.5-76-3. Burden of Proof. In a civil action against an official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.

120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.

(a) All hearings and/or proceedings related to a complaint shall be closed to the general public.

(b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review ~~to the Oneida Business Committee and~~ by the Trial Court.

(c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

## **120.6-Complaints Alleged Against an Appointed Official**

~~5. Determination~~ ~~120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee.~~

~~120.6-2. Receipt of Complaint. Upon receiving a complaint, the Business Committee Support Office shall:~~

~~(a) immediately forward copies of the complaint, including any supporting documentation, to:~~

~~(1) all members of the Oneida Business Committee for review; and~~

~~(2) the individual who is the subject of the complaint.~~

~~(b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.~~

~~120.6-3. Mediation. The complainant or the official who is the subject of the complaint shall have up to five (5) business days after the initial receipt of the complaint to contact the Business Committee Support Office and request mediation.~~

~~(a) If both the complainant and the official who is the subject of the complaint agree to mediation, then the Business Committee Support Office shall schedule a mediation between the parties. The intent of this mediation meeting is to resolve the complaint prior to commencing an initial review.~~

~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate the mediation meeting. Every mediator shall have at least twenty five (25) hours of mediation training or at least three (3) years of experience in dispute resolution.~~

~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be informed of the resolution before the initial review and the complaint shall be formally dismissed during the initial review.~~

~~(e) If the matter is not resolved through mediation, the initial review shall occur as prescribed by this law.~~

~~120.6 4. Answer to the Complaint. The individual who is the subject of the complaint shall have ten (10) business days after receiving his or her copy of the complaint, to submit to the Business Committee Support Office a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.~~

~~(a) The Business Committee Support Office shall immediately forward the answer and any supporting documentation to all members of the Oneida Business Committee upon receipt from the individual who is the subject of the complaint.~~

~~120.6 5. Conflict of Interest. An Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee, shall immediately recuse himself or herself and shall not participate in any portion of the complaint process.~~

~~(a) Failure of an Oneida Business Committee member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties.~~

~~120.6 6. Initial Review. The Oneida Business Committee shall perform an initial review of an allegation of misconduct on the part of an official. The purpose of the initial review shall be to determine whether the allegation made within the complaint has merit.~~

~~(a) During the initial review the Oneida Business Committee shall review the complaint and the written answer; as well as any supporting documentation.~~

~~(b) In order to determine if a complaint has merit, the Oneida Business Committee will discuss if whether assuming the facts alleged are true, said facts would support a determination of misconduct.~~

~~(c) The Oneida Business Committee shall determine, by majority vote, whether the complaint has merit.~~

~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee shall schedule an investigatory hearing to consider the specific allegations identified in the complaint.~~

~~(A) The investigatory hearing shall occur within thirty (30) business days after the initial review has concluded and shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee.~~

~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee shall dismiss the complaint. The Oneida Business Committee shall send notice that the complaint was dismissed to the complainant and the official who is the subject of the complaint within five (5) business days.~~

~~(A) If the Oneida Business Committee dismisses the complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, the complainant may be subject to:~~

~~(i) a fine not to exceed five hundred dollars (\$500);~~



214 ~~(ii) prohibition from filing another complaint for a period of time~~  
 215 ~~not to exceed one (1) year; and/or~~

216 ~~(iii) a civil suit in the Nation's Trial Court brought by the official~~  
 217 ~~accused by the frivolous, false or malicious allegation.~~

218 ~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall~~  
 219 ~~provide the complainant, the official who is the subject of the complaint, and any other individual~~  
 220 ~~compelled to attend the hearing with written notice of the date and the time of the investigatory~~  
 221 ~~hearing at least ten (10) business days before the investigatory hearing.~~

222 ~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida~~  
 223 ~~Business Committee to determine if there is enough evidence to substantiate the allegations of~~  
 224 ~~misconduct by clear and convincing evidence.~~

225 ~~(a) When conducting an investigatory hearing, the Oneida Business Committee shall have~~  
 226 ~~the broadest grant of authority to compel any person or organization within the Nation to:~~

227 ~~(1) appear at the hearing to provide testimony under oath and/or information~~  
 228 ~~relevant to the allegations against the official; and/or~~

229 ~~(2) produce physical evidence that is relevant to the allegations.~~

230 ~~(b) The Oneida Business Committee shall provide an opportunity for the official who is~~  
 231 ~~the subject of the complaint to answer all allegations and to provide witness testimony,~~  
 232 ~~documents, and other evidence on his or her own behalf.~~

233 ~~(c) The Oneida Business Committee shall also provide the complainant the opportunity to~~  
 234 ~~answer questions, provide witness testimony or additional information, and/or to otherwise~~  
 235 ~~speak on his or her own behalf.~~

236 ~~(d) The hearing shall be informal and conducted as the interests of justice so require, and~~  
 237 ~~shall be recorded by the Business Committee Support Office.~~

238 ~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory~~  
 239 ~~hearing, the Oneida Business Committee shall excuse everyone from executive session for the~~  
 240 ~~deliberation of the Oneida Business Committee. Prior to making a final determination as to~~  
 241 ~~whether to substantiate the complaint, the Oneida Business Committee shall:~~

242 ~~(a) consider all evidence and information provided, and shall have a full and complete~~  
 243 ~~discussion of all aspects of the complaint and answer; and~~

244 ~~(b) have a full and complete discussion of all potential sanctions and penalties that may be~~  
 245 ~~imposed, if appropriate.~~

246 ~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has~~  
 247 ~~concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee~~  
 248 ~~shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,~~  
 249 ~~declare whether the Oneida Business Committee has determined there is enough evidence to~~  
 250 ~~substantiate the allegations of misconduct by clear and convincing evidence.~~

251 ~~(a) If the Oneida Business Committee finds that there is clear and convincing evidence that~~  
 252 ~~the official engaged in misconduct, the Oneida Business Committee shall, by majority vote,~~  
 253 ~~determine and impose appropriate sanctions and/or penalties.~~

254 ~~(b) If the Oneida Business Committee does not find that there is clear and convincing~~  
 255 ~~evidence to support the allegations that the official engaged in misconduct, the complaint~~  
 256 ~~shall be dismissed.~~

257 ~~(c) Within ten (10) business days after the investigatory hearing, the Oneida Business~~  
 258 ~~Committee shall issue a written decision and provide copies of the decision to:~~

259 ~~(1) the complainant,~~

260 ~~(2) the official who is the subject of the complaint, and~~

~~(3) the Business Committee Support Office, for recordkeeping.~~

~~120.6-11. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

### **120.7. Complaints Alleged Against an Elected Official**

~~120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure.~~

~~120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.~~

~~120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.~~

~~(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.~~

~~(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.~~

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

~~120.6-7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.~~

### **120.8-7. Sanctions and Penalties**

~~120.8-7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.~~

~~120.8-7-2. Sanctions and penalties may include:~~

~~(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.~~

~~(1) The Oneida Business Committee or Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.~~

306 (2) To impose the verbal reprimand, the presiding Oneida Business Committee  
 307 Chairperson, or another Oneida Business Committee member if the verbal  
 308 reprimand is imposed against the presiding Oneida Business Committee  
 309 Chairperson, shall read a statement that identifies:

310 (A) ~~The Oneida Business Committee or~~ Trial Court's findings regarding the  
 311 specific actions or inaction taken by the official that were found to be  
 312 misconduct;

313 (B) The reasons why the official's actions or inactions amounted to  
 314 misconduct;

315 (C) A statement identifying that the misconduct violates the high standards  
 316 of behavior expected of the Nation's officials and is not acceptable; and

317 (D) A direction to the official to refrain from engaging in future misconduct.

318 (b) *Public Apology.* The official may be ordered to make a public apology. ~~The Oneida~~  
 319 ~~Business Committee or~~ The Trial Court shall submit written notices to both the official and  
 320 to the Business Committee Support Office of the specific date, time and location of the  
 321 public apology. The public apology shall occur at an Oneida Business Committee meeting  
 322 and/or a General Tribal Council meeting. The public apology shall:

323 (1) identify the specific misconduct committed by the official;

324 (2) recognize that the official's actions or inactions were wrong;

325 (3) identify the effects of the official's misconduct; and

326 (4) include a clear and unambiguous apology from the official.

327 (c) *Written Reprimand.* A written reprimand may be imposed on the official by publication  
 328 on the Nation's official media outlets, as determined by the Oneida Business Committee.  
 329 ~~The Oneida Business Committee or the~~ The Trial Court may publish a written reprimand  
 330 which includes the information required for the verbal reprimand as stated in section  
 331 120.87-2(a)(2)(A)-(D).

332 (d) *Suspension.* An official may be suspended from performing his or her duties as an  
 333 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if  
 334 the official serves in a full-time capacity.

335 (1) During a suspension, the official shall not:

336 (A) attend meetings, trainings or any other event as part of the entity;

337 (B) attend conferences or other events on behalf of, or as a representative  
 338 of, the entity;

339 (C) vote or participate in any activities of the entity;

340 (D) perform work on behalf of the entity; or

341 (E) be eligible for any compensation, including regular pay, stipends, or  
 342 mileage reimbursement.

343 (2) When an official is suspended, the ~~Oneida Business Committee or~~ Trial Court  
 344 shall submit written notices to both the official and to the Business Committee  
 345 Support Office of the specific start and end date of the suspension.

346 (3) If a suspension is imposed on multiple officials of the same entity at one time,  
 347 the ~~Oneida Business Committee or the~~ Trial Court shall impose the suspensions of  
 348 the officials on a staggered basis to avoid an interruption of the official business  
 349 and function of the entity.

350 (e) *Restitution.* An official may be ordered to pay restitution, which may include the  
 351 repayment of any improperly received benefit, or any other payment which is intended to  
 352 make another whole after suffering losses as a result of the official's misconduct.

353 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five  
354 hundred dollars (\$2,500).

355 (1) Fines shall be paid to the Trial Court.

356 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld  
357 on final appeal, whichever is later. ~~Cash shall not be accepted for payment of fines.~~  
358 If the fine is not paid by this deadline, the Trial Court may seek to collect the money  
359 owed through the Nation's garnishment and/or per capita attachment process.

360 (3) Money received from fines shall be deposited into the General Fund.

361 (4) Community service may be substituted for part or all of any fine at the minimum  
362 wage rate of the Nation for each hour of community service.

363 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service  
364 on an entity not to exceed two (2) meetings.

365 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and  
366 complete a training class or program that will assist the official in addressing and  
367 improving his or her behaviors and/or actions.

368 (1) The mandated training class or program may address a variety of topics  
369 including, but not limited to, anger management, sexual harassment, or other  
370 sensitivity training.

371 ~~(i) *Termination of Appointment*. An appointed official may have his or her appointment  
372 terminated by the Oneida Business Committee in accordance with the Nation's laws and/or  
373 policies governing boards, committees, and commissions.~~

374 ~~(i)~~ (i) *Removal*. The Trial Court may recommend that the process for removing an elected  
375 official as contained in the Nation's laws and/or policies governing removal be initiated.

376 120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining  
377 the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court  
378 may consider all factors it deems relevant, including but not limited to:

379 (a) the seriousness or severity of the misconduct;

380 (b) whether the conduct was intentional or not;

381 (c) the likelihood of repetition;

382 (d) the extent of probable damage to the finances or reputation of the Nation, the  
383 complainant, the entity, or to any other person or organization;

384 (e) whether the official or his or her family personally profited, financially or otherwise,  
385 from the prohibited conduct;

386 (f) the official's remorse, or

387 (g) the official's willingness and ability to take steps to mitigate the harm caused by the  
388 violation, and

389 (h) any prior complaints filed, including any previous sanctions and penalties imposed  
390 upon the official while serving on an entity.

391 120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or  
392 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall  
393 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

394 120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not  
395 exempt an official from individual liability for the underlying misconduct, and does not limit any  
396 penalties that may be imposed in accordance with other applicable laws. In addition to any  
397 sanctions and penalties that may be imposed in accordance with this law, officials who commit  
398 misconduct in office may be subject to other consequences; including but not limited to:

399 (a) removal in accordance with the Nation's laws and/or policies governing removal, ~~if an~~  
400 ~~elected official;~~

401 (b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~

402 ~~(c)~~ criminal prosecution, for misconduct that also violates applicable criminal law;

403 ~~(d)~~ civil liability, in accordance with the applicable law of any jurisdiction; and/or

404 ~~(e)~~ penalties for specific misconduct as authorized by any other law of the Nation.

405 120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed  
406 against him or her by ~~either the Oneida Business Committee or~~ the Trial Court may be subject to  
407 the following:

408 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed  
409 in accordance with this Law based on the non-compliance;

410 ~~(b) termination of appointment by the Oneida Business Committee in accordance with the~~  
411 ~~Nation's laws and policies governing boards, committees, and commissions, if the official~~  
412 ~~was appointed to his or her position; and/or~~

413 ~~(c)~~ removal in accordance with the Nation's laws and policies governing removal, ~~if the~~  
414 ~~official was elected to his or her position.~~

#### 415 **120.98. Effect of Resignation by an Official**

416 120.98-1. The resignation of an official after a complaint has been filed against the official shall  
417 not affect the status of the hearing and determination by ~~either the Oneida Business Committee~~  
418 ~~or~~ the Trial Court.

419 120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion  
420 of the ~~Oneida Business Committee or~~ Trial Court.

#### 421 **120.10.9. Record of Conduct in Office**

422 120.10.9-1. The Business Committee Support Office shall maintain a record of conduct in office  
423 for each official.

424 120.10.9-2. The record of conduct in office maintained for each official shall include, at a  
425 minimum:

426 (a) a copy of each complaint filed against the official;

427 (b) recording and/or transcript from any hearings and/or proceedings;

428 (c) the outcome of the complaint, and

429 (d) any sanctions or penalties imposed upon an official.

430 120.10.9-3. The record of conduct in office for each official shall be maintained for a period of no  
431 less than seven (7) years.

432 *End.*

433  
434  
435  
436  
437 Adopted – GTC-\_\_-\_\_-\_\_-\_\_  
438

# December 2019

December 2019

Su	Mo	Tu	We	Th	Fr	Sa
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January 2020

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 1	2	3	4 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	5	6	7
8	9	10	11	12 2:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	13	14
15	16	17	18	19 12:15pm PUBLIC MEETING: Indian Preference in Contracting Law Amendments (BC_Conf_Room)	20	21
22	23	24	25	26	27	28
29	30	31	Jan 1, 20	2	3	4



# January 2020

January 2020

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February 2020

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 29	30	31	Jan 1, 20 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) - LOC	2	3	4
5	6	7	8	9 1:30pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	10	11
12	13	14	15	16	17	18
19	20	21	22	23 9:00am FW: LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	24	25
26	27	28	29	30 9:00am FW: LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	31	Feb 1