



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
January 15, 2020  
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**  
December 18, 2019 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  1. Citations Law (pg. 3)
  2. Children's Burial Fund Policy Amendments (pg. )
  3. Oneida Food Service Code Amendments (pg. )
  4. Sanctions and Penalties Law \*HANDOUT (pg. )
- IV. New Submissions**
  1. Real Property Law Emergency Amendments (pg. )
  2. Southeastern Oneida Tribal Services Advisory Board Amendments (pg. )
  3. Tobacco Law Emergency Amendments (pg. )
- V. Additions**
- VI. Administrative Updates**
  1. E-Poll Results: Vehicle Driver Certification and Fleet Management Amendments (pg. )
- VII. Executive Session**
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
December 18, 2019  
9:00 a.m.

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

**Others Present:** Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Kristen Hooker, Jennifer Falck, Rae Skenandore, Jameson Wilson, Lee Cornelius

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

David P. Jordan called the December 18, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Ernest Stevens III. Motion carried unanimously.

**II. Minutes to be Approved**

Motion by Kirby Metoxen to approve the December 04, 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 (:45-9:11)**

Motion by Jennifer Webster to approve the adoption packet for the Child Support law amendments with correction to page 9 and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Citations Law (9:12-12:30)**

Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**3. Vehicle Driver Certification & Fleet Management Amendments (12:33-18:57)**

Motion by Kirby Metoxen to approve the public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 16, 2020; seconded by Ernest Stevens III. Motion carried unanimously

**4. Children's Burial Fund (18:58-23:02)**

Motion by Jennifer Webster to accept the draft of the Children's Burial Fund amendments and direct that a legislative analysis be completed and brought back to the January 15, 2020, Legislative Operating Committee meeting; seconded by Kirby



Metoxen. Motion carried unanimously.

**5. Oneida Food Service Code Amendments (23:03-52:40)**

Motion by Kirby Metoxen to approve the draft amendments to the Oneida Food Service Code and the legislative analysis and defer to a work meeting; seconded by Ernest Stevens III. Motion carried unanimously.

**IV. New Submissions**

**V. Additions**

**VI. Administrative Items**

**1. E-poll Results: Sanctions and Penalties Law – Rescission of the December 4, 2019, LOC Action (52:41-55:03)**

Motion by Jennifer Webster to enter into the record the December 4, 2019, E-poll results for the Sanctions and Penalties law – rescission of the December 4, 2019, LOC action; seconded by Kirby Metoxen. Motion carried unanimously.

**2. E-poll Results: Sanctions and Penalties Law – Approval of the Public Meeting (55:06-58:45)**

Motion by Ernest Stevens III to enter into the record the December 10, 2019, E-poll results for the Sanctions and Penalties law – approval of a public meeting; seconded by Jennifer Webster. Motion carried unanimously.

**VII. Executive Session**

**VIII. Adjourn**

Motion by Kirby Metoxen to adjourn the December 18, 2019, Legislative Operating Committee meeting at 9:59 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee  
January 15, 2020

## Citations Law

<b>Submission Date:</b> 5/15/19	<b>Public Meeting:</b> 11/22/19
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a

**Summary:** *This item came to the LOC as a result of the development of the amendments to the Domestic Animals law. The development of a Citations law will ensure that the Nation provides a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.*

**5/15/19 LOC:** Motion by Jennifer Webster to add the Citations Law to the active files list with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Abstained by Ernest Stevens III and Daniel Guzman King. Motion carried.

**5/21/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Eric Boulanger, Chad Wilson, Kelly McAndrews, Wes Martin, Tsyoslake House. The purpose of this work meeting was to review and discuss the initial draft of the Citations law with the departments and entities that are currently involved in the handling of citations. The Oneida Law Office, Legal Resource Center, and Oneida Police Department provided suggestions and recommendations to the LRO staff. LRO will update the draft.

**5/23/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to discuss and plan for how the LOC will collaborate with the Judiciary on the development of this Law.

**6/13/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Laura Laitinen-Warren. The purpose of this work meeting was to review the draft of the Law, and for the LOC to provide input. The LOC provided the LRO with revisions to be made to the law, and areas that should be researched. LOC also determined that the law should not move forward until the Judiciary has been consulted.

**8/6/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Eric Boulanger, Lisa Skenandore, Patricia Degrand, Kristina Denny, Kelly McAndrews. The purpose of this work meeting was to review the proposed draft of the Law to ensure that the processes and timelines included are realistic and can be implemented successfully.

**8/29/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the proposed revisions to the draft of the Citations law based on the comments collected from the Oneida Police Department, Oneida Law Office, and Judiciary.



**10/2/19 LOC:** Motion by Daniel Guzman King to accept the draft Citations law and Legislative Analysis and defer to a work meeting for further consideration; seconded by Kirby Metoxen. Motion carried unanimously.

**10/2/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to review the legislative analysis and make decisions regarding the policy considerations contained in the law.

**10/16/19 LOC:** Motion by Jennifer Webster approve the public meeting packet, with the updated draft and analysis, and forward the Citation Law to a public meeting to be held on November 22, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

**11/22/19:** *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Mollie Passon. There were no oral comments made during this public meeting.

**12/3/19:** *Public Comment Period Closed.* There was one (1) submission of written comments received during the public comment period.

**12/18/19 LOC:** Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**12/18/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received. LRO will update the draft based on the LOC's considerations.

#### **Next Steps:**

- Accept the updated public comment review memorandum, draft, and legislative analysis.
- Approve the Citations law fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by January 29, 2020.



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54115-0365  
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TO: Legislative Operating Committee (LOC)  
 FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney **CNS**  
 DATE: January 15, 2020  
 RE: Citations Law: Public Meeting Comment Review

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On November 22, 2019, a public meeting was held regarding the proposed Citations law (“the Law”). The public comment period was then held open until December 3, 2019. On December 18, 2019, the Legislative Operating Committee reviewed and considered all public comments that were received.

This memorandum is submitted as the Legislative Operating Committee’s review and consideration of the written comments received within the public comment period.

#### Comment 1 – Service of Citation:

##### **807.4. Commencement of a Citation Action**

**807.4-2. Authority to Issue.** An officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation.

**Jeff Mears (written):** Service of Citation – For laws like the Oneida Tribal Environmental Response law and Food Service Code, the defendant may be a company, business, or Oneida division or department. Will the service of a citation of a person be required? For such laws, it is important that citations are not attached to specific individuals, but rather the business entity, as citations may be based on the violation history of the business.

##### **Response**

The commenter questions whether under the proposed Law citations can only be issued to a person, because under some laws of the Nation it may be necessary to issue a citation to a business or department of the Nation.

The Law provides that an officer may issue a citation to any *person* he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation. [8 O.C. 807.4-2]. Although each law of the Nation that provides specific citation authority may include more specific information on who may be issued a citation, this Law does not currently provide clarification on if only a person may be issued a citation, or if a business entity can also be issued a citation.

The Legislative Operating Committee should consider adding clarification to the Law on who may be issued a citation. It is recommended that the Legislative Operating Committee make the following revision to the Law to expand what the term “person” means:



### 807.3. Definitions

807.3-1. 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.

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

### *LOC Consideration*

The Legislative Operating Committee decided that the following revision should be made to the Law:

#### **807.3. Definitions**

807.3-1. 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.

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

The Legislative Operating Committee made this decision after a discussion on the various situations that may arise in which an individual, a business, or even in some cases, both an individual and a business may be cited for violations of a law. In an effort to provide the most flexibility in the interpretation and implementation of the Citations law, the Legislative Operating Committee decided to add in the clarification that a person under the Citations law includes not only individual people but also a business or other legal entity.

### **Comment 2 – Qualifications of an Authorized Attorney:**

#### **807.3. Definitions**

**807.3-1. 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) "Authorized attorney" means an attorney of the Nation who represents the department or entity of the officer who issued the citation.**

#### **807.5. Stipulations**

**807.5-1. Authority for Stipulations and Case Settlement. An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.**

**(a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).**

**807.5-2. Form of Stipulation. Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:**

- (a) A summary of the citation violation information included on the citation;**
- (b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;**
- (c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court;**

and

(d) A statement that all parties signed the agreement free of duress and coercion.

**807.5-3. Submission of the Stipulation to the Court.** If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

(a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.

(b) If the Court does not enter an order approving the stipulation as written or requests clarification, the Court shall schedule the matter for a hearing. The Court shall provide the authorized attorney and defendant notice of the hearing date and written explanation as to why the Court did not approve the stipulation of the parties.

**807.5-4.** If the authorized attorney and defendant do not reach an agreement as to a stipulation, then the parties shall proceed with the citation hearing process.

**807.5-5.** Compliance with a stipulation shall be monitored by the authorized attorney. The authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a motion for contempt if the defendant is non-compliant with the terms of the stipulation.

**Jeff Mears (written):** Stipulations – The only qualification is “authorized attorney of the Nation.” In other jurisdictions this is either a position elected or hired based on qualifications. This law establishes authority but does not establish competencies. Oneida has built an organization to best serve Oneida people with agency expertise and judiciary expertise, yet much of the decision-making power will rest with an “authorized attorney of the Nation.” With the diverse affected entities and related legislation listed, how will the authorized attorney interact with the organization to consider things like trapping, hazardous discharges, food safety, and dangerous animals, during the process?

### *Response*

The commenter states that the Law lacks competencies and qualifications for the authorized attorney position, and then expresses concern that “much of the decision-making power will rest with the ‘authorized attorney’ of the Nation.”

The Law defines an authorized attorney as an attorney of the Nation who represents the department or entity of the officer who issued the citation. [8 O.C. 807.3-1(a)]. The Law does not provide qualifications for authorized attorneys of the Nation because the purpose of this Law is to provide a consistent process for handling citations of the Nation, not set employment standards for the individuals employed by the Nation as attorneys.

Qualifications for attorneys hired by the Nation are set through specific job descriptions. Attorneys of the Nation must have obtained a Juris Doctorate degree from an accredited law school and be licensed to practice law in the State of Wisconsin. Attorneys of the Nation must also meet other qualifications such as minimum number of years of experience, or knowledge and experience regarding specific subject matters. Attorneys are then assigned to specific departments and/or areas of the Nation and are expected to diligently represent the interests of their areas and learn the various laws, policies, and/or rules governing those areas.



It is inaccurate to say that much of the decision-making power will rest with the authorized attorney of the Nation. Although the Law does delegate authority to the authorized attorney to seek the settlement of a citation, that authority is not unilateral. [8 O.C. 807.5-1]. The stipulation must be agreed to by the defendant and contain:

- A summary of the citation violation information included on the citation;
  - The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;
  - A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and
  - A statement that all parties signed the agreement free of duress and coercion.
- [8 O.C. 807.5-2(a)-(d)].

If the authorized attorney and defendant reach an agreement through the stipulation, then the stipulation is submitted to the Court for the Court's approval. [8 O.C. 807.5-3]. The Court has the authority to approve or deny a stipulation. If the Court approves the stipulation as written, then an order is entered and a copy of the order is provided to the authorized attorney and defendant. [8 O.C. 807.5-3(a)]. If the Court does not approve the stipulation, or requests clarification on the stipulation, then the Court shall not enter an order, and will instead schedule the matter for a hearing. [8 O.C. 807.5-3(b)].

Therefore, based on the fact that the authorized attorneys do in fact have to meet basic qualifications, and are not unilaterally given all decision power in regard to stipulations, there is no recommended revision based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined no revision to the Law is needed based on this comment.

The Legislative Operating Committee made this decision based on the fact that authorized attorneys of the Nation do in fact have to meet qualifications and competencies. The Legislative Operating Committee also based this decision off of the fact that the stipulation process contained in the Citations law does not unilaterally give all decision making power to the authorized attorney, and instead requires all stipulations – which have to be agreed upon by the authorized attorney and defendant – to be approved by the Court.

### **Comment 3 – Standards for the Burden of Proof:**

#### **807.6. Hearing Procedure**

**807.6-2. Citation Hearing.** For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

- (a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

**Jeff Mears (written):** Citation Hearing Burden of Proof – We will need training for evidence “clear and convincing” and “preponderance of the evidence.”

### ***Response***

The commenter provides that training on the various standards of evidence will be needed by the departments.

The burden of proof at a citation hearing is “clear and convincing evidence.” [8 O.C. 807.6-2(a)]. This means that there must be evidence which shows that the alleged violation is highly probable or probably certain to have occurred.

The Oneida Judiciary Rules of Civil Procedure allows for a law of the Nation to specify the burden of proof to be used by the Court for deciding matters related to that law. [8 O.C. 803.4-8]. If no burden of proof is specified, then the “preponderance of the evidence” burden is used. The preponderance of the evidence burden is the most commonly used and also is the lowest standard of proof for civil actions. It means that there is evidence that shows that the alleged violation more likely than not occurred, or that there is sufficient evidence that there is a greater than fifty percent (50%) chance that the claim is true.

The Legislative Operating Committee made the decision to include the higher burden of proof of clear and convincing evidence in the Law. This was an effort to ensure that members of the community are not unduly penalized, and only penalized when the Nation and its agencies (represented by its authorized attorney) can meet this higher burden of proof.

It is not necessarily the departments of the officers of the Nation themselves that have to be well versed in the various burdens of proof, as it will be the responsibility of the authorized attorney to meet the clear and convincing evidence standard during the citation hearing. An officer of the Nation only needs to have reasonable grounds to believe that a person has committed a violation of a law of the Nation that expressly permits the issuance of a citation in order to issue a citation to a person. [8 O.C. 803.4-2].

There is no recommended revision to the Law based on this comment. If a department of a Nation who is authorized by a law of the Nation to issue a citation for a violation of said law needs further clarification on the burden of proof to be met by the authorized attorney during a citation hearing, then it is recommended that the department reach out to their authorized attorney for further clarification and/or training on the matter.

### ***LOC Consideration***

The Legislative Operating Committee determined no revision to the Law was needed based on this comment.



The Legislative Operating Committee agreed that if any department has any questions on a burden of proof or the Law in general, then the department should reach out to their authorized attorney for further clarification on the matter.

#### **Comment 4 – Timing and Transparency:**

**Jeff Mears (written):** Timing and Transparency – The Oneida Citations law affects numerous Oneida entities, like Conservation wardens and related legislation like the Hunting, Fishing, and Trapping Law. The public comment period from the public hearing of November 22, 2019 to the close on December 3, 2019 includes the two-day Thanksgiving holiday and the nine-day Wisconsin gun deer season. This is literally the worst 10-day period of the year to solicit input from Oneida Conservation wardens or Oneida deer hunters.

#### **Response**

The commenter expresses dissatisfaction with when the public meeting and public comment period was held for the Law.

Public meetings for proposed legislation are governed by the Legislative Procedures Act (LPA). The LPA provides a process for the adoption of laws of the Nation that takes into account comments from members of the Nation and agencies of the Nation. [1 O.C. 109.1-1, 109.1-2]. The LPA requires that a public meeting be held for every piece of legislation to solicit oral comments, and that the public meeting is followed by a public comment period, where written comments can be submitted, that remains open for no less than five (5) business days after the public meeting is held. [1 O.C. 109.8-1].

The LPA provides specific requirements for how the community and agencies of the Nation are notified of the public meeting and public comment period. A notice for the public meeting is required to be developed and contain the name, address, phone number, and other appropriate information to submit comments on the legislation, as well as the date, time, and place of the public meeting and the time period in which comments must be received. [1 O.C. 109.8-2]. At least ten (10) days before a public meeting is held, the public meeting notice must be published in the Kalihwisaks, and the public meeting notice, legislation, legislative analysis, and fiscal impact statement if available, are required to be made publicly available on the Oneida Register and electronically provided to all managers and directors. [1 O.C. 109.8-2(a)-(c)].

Additionally, the LPA requires all appropriate managers or directors to direct comments be provided during the comment period or at a public meeting by those employees of the Nation who have special knowledge or expertise on the legislation. [1 O.C. 109.8-4(a)].

In regard to the proposed Citations law, at the October 16, 2019, Legislative Operating Committee meeting the Legislative Operating Committee approved the public meeting materials and set a public meeting date of November 22, 2019.

The public meeting notice, proposed Citations law, and legislative analysis were then made available on the Oneida Register, as well as electronically provided to all directors, managers, and



supervisors of the Nation on October 16, 2019. Although the LPA only requires these materials be noticed ten (10) business days prior to the public meeting, in this case notice was provided twenty-seven (27) business days before the public meeting. The public meeting notice was then published in the Kalihwisaks on November 7, 2019.

The Legislative Operating Committee held a public meeting for the proposed Law on November 22, 2019. The public comment period for this legislative item was then held open for five (5) business days until December 3, 2019.

Therefore, although the public comment period did include the Thanksgiving and Indian Day holidays, the public meeting and public comment period still met, and exceeded, all requirements of the LPA. Members of the community were adequately noticed of when the public meeting and public comment period would occur, and all managers, supervisors, and directors, including those of the Conservation Wardens, were informed of the obligation to direct any necessary comments be provided by any employee who may have special knowledge or expertise on the legislation.

### ***LOC Consideration***

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

The Legislative Operating discussed the fact that the scheduling of the public meeting and public comment period for the Law not only met the requirements of the Legislative Procedures Act but exceeded the requirements. The Legislative Operating Committee feels that all departments of the Nation and members of the community were adequately noticed of when the public meeting and public comment period would occur.

The Legislative Operating Committee would also like to highlight that the public meeting date is based on a variety of factors including the date of the Legislative Operating Committee meeting to approve the public meeting, Kalihwisaks submission deadlines and publication dates, and the notice requirements of the Legislative Procedures Act. The Legislative Operating Committee did not specifically choose to hold its public meeting during this timeframe, which the commenter deemed as the “worst 10-day period of the year”, but instead the dates chosen for this public meeting and public comment period followed the natural progression of the legislative process for this legislative matter.

### **Comments 5 and 6 – Consultation and Outreach:**

**Jeff Mears (written):** Consultation and outreach – Environmental Health & Safety was not included in the development.

**Jeff Mears (written):** Consultation and Outreach. There are 17 laws of the Oneida Nation cited, that authorize citations, that the proposed Citations law will apply to. Of those 17 laws cited, Environmental Health & Safety has authority to enforce 11. Environmental Health & Safety was not invited to participate in development of the Citations Law.

#### *CITATIONS LAW*



*LEGISLATIVE ANALYSIS*

*SECTION 3. CONSULTATION AND OUTREACH*

*A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida Legal Resource Center, and Oneida Environmental Resource Board.*

***Response***

The commenter states that the Environmental Health and Safety Department was not included in the development of this Law even though there are many laws of the Nation that authorize the Environmental Health and Safety Department to issue citations.

The Legislative Operating Committee is delegated the authority to develop legislation of the Nation. [1 O.C. 109.4-2]. It is within the Legislative Operating Committee's discretion and authority to collaborate with various departments of the Nation on the development of proposed legislation when the Legislative Operating Committee determines it is necessary and relevant.

Although the Citations law is a new law for the Nation, it is not a new concept or process. Authority to issue a citation is referenced in some manner in nineteen (19) laws of the Nation. Many of those laws even include reference to a process for how those citations are handled.

During the development of the most recent amendments to the Domestic Animals law the citation process was discussed with representatives from the Oneida Environmental Health, Safety and Land Division, Oneida Comprehensive Health Division – Community Health, Environmental Resource Board, Oneida Police Department, Oneida Conservation Department, and Oneida Law Office. It was discussed that although the Domestic Animals law contained some process for how citations are handled there were many gaps in the process, specifically relating to after a citation is issued and the resulting court procedure. [3 O.C. 304.13]. That lack of clarity of the citation process contained in the law resulted in differences in interpretation between the Judiciary and Oneida Law Office. It was then identified that the citation process was used and referenced in many more laws of the Nation other than the Domestic Animals law, so the Legislative Operating Committee ultimately decided that a Citations law should be developed as a stand alone law so a consistent process can be created for all laws that delegate the authority to issue citations, instead of just updating the process contained within the Domestic Animals law.

For the development of this Law, once it was determined that the gaps in the process that needed to be addressed primarily focused on the interaction of the key players throughout the court process, the Legislative Operating Committee collaborated with the Oneida Police Department, Oneida Judiciary, Oneida Legal Resource Center, and the Oneida Law Office. From the Oneida Law Office, Attorney Kelly McAndrews was specifically collaborated with, as she represents a majority of the departments or areas that are delegated the authority to issue a citation. The Legislative Operating Committee worked with the Oneida Law Office, Oneida Judiciary, and Oneida Legal Resource Center based on the subject matter expertise those areas could provide on the development of court process and the interactions of the various players within those processes. The Legislative Operating Committee collaborated with the Oneida Police Department based on



the fact that the Oneida Police Department is the only known entity actively issuing citations. The Oneida Conservation Department was also invited to initial work meetings on this matter, but did not attend.

The Legislative Operating Committee understands that during the development of legislation there may be entities that will be affected in some way by legislation that are not chosen to directly participate in the development of amendments. For those entities, the public meeting and subsequent public comment period, as required by the Legislative Procedures Act, is the opportunity to participate in the legislative process by providing any comments or questions the department may have. [1 O.C. 109.8]. All departments of the Nation are encouraged to participate during a public meeting and share any insights or expertise with the Legislative Operating Committee.

Additionally, the Legislative Operating Committee holds its meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room. If a department, or community member, feels as if they have information they would like to share with the Legislative Operating Committee regarding proposed legislation then the Legislative Operating Committee encourages attendance at the meetings and participation by asking questions and/or providing input during those meetings. Legislative Operating Committee meeting agendas are sent out electronically via e-mail and published on the Nation's website at least three (3) business days before the Legislative Operating Committee meeting. The Citations law has been present on three (3) Legislative Operating Committee meeting agendas thus far.

The Environmental Health, Safety, and Land Division is delegated the authority to issue citations in the following six (6) laws of the Nation:

1. Tribal Environmental Response Law;
2. Well Abandonment Law;
3. Onsite Waste Disposal Ordinance;
4. Oneida Food Service Code;
5. Tattoo and Body Piercing Law; and
6. Non-Metallic Mine Reclamation Law.

Of the six (6) laws mentioned above, this Law does not apply to the citations referenced in the Non-Metallic Mine Reclamation law since the Non-Metallic Mine Reclamation law delegates hearing authority to the Oneida Land Commission and not the Oneida Judiciary. [8 O.C. 807.7-1].

Although the Environmental Health, Safety, and Land Division is delegated authority to issue citations, the Division, or more specifically the Environmental Health and Safety Department, was not included in the Legislative Operating Committee's initial work group due to the fact that the Department's authority to issue citations was not changing. Therefore, the Legislative Operating Committee decided to focus its work with those areas that could provide subject matter expertise on the development of court procedure.

Although the Environmental Health and Safety Department was not included in the initial work group, they were consulted during the development of the legislative analysis. The Environmental Health and Safety Department was consulted in regard to specific authority to issue citations and

whom in the Environmental Health and Safety Department would be responsible for that action. The Environmental Health and Safety Department was also later encouraged to submit public comments on the Law.

Ultimately, it is the Legislative Operating Committee that is delegated the authority to develop legislation of the Nation. [1 O.C. 109.4-2]. The Legislative Operating Committee appreciates and encourages participation and collaboration with all departments of the Nation and members of the community, even if that participation occurs in different ways.

There is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

The Legislative Operating Committee confirms its authority to develop legislation of the Nation, and its discretion on how collaboration with entities that may be affected by or interested in legislation occurs throughout the legislative process. The Legislative Operating Committee always encourages departments of the Nation or members of the community to participate in the legislative process. The Legislative Operating Committee values all input that is received no matter if that input comes as a result of participation during work meetings, at Legislative Operating Committee meetings, or during the public meeting and subsequent public comment period.

### **Comment 7 – Process for Internal Input on Legislation:**

**Jeff Mears (written):** Agency comments and public comments. The Oneida public should expect that the Oneida government has a process for internal input from Affected Entities to proposed laws before they are submitted for public comment. The Oneida Legislative Procedures Act appears to mandate management to direct staff with expertise to provide comments during the public comment time frame. Environmental Health & Safety does not have legislative procedures experts.

Title 1. Government and Finances - Chapter 109

LEGISLATIVE PROCEDURES ACT

109.8-4. Comments and Testimony. The Legislative Operating Committee shall consider fully, all written comments and oral testimony received during the public comment period and any public meeting on the legislation.

(a) All appropriate managers or directors shall direct comments to be provided during the comment period or at a public meeting by those Tribal employees who have special knowledge or expertise on the legislation.

### ***Response***

The commenter states that the Nation should have a process for internal input from entities of the Nation before proposed legislation is submitted for public comment.



The public meeting and accompanying public comment period as required by the Legislative Procedures Act is the Nation's process for collecting comments and input from internal departments or entities or members of the community. [1 O.C. 109.8]. The Legislative Operating Committee is required to then fully consider all written comments and oral testimony that is received during the public meeting and public comment period and determine if any changes to the proposed legislation is needed based on those comments. [1 O.C. 109.8-4].

The commenter is correct in stating that the Legislative Procedures Act requires all appropriate managers or directors to direct comments be provided during the comment period or at a public meeting by those employees of the Nation who have special knowledge or expertise on the legislation. [1 O.C. 109.8-4(a)]. A department does not need to have its own legislative procedures expert to participate in the legislative process. The electronic notice of a public meeting that is sent out to all directors, supervisors, and managers of the Nation includes a statement referencing the requirement of the Legislative Procedures Act that employees who may have specialized knowledge be directed to provide comment on the legislation. [1 O.C. 109.8-2(a)-(c)]. The directors, managers, and supervisors are required to direct employees that may have specialized knowledge of the subject matter of the legislation to participate, it is not just employees who may have specialized knowledge of the legislative process.

Additionally, if a department of the Nation has questions on the legislative process the department can contact the Legislative Reference Office at [LOC@oneidanation.org](mailto:LOC@oneidanation.org). The Legislative Reference Office has met with various departments to provide more information on the legislative process.

There is no recommended revision to the Law based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

The Legislative Operating Committee discussed the fact that the public meeting and accompanying public comment period as required by the Legislative Procedures Act is the Nation's process for collecting comments and input from internal departments or entities or members of the community. The Legislative Operating Committee encourages anyone who has questions on the legislative process to contact the Legislative Reference Office.

**Title 8. Judiciary - Chapter 807**  
**Kayanl'ásla Olí'wa?**  
*Laws of issues/matters*  
**CITATIONS**

807.1. Purpose and Policy  
807.2. Adoption, Amendment, Repeal  
807.3. Definitions  
807.4. Commencement of a Citation Action

807.5. Stipulations  
807.6. Hearing Procedure  
807.7. Exclusion

**807.1. Purpose and Policy**

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

**807.2. Adoption, Amendment, Repeal**

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. 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.

807.2-4. 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.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**807.3. Definitions**

807.3-1. 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) "Authorized attorney" means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) "Court" means the Nation's Trial Court, Family Court, or any other specific courts or divisions of the Nation's Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeals within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) "Nation" means the Oneida Nation.

38 (g) “No contest” means a plea by which a defendant will accept the charged violation of  
39 law but does not plead or admit guilt.

40 (h) “Officer” means an individual authorized by a law of the Nation to issue a citation for  
41 a violation of said law.

42 (i) “Person” means a natural person, sole proprietorship, partnership, corporation, limited  
43 liability company, or any other form of a legal entity.

#### 44 45 **807.4. Commencement of a Citation Action**

46 807.4-1. *Action.* The issuance of a citation shall commence a civil action in the Judiciary for a  
47 violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law  
48 in the name of the Nation.

49 807.4-2. *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable  
50 grounds to believe has committed a violation of a law of the Nation that expressly permits the  
51 issuance of a citation.

52 807.4-3. *Form of Citation.* A citation shall contain the following information:

53 (a) The name of the officer who issued the citation.

54 (b) The name, address, and date of birth of the defendant.

55 (c) The enrollment number and/or license number of the defendant, if applicable.

56 (d) Information about the alleged violation including:

57 (1) the violation alleged;

58 (2) the law violated;

59 (3) the time and place of the occurrence of the violation; and

60 (4) a description of the violation.

61 (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement  
62 as to whether the appearance at the pre-hearing is mandatory.

63 (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if  
64 applicable.

65 (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior  
66 to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide  
67 written notice to the Court that he or she is contesting the citation, the Court may issue a  
68 default judgment which may include any fine amount due, restitution and/or suspension of  
69 any rights, privileges, or licensures, or any other penalty authorized by law.

70 (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may  
71 result in per capita attachment, wage garnishment, revocation, suspension of any rights,  
72 privileges, licensures, and/or any other action authorized by law and/or other collection  
73 processes available to the Court.

74 (i) Any other relevant information.

75 807.4-4. *Service of a Citation.* The defendant is served with a citation when one of the following  
76 occurs:

77 (a) *Personal Service.* The citation is provided to the defendant directly by the officer, or  
78 a copy of the citation is left at the defendant’s home or usual place of abode by the officer:

79 (1) in the presence of a competent family member at least fourteen (14) years of  
80 age who shall be informed of the contents of the citation; or

81 (2) in the presence of a competent adult who resides in the home or usual place of  
82 abode of the defendant, who shall be informed of the contents of the citation.

83 (b) *Mail Service.* If personal service is not possible, and the defendant’s address is known  
84 or with reasonable diligence can be ascertained, then mail service may be used. For service



85 by mail, a copy of the citation may be delivered to the defendant's last known address by  
86 certified mail with return receipt. The certified mail return receipt shall be signed by the  
87 defendant or a competent family member at least fourteen (14) years of age or an adult who  
88 resides in the home of the defendant.

89 (1) The certified mail return receipt shall be filed with the Court as proof of service.

90 (c) *Service by Publication.* If after a showing of due diligence personal service and mail  
91 service were not possible, then service may be completed by publication as a last resort.  
92 The publication shall be in the Nation's newspaper and shall be designated as "Legal  
93 Notice." The department of the officer and/or authorized attorney shall publish this notice  
94 at least two (2) times within a thirty (30) day period. The two (2) notices shall be published  
95 a minimum of ten (10) days before the citation pre-hearing.

96 (1) Copies of the two (2) published notices and written report stating the facts  
97 surrounding the failure of personal and mail service shall be filed with the Court as  
98 proof of service.

99 (2) If service by publication is required and there is insufficient time for proper  
100 service before the pre-hearing, the Court may, on its own, order different time limits  
101 for service by publication and/or re-schedule the pre-hearing appropriately in order  
102 to provide for fair notice and opportunity for the defendant to respond.

103 (3) The Court may order the defendant to reimburse the department of the officer  
104 and/or the authorized attorney for any costs incurred from service by publication.

105 807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who  
106 issued the citation shall file the citation with the Court along with any applicable proof of service  
107 at least thirty (30) days prior to the date of the pre-hearing.

108 (a) Citations may be filed in person or electronically transmitted to the Court. Citations  
109 that are electronically transmitted to the Court are deemed filed upon confirmation of  
110 receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the  
111 citation.

112 (b) After filing the citation with the Court, the department of the officer who issued the  
113 citation shall forward the citation and all relevant accompanying information to the  
114 authorized attorney. Relevant information to accompany the citation may include, but is  
115 not limited to, a narrative by the officer and/or history of violations by the defendant.

116 807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized  
117 attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the  
118 defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before  
119 the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of  
120 the Court, upon notice to the parties and an opportunity to be heard.

## 121 **807.5. Stipulations**

122 807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is  
123 granted the discretion to seek the settlement of a citation.

124 (a) When seeking to enter into a stipulation the authorized attorney shall explain to the  
125 defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

126 807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant  
127 shall be in writing and signed. The stipulation shall include the following:

128 (a) A summary of the citation violation information included on the citation;

129 (b) The details of the stipulation including any fine, penalty, condition, or payment plan  
130 the defendant shall comply with;  
131

- 132 (c) A statement that by entering into the stipulation the defendant is admitting that he or  
133 she committed the act for which the citation was issued or is entering a plea of no contest  
134 and thereby waives his or her right to contest the citation with the Court; and  
135 (d) A statement that all parties signed the agreement free of duress and coercion.

136 807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach  
137 an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's  
138 approval.

139 (a) If the Court enters an order approving the stipulation as written, a copy of the order  
140 shall be provided to the authorized attorney and defendant.

141 (b) If the Court does not enter an order approving the stipulation as written or requests  
142 clarification, the Court shall schedule the matter for a hearing. The Court shall provide the  
143 authorized attorney and defendant notice of the hearing date and written explanation as to  
144 why the Court did not approve the stipulation of the parties.

145 807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation,  
146 then the parties shall proceed with the citation hearing process.

147 807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The  
148 authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a  
149 motion for contempt if the defendant is non-compliant with the terms of the stipulation.

## 150 807.6. Hearing Procedure

151 807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which  
152 shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law  
153 of the Nation.

154 (a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or  
155 resolution of the Nation requires a mandatory appearance for that specific violation of law.

156 (b) If an appearance is not mandatory, and a person does not wish to contest the citation,  
157 a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing  
158 date.

159 (1) If the person pays the fine and/or penalty as listed on the citation prior to the  
160 pre-hearing date the citation shall be considered satisfied.

161 (c) If a person wishes to contest the citation, the person shall provide notice to the Court  
162 in one (1) of the following manners:

163 (1) appear at the pre-hearing to contest the citation; or

164 (2) if an appearance is not mandatory, send written notice to the Court, with a copy  
165 to the Oneida Law Office, prior to the pre-hearing notifying the Court that the  
166 defendant wishes to contest the citation.

167 (d) At the pre-hearing the Court shall accept pleas which either contest or admit committing  
168 the act for which the citation was issued, or a plea of no contest.

169 (1) If the defendant admits committing the act for which the citation was issued  
170 the Court shall provide a statement that by admitting that he or she committed the  
171 act for which the citation was issued the defendant thereby waives his or her right  
172 to contest the citation with the Court. The Court shall obtain an affirmative  
173 acknowledgment from the defendant of that waiver of rights.

174 (e) In addition to scheduling requested hearings, the Court may also make conditional  
175 orders at the pre-hearing which are effective until the matter is resolved.

176 (f) If a defendant does not appear at the pre-hearing or submit written notice that he or she  
177 is contesting the citation when there is a non-mandatory appearance, and the defendant has  
178

179 not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the  
180 Court may proceed to enter a default judgment.

181 (1) A default judgment may include any fine amount due, restitution, suspension  
182 of any rights, privileges, or licensures, and/or any other penalty authorized by law.

183 (2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days  
184 to satisfy a default judgment by paying any fine and/or complying with any  
185 condition or penalty ordered.

186 **807.6-2. Citation Hearing.** For all persons entering a plea contesting the fact that he or she  
187 committed the act for which a citation was issued, the Court shall schedule a hearing as  
188 expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of  
189 the pre-hearing when possible.

190 (a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

191 (b) As a result of the citation hearing the Court may issue an order which includes a  
192 determination as to the underlying violation of law as well as any fine amount, restitution,  
193 suspension of any rights, privileges, or licensures, and/or any other penalty as authorized  
194 by law.

195 (c) A defendant who fails to satisfy a lawful order of the Court shall be subject to  
196 punishment for contempt of court which may include fines, revocation and/or suspension  
197 of any rights, privileges, licensures, or any other action authorized by law.

198 (d) The defendant's failure to satisfy a fine and/or restitution may result in per capita  
199 attachment, wage garnishment and/or other collection processes available to the Court.

200 **807.6-3. Appeals of the Court's Determinations.** Any person wishing to contest the determination  
201 of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate  
202 Procedure.

203  
204 **807.7. Exclusion**

205 807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a  
206 hearing body other than the Oneida Judiciary.

207  
208 *End.*

209  
210 \_\_\_\_\_  
211 Adopted – BC-\_\_-\_\_-\_\_-\_\_

**Title 8. Judiciary - Chapter 807**  
**Kayanl'ásla Olí-wa?**  
*Laws of issues/matters*  
**CITATIONS**

807.1. Purpose and Policy  
807.2. Adoption, Amendment, Repeal  
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**807.1. Purpose and Policy**

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

**807.2. Adoption, Amendment, Repeal**

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. 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.

807.2-4. 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.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**807.3. Definitions**

807.3-1. 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) "Authorized attorney" means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) "Court" means the Nation's Trial Court, Family Court, or any other specific courts or divisions of the Nation's Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeals within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) "Nation" means the Oneida Nation.

38 (g) “No contest” means a plea by which a defendant will accept the charged violation of  
39 law but does not plead or admit guilt.

40 (h) “Officer” means an individual authorized by a law of the Nation to issue a citation for  
41 a violation of said law.

42 (i) “Person” means a natural person, sole proprietorship, partnership, corporation, limited  
43 liability company, or any other form of a legal entity.

44  
45 **807.4. Commencement of a Citation Action**

46 807.4-1. *Action*. The issuance of a citation shall commence a civil action in the Judiciary for a  
47 violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law  
48 in the name of the Nation.

49 807.4-2. *Authority to Issue*. An officer may issue a citation to any person he or she has reasonable  
50 grounds to believe has committed a violation of a law of the Nation that expressly permits the  
51 issuance of a citation.

52 807.4-3. *Form of Citation*. A citation shall contain the following information:

53 (a) The name of the officer who issued the citation.

54 (b) The name, address, and date of birth of the defendant.

55 (c) The enrollment number and/or license number of the defendant, if applicable.

56 (d) Information about the alleged violation including:

57 (1) the violation alleged;

58 (2) the law violated;

59 (3) the time and place of the occurrence of the violation; and

60 (4) a description of the violation.

61 (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement  
62 as to whether the appearance at the pre-hearing is mandatory.

63 (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if  
64 applicable.

65 (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior  
66 to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide  
67 written notice to the Court that he or she is contesting the citation, the Court may issue a  
68 default judgment which may include any fine amount due, restitution and/or suspension of  
69 any rights, privileges, or licensures, or any other penalty authorized by law.

70 (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may  
71 result in per capita attachment, wage garnishment, revocation, suspension of any rights,  
72 privileges, licensures, and/or any other action authorized by law and/or other collection  
73 processes available to the Court.

74 (i) Any other relevant information.

75 807.4-4. *Service of a Citation*. The defendant is served with a citation when one of the following  
76 occurs:

77 (a) *Personal Service*. The citation is provided to the defendant directly by the officer, or  
78 a copy of the citation is left at the defendant’s home or usual place of abode by the officer:

79 (1) in the presence of a competent family member at least fourteen (14) years of  
80 age who shall be informed of the contents of the citation; or

81 (2) in the presence of a competent adult who resides in the home or usual place of  
82 abode of the defendant, who shall be informed of the contents of the citation.

83 (b) *Mail Service*. If personal service is not possible, and the defendant’s address is known  
84 or with reasonable diligence can be ascertained, then mail service may be used. For service

85 by mail, a copy of the citation may be delivered to the defendant’s last known address by  
86 certified mail with return receipt. The certified mail return receipt shall be signed by the  
87 defendant or a competent family member at least fourteen (14) years of age or an adult who  
88 resides in the home of the defendant.

89 (1) The certified mail return receipt shall be filed with the Court as proof of service.

90 (c) *Service by Publication.* If after a showing of due diligence personal service and mail  
91 service were not possible, then service may be completed by publication as a last resort.  
92 The publication shall be in the Nation’s newspaper and shall be designated as “Legal  
93 Notice.” The department of the officer and/or authorized attorney shall publish this notice  
94 at least two (2) times within a thirty (30) day period. The two (2) notices shall be published  
95 a minimum of ten (10) days before the citation pre-hearing.

96 (1) Copies of the two (2) published notices and written report stating the facts  
97 surrounding the failure of personal and mail service shall be filed with the Court as  
98 proof of service.

99 (2) If service by publication is required and there is insufficient time for proper  
100 service before the pre-hearing, the Court may, on its own, order different time limits  
101 for service by publication and/or re-schedule the pre-hearing appropriately in order  
102 to provide for fair notice and opportunity for the defendant to respond.

103 (3) The Court may order the defendant to reimburse the department of the officer  
104 and/or the authorized attorney for any costs incurred from service by publication.

105 807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who  
106 issued the citation shall file the citation with the Court along with any applicable proof of service  
107 at least thirty (30) days prior to the date of the pre-hearing.

108 (a) Citations may be filed in person or electronically transmitted to the Court. Citations  
109 that are electronically transmitted to the Court are deemed filed upon confirmation of  
110 receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the  
111 citation.

112 (b) After filing the citation with the Court, the department of the officer who issued the  
113 citation shall forward the citation and all relevant accompanying information to the  
114 authorized attorney. Relevant information to accompany the citation may include, but is  
115 not limited to, a narrative by the officer and/or history of violations by the defendant.

116 807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized  
117 attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the  
118 defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before  
119 the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of  
120 the Court, upon notice to the parties and an opportunity to be heard.

## 121 **807.5. Stipulations**

122 807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is  
123 granted the discretion to seek the settlement of a citation.

124 (a) When seeking to enter into a stipulation the authorized attorney shall explain to the  
125 defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

126 807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant  
127 shall be in writing and signed. The stipulation shall include the following:

128 (a) A summary of the citation violation information included on the citation;

129 (b) The details of the stipulation including any fine, penalty, condition, or payment plan  
130 the defendant shall comply with;  
131

132 (c) A statement that by entering into the stipulation the defendant is admitting that he or  
133 she committed the act for which the citation was issued or is entering a plea of no contest  
134 and thereby waives his or her right to contest the citation with the Court; and

135 (d) A statement that all parties signed the agreement free of duress and coercion.

136 807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach  
137 an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's  
138 approval.

139 (a) If the Court enters an order approving the stipulation as written, a copy of the order  
140 shall be provided to the authorized attorney and defendant.

141 (b) If the Court does not enter an order approving the stipulation as written or requests  
142 clarification, the Court shall schedule the matter for a hearing. The Court shall provide the  
143 authorized attorney and defendant notice of the hearing date and written explanation as to  
144 why the Court did not approve the stipulation of the parties.

145 807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation,  
146 then the parties shall proceed with the citation hearing process.

147 807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The  
148 authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a  
149 motion for contempt if the defendant is non-compliant with the terms of the stipulation.

## 150 151 **807.6. Hearing Procedure**

152 807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which  
153 shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law  
154 of the Nation.

155 (a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or  
156 resolution of the Nation requires a mandatory appearance for that specific violation of law.

157 (b) If an appearance is not mandatory, and a person does not wish to contest the citation,  
158 a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing  
159 date.

160 (1) If the person pays the fine and/or penalty as listed on the citation prior to the  
161 pre-hearing date the citation shall be considered satisfied.

162 (c) If a person wishes to contest the citation, the person shall provide notice to the Court  
163 in one (1) of the following manners:

164 (1) appear at the pre-hearing to contest the citation; or

165 (2) if an appearance is not mandatory, send written notice to the Court, with a copy  
166 to the Oneida Law Office, prior to the pre-hearing notifying the Court that the  
167 defendant wishes to contest the citation.

168 (d) At the pre-hearing the Court shall accept pleas which either contest or admit committing  
169 the act for which the citation was issued, or a plea of no contest.

170 (1) If the defendant admits committing the act for which the citation was issued  
171 the Court shall provide a statement that by admitting that he or she committed the  
172 act for which the citation was issued the defendant thereby waives his or her right  
173 to contest the citation with the Court. The Court shall obtain an affirmative  
174 acknowledgment from the defendant of that waiver of rights.

175 (e) In addition to scheduling requested hearings, the Court may also make conditional  
176 orders at the pre-hearing which are effective until the matter is resolved.

177 (f) If a defendant does not appear at the pre-hearing or submit written notice that he or she  
178 is contesting the citation when there is a non-mandatory appearance, and the defendant has



179 not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the  
180 Court may proceed to enter a default judgment.

181 (1) A default judgment may include any fine amount due, restitution, suspension  
182 of any rights, privileges, or licensures, and/or any other penalty authorized by law.

183 (2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days  
184 to satisfy a default judgment by paying any fine and/or complying with any  
185 condition or penalty ordered.

186 807.6-2. *Citation Hearing.* For all persons entering a plea contesting the fact that he or she  
187 committed the act for which a citation was issued, the Court shall schedule a hearing as  
188 expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of  
189 the pre-hearing when possible.

190 (a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

191 (b) As a result of the citation hearing the Court may issue an order which includes a  
192 determination as to the underlying violation of law as well as any fine amount, restitution,  
193 suspension of any rights, privileges, or licensures, and/or any other penalty as authorized  
194 by law.

195 (c) A defendant who fails to satisfy a lawful order of the Court shall be subject to  
196 punishment for contempt of court which may include fines, revocation and/or suspension  
197 of any rights, privileges, licensures, or any other action authorized by law.

198 (d) The defendant's failure to satisfy a fine and/or restitution may result in per capita  
199 attachment, wage garnishment and/or other collection processes available to the Court.

200 807.6-3. *Appeals of the Court's Determinations.* Any person wishing to contest the determination  
201 of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate  
202 Procedure.

203  
204 **807.7. Exclusion**

205 807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a  
206 hearing body other than the Oneida Judiciary.

207  
208 *End.*

209  
210 \_\_\_\_\_  
211 Adopted – BC-\_\_-\_\_-\_\_-\_\_



# Kayanl<sup>^</sup>sla Ols<sup>wa</sup>>

*(Laws of issues/matters)*

## CITATIONS LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Law	To establish a consistent process for citations issued for violations of laws of the Nation, including: <ul style="list-style-type: none"> <li>▪ What must appear on a citation form;</li> <li>▪ How a citation must be served;</li> <li>▪ A process for entering into stipulation agreements to settle citations;</li> <li>▪ A process for contesting citations in court; and</li> <li>▪ Timelines and procedures for citation hearings.</li> </ul>		
Purpose	To provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation [8 O.C. 807.1-1].		
Affected Entities	Any person issued a citation under the laws of the Nation; Agencies responsible for enforcement and issuing citations under the laws of the Nation (Oneida Police Department, Conservation Wardens, Oneida Environmental Health Safety and Land Division, Licensing Department), the Nation’s Judiciary, Oneida Law Office, GTC Legal Resource Center, Utilities Department, and Oneida Land Commission.		
Related Legislation	Domestic Animals law; Hunting, Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law; Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic Mine Reclamation law; Zoning and Shoreland Protection law; Marriage law, Sanitation Ordinance, Rules of Civil Procedure; Rules of Appellate Procedure, Judiciary Law Rule No. 1 – Oneida Trial Court Rules.		
Public Meeting	A public meeting was held on November 22, 2019.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Oneida Nation exercises its sovereignty through the enactment and enforcement of its own laws.
- 3 These laws cover a variety of topics, including health and public safety, environmental and natural
- 4 resources, property and land, and others. When a person violates a law of the Nation, several laws
- 5 authorize the Nation to enforce through the issuance of citations, fines and penalties. However, the
- 6 Nation’s laws do not include a uniform process for what happens after a citation is issued, particularly
- 7 once it reaches the Judiciary. This has led to implementation issues for entities involved in the citation
- 8 process and, in some instances, the dismissal of cases in the Judiciary.
- 9 **B.** During the development of amendments to Domestic Animals law in 2019, the LOC worked
- 10 collaboratively with several of the Nation’s agencies. During this process, the need to develop a more
- 11 detailed procedure for the issuance and processing of citations was discussed. Rather than add a detailed

12 process only to the Domestic Animals law, the LOC decided to begin drafting a new Citations law that  
13 can apply to violations of all laws of the Nation that include citations.

- 14 C. The LOC added the proposed Citations law to the Active Files List on May 15, 2019. Since that time,  
15 a work group of representatives from Oneida Police Department, Environmental Resource Board,  
16 Oneida Law Office and Oneida Legal Resource Center met to work on the proposed law.  
17 D. This proposed law applies only to citations issued by the Nation for violations of the Nation’s laws.  
18 Officers of the Oneida Police Department are cross-deputized by the Brown County Sheriff’s  
19 Department and also have the authority to issue citations for violation of state laws that may be heard  
20 in Wisconsin Circuit Courts (for example, violations for operating while intoxicated).  
21

### 22 SECTION 3. CONSULTATION AND OUTREACH

- 23 A. Representatives from the following departments or entities participated in the development of this law  
24 and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida  
25 Legal Resource Center, and Oneida Environmental Resource Board.  
26 B. The following laws were reviewed in the drafting of this analysis: Domestic Animals law; Hunting,  
27 Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and  
28 Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste  
29 Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law;  
30 Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic  
31 Mine Reclamation law; Zoning and Shoreland Protection law; Motor Vehicle Registration law;  
32 Marriage law; Sanitation Ordinance; Clean Air Policy; Alcohol Beverage Licensing law; Oneida  
33 Woodcutting Ordinance; Building Code law; Rules of Civil Procedure; Rules of Appellate Procedure,  
34 and Judiciary Law Rule No 1 – Oneida Trial Court Rules.  
35

### 36 SECTION 4. PROCESS

- 37 A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act  
38 (LPA).  
39 B. The law was added to the Active Files List on May 15, 2019.  
40 C. A public meeting was held on November 22, 2019. The public comment period was held open until  
41 December 3, 2019.  
42 C. The following work meetings were held regarding the development of this law and legislative analysis:  
43 ■ May 21, 2019: Work meeting with Oneida Police Department, Oneida Law Office, Environmental  
44 Resource Board and Legal Resource Center.  
45 ■ May 23, 2019: Work meeting with LOC.  
46 ■ June 13, 2019: Work meeting with LOC.  
47 ■ August 6, 2019: Work meeting with Oneida Police Department, Oneida Law Office and Oneida  
48 Judiciary clerks.  
49 ■ August 29, 2019: Work meeting with LOC.  
50 ■ October 2, 2019: Work meeting with LOC.  
51 ■ December 18, 2019: Work meeting with LOC.  
52

### 53 SECTION 5. CONTENTS OF THE LEGISLATION

- 54 A. *Commencement of a Citation Action.*  
55 ■ *What is a Citation?* A citation is a “legal document that services as a notice or summons to appear  
56 in a court of the Nation in response to a charge against an individual of a violation of law” [8 O.C.  
57 807.3-1(b)]. The issuance of a citation begins a civil action in the Judiciary for violating a law of  
58 the Nation for the purpose of collecting a fine or penalty imposed by the law [8 O.C. 807.4-1].  
59 ■ *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable grounds  
60 to believe has committed a violation of a law of the Nation. For the purposes of this law, an “officer”

61 is defined as “any individual authorized by a law of the Nation to issue a citation for a violation of  
 62 said law” [8 O.C. 807.3-1(g)]. For most laws of the Nation, the individual authorized to issue a  
 63 citation is an officer of the Oneida Police Department or a Conservation Warden.

64 ■ A “person” who receives a citation may be an individual or a legal entity, such as a corporation,  
 65 LLC or sole proprietorship [8 O.C. 807.3-1(i)].

66 **B. Form of Citation.** This law creates a standard list of information that must be included on a citation  
 67 form when it is issued. These requirements match the information included on the current citation form  
 68 used by the Nation [8 O.C. 807.4-3].

69 ■ *Identifying Information:*

- 70 ○ Name of the officer who issued citation;
- 71 ○ Name, address, and date of birth of the defendant. Enrollment number and/or license  
 72 number of the defendant, if applicable.

73 ■ *Information About the Alleged Violation:*

- 74 ○ The violation alleged, the law violated, the time and place of the violation, and a description  
 75 of the violation.

76 ■ *Court Hearing & Fine Information:*

- 77 ○ A notice of when and where to appear at a citation pre-hearing and whether the pre-hearing  
 78 is mandatory;
- 79 ○ Provisions for payment of citation and stipulation in lieu of an appearance in Court, if  
 80 applicable. In other words, the option for individuals to pay their fine without having to  
 81 make a court appearance;
- 82 ○ Notice that if the defendant does not pay the citation or stipulate an agreement prior to the  
 83 pre-hearing and fails to appear in Court at the time listed on the citation, the Court may  
 84 issue a default judgment which may include any fine amount due, restitution and/or  
 85 suspension of any rights, privileges, or licensures, or any other penalty authorized by law;
- 86 ○ Notice that failure to satisfy a fine, restitution, or any other party of the judgment may  
 87 result in per capita attachment, wage garnishment, revocation, suspension of any rights,  
 88 privileges, licensures, and/or any other action authorized by law and/or other collection  
 89 processes available to the court.

91 *Current Oneida Nation Citation Form – Front*

**ONEIDA NATION CITATION #20 \_\_\_\_\_ - IR# \_\_\_\_\_**

<b>Appearance Required</b> <input type="checkbox"/> No <input type="checkbox"/> Yes		<b>Date:</b> _____		<b>See back for court/ payment information</b>		<b>Fine/Other Penalties</b> \$ _____	
Oneida Judiciary 2630 West Mason Street, Green Bay, WI 54303		<b>Time:</b> _____		<input type="checkbox"/> AM <input type="checkbox"/> PM		<b>Court Costs</b> \$ _____	
Day of Week	Date of Violation	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	COUNTY	TWP-Village-City			
NAME (Last, First, MI)				Area Code - Telephone No.			
Tribal ID		Driver's License/ID #		State		Exp Year	
Street Address				City		State	
Zip Code							
Date of Birth MM/DD/YYYY	Sex	Race	HT	WT	Hair	Eyes	Case Type <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile
Parent's Name (Juvenile Only)		Parent's Phone (Juvenile Only)		Parents Notified <input type="checkbox"/> No <input type="checkbox"/> Yes			
Violation Code		Violation Name					
Description of Violation							
Print Officer Name		Officer Signature		Title		Badge Number	
Department/Agency							
<b>YOU ARE HEREBY NOTIFIED TO APPEAR IN FRONT OF THE ONEIDA JUDICIARY</b> A failure to appear and defend may result in a default judgment against the Defendant							
Issuance Information		Method of Service		Personal		Mail	
Left with ___ at defendant's residence							

Distribution: White-Court Yellow-Defendant Pink-Law Office Goldenrod-Agency

92 *Current Oneida Nation Citation Form – Back*

**Mandatory Appearance** If your citation is marked “Yes” under the “Appearance Required,” you **MUST** appear in Court.

**Disputing a Citation** If you wish to dispute the citation, you must appear in court for a pre-hearing where a “contest” or “admit” plea will be entered verbally. A hearing date will then be scheduled.

**If you do not wish to dispute the Citation** You may mail in a money order or cashier’s check made payable to the Oneida Judiciary; include a copy of your citation and send to Oneida Judiciary at P.O. Box 19 Oneida, WI 54155 before the Court date stated on your citation. Or you may pay in person at the Oneida Judiciary located at 2630 West Mason Street, Green Bay, WI 54303.

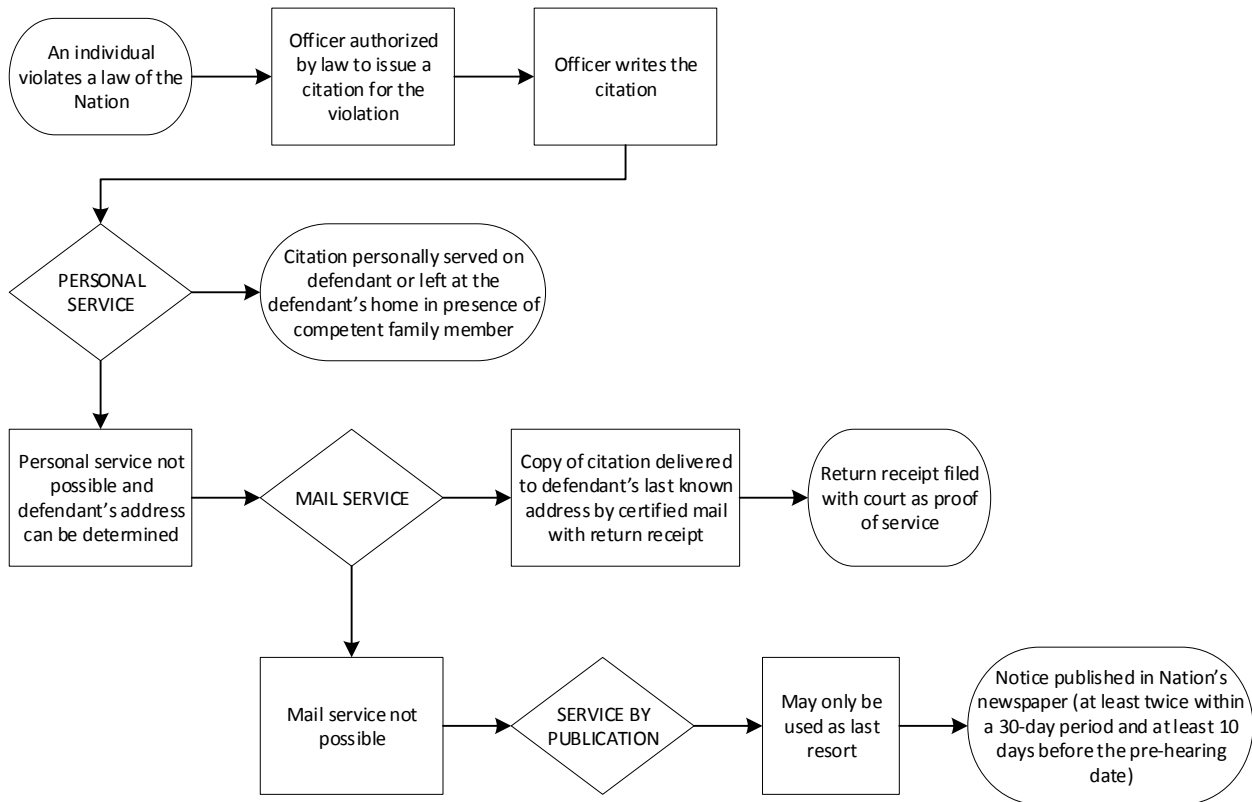
**If you do nothing** The Court may enter a default judgement which may include, but is not limited to, any fine amount that is due, restitution and/or suspension of any rights, privileges or licensures with the Oneida Nation.

**Failure to satisfy Penalty/Restitution** A failure to satisfy and fine, restitution or any other part of the judgement, may result in the following, but is not limited to, intercept of Per Capita, wage garnishment, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law with the Oneida Nation.

OP25352 R11/17

- 93  
94 C. **Service of a Citation.** When an officer issues a citation, the citation must be “served” on the individual  
95 alleged to have violated the law [8 O.C. 807.4-4].  
96     ▪ **Personal Service.** An officer must first attempt to personally serve the citation on the defendant  
97 (i.e. hand the citation to the defendant) or leave a copy of the citation at the defendant’s home in  
98 the presence of a competent family member at least fourteen (14) years of age or an adult who  
99 resides in the home of the defendant.  
100         ○ *Why age 14?* In the state of Wisconsin, a service of summons may be left in the presence  
101 of a competent family member at least fourteen (14) years of age if, with reasonable due  
102 diligence, the defendant cannot be personally served [Wis. Stats 801.11]. This provision is  
103 modeled after WI statutes.  
104     ▪ **Mail Service.** If personal service is not possible and the defendant’s address can be determined,  
105 then mail service may be used. For service by mail, a copy of the citation may be delivered to the  
106 defendant’s last known address by certified mail with return receipt. The certified mail return  
107 receipt will be signed by the defendant or competent family member at least fourteen (14) years of  
108 age or an adult who resides in the home of the defendant. The certified mail return receipt will be  
109 filed with the Court as proof of service.  
110     ▪ **Service by Publication.** As a last resort, after a showing of due diligence that personal and mail  
111 service are not possible, then service may be completed by publication in the Nation’s newspaper  
112 (the Kalihwisaks). The notice must be published at least two (2) times within a 30-day period. The  
113 notices must be published at least ten (10) days before the citation pre-hearing.  
114     ▪ **Filing a Citation.** The department of the officer who issued the citation must file the citation with  
115 the Court along with proof of service, if applicable, at least thirty (30) days prior to the date of the  
116 pre-hearing. Citations may be filed in person or electronically transmitted [8 O.C. 807.4-5].  
117         ○ *Amendments to Citations.* A citation may be amended by an officer or the authorized  
118 attorney prior to the citation pre-hearing. A copy of the amended citation must be provided  
119 to the defendant at least five (5) days prior to the citation pre-hearing.

120 *Chart 1. Service of a Citation.*  
 121



122  
 123 **D. Stipulations.** An authorized attorney of the Nation is granted the discretion to seek the settlement of  
 124 the citation. This means that the Nation and the defendant can agree to a lower fine amount or other  
 125 condition to settle the case [8 O.C. 807.5].

- 126 ■ *Who is an Authorized Attorney of the Nation?* An attorney of the Nation who represents the  
 127 department or entity of the officer who issued the citation, such as the attorney for the Oneida Police  
 128 Department [8 O.C. 807.3-1]. Attorneys of the Nation work in the Oneida Law Office.
- 129 ■ *Form of Stipulation.* The stipulation, or agreement, between the Nation’s attorney and defendant  
 130 must be in writing, signed by both parties, and include the following information:
  - 131 ○ A summary of the violation that resulted in the citation,
  - 132 ○ The details of the stipulation including any fine, penalty, condition or payment plan the  
 133 defendant must comply with,
  - 134 ○ A statement that the defendant admits that he or she committed the act or is entering a plea  
 135 of no contest and waives his or her right to contest the citation in Court; and
  - 136 ○ A statement that all parties signed the agreement free of duress and coercion.
- 137 ■ *Current Practice.* It is the Nation’s current practice to offer stipulations to defendants for violations  
 138 of the Nation’s Domestic Animals law. Stipulations typically involve the Nation lowering a fine  
 139 amount. Currently, this practice is not outlined in detail in any law of the Nation.
  - 140 ○ *Comparison to State of WI.* For cases in Wisconsin circuit court, stipulations are typically  
 141 handled by the prosecutor’s office. Oneida Nation does not have a prosecutor or exercise  
 142 criminal jurisdiction, so in this instance, the Nation is represented by an attorney of the  
 143 Law office who assumes these responsibilities for violations the Nation’s civil laws.
- 144 ■ *Effect.* Although offering stipulations is the current practice of the Nation, placing the process in  
 145 the law will formally establish this authority for the authorized attorneys of the Nation.

146 **E. Citation Pre-Hearing.** All citations will include a pre-hearing date with the Court which will be set at  
 147 least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation [8

148 *O.C. 807.6-1*]. The Judiciary’s current practice is to hold citation pre-hearings on the third Thursday of  
149 each month.

150 ■ *Mandatory Appearance.* Appearance at a pre-hearing is only mandatory when a law, policy, rule  
151 or resolution of a Nation requires a mandatory appearance for that specific violation of the law.  
152 Most violations of the Nation’s laws do not require a mandatory appearance.

153 ○ *Example:* The Domestic Animals law fine, penalty and licensing fee schedule requires a  
154 mandatory court appearance for mistreatment of animals [*BC Resolution 05-08-19-D*].

155 ■ *Paying Fine or Penalty.* If an appearance is not mandatory and the individual does not want to  
156 contest (or challenge) the citation, the individual may pay the fine or penalty listed on the citation  
157 before the pre-hearing date and the citation will be considered satisfied.

158 ■ *Contesting a Citation.* If an individual wants to contest their citation, that person can appear at the  
159 pre-hearing to contest the citation. If an appearance at the pre-hearing isn’t mandatory, that  
160 individual can also send a written notice to the Court with a copy to the Law Office notifying the  
161 court that they wish to contest the citation.

162 ■ *Default Judgment.* If the defendant does not pay their fine or enter into a stipulation before their  
163 pre-hearing date and fails to appear at their pre-hearing or provide notice to the court, then the court  
164 may enter a default judgment against the defendant. In other words, if a defendant “ignores” their  
165 citation, the court can automatically find them guilty of the violation.

166 ○ *Consequences.* A default judgment can include the fine amount due, restitution, suspension  
167 of rights, privileges and licenses, or any other penalty authorized by laws of the Nation.

168 **F. Citation Hearing.** If a defendant contests that they committed the violation that resulted in the citation,  
169 then the Court will schedule a hearing within ninety (90) days of the pre-hearing date. In other words,  
170 if the defendant argues that they did not commit the violation or that the citation was issued  
171 inappropriately, the defendant has an opportunity to challenge their citation at a court hearing [*8 O.C.*  
172 *807.6-2*].

173 ■ *Burden of Proof.* The burden of proof at a citation hearing is “clear and convincing evidence.” This  
174 means that the Nation must provide evidence “indicating that the [allegation] to be proved is highly  
175 probably or reasonably certain” [*see Black’s Law Dictionary*].

176 ○ *Current Standard of Proof.* The Nation’s Rules of Civil Procedure state that the standard  
177 of proof for all matters to be decided by the Court shall be proven by a “preponderance of  
178 the evidence” standard, unless specified otherwise [*8 O.C. 803.4-8*]. “Preponderance of  
179 the evidence” is the burden of proof in most civil trials and means that there is sufficient  
180 evidence that there is a greater than 50% chance that the claim is true.

181 ○ *Effect.* This law sets a higher burden of proof than the Judiciary is currently using for  
182 citation hearings under the laws of the Nation. This means that the Nation and its agencies  
183 (represented by its authorized attorney) will have to meet this higher burden of proof when  
184 a citation is challenged by a defendant. This will only apply to citation hearings. All other  
185 hearings of the court will utilize the “clear and convincing evidence” standard unless  
186 otherwise noted in another law of the Nation.

187 ■ *Appeals.* Anyone who wishes to appeal a judgment of the court may appeal to the Nation’s Court  
188 of Appeals in accordance with the Rules of Appellate Procedure [*8 O.C. 807.6-3*].

189 ○ The Rules of Appellate Procedure state that a notice of appeal must be filed within thirty  
190 (30) days after the Trial Court’s order is rendered [*8 O.C. 805.5*].

191 **G. Exclusion.** This law will not apply to any law of the Nation that delegates hearing authority to a hearing  
192 body other than the Judiciary [*8 O.C. 807.7*]. The Oneida Land Commission retains hearing authority  
193 for citations issued under two of the Nation’s laws. Therefore, the proposed Citations law will not apply  
194 to citations issued under the following two laws:

195 ■ Zoning and Shoreland Protection law [*6 O.C. 605*].

196 ■ Non-Metallic Mining Reclamation law [*4 O.C. 402*].

197

198 **SECTION 6. EXISTING LEGISLATION**

199 **A. Which Laws of the Nation will the New Citations Process Apply to?** Many laws of the Nation authorize  
 200 citations, fines or forfeitures for violations. The intent of the proposed Citations law is to establish a uniform  
 201 process that can apply to all of these laws without conflict. Some of these laws were updated after the  
 202 creation of the Nation’s Judiciary and conform cleanly with the process in this proposed Citations Law.  
 203 However, other laws are decades-old and conform less clearly due to changes in drafting style and the  
 204 Nation’s organizational structure over the years. The following charts provide a summary of the Nation’s  
 205 laws that authorize citations, fines, forfeitures or penalties and whether the proposed Citations law will  
 206 apply.

- 207 ■ **Laws that Authorize Citations & Include Judiciary Appeals Process with Timelines.** The  
 208 following laws of the Nation specifically authorize the issuance of citations and include a process  
 209 for contesting citations in the Judiciary Trial Court with required timelines for citations hearings.  
 210 The proposed Citations law conforms with these timeframes and adds additional process and  
 211 requirements.
  - 212 ○ *Conclusion:* The proposed Citations will apply to any citations issued under the following  
 213 laws of the Nation:

214 *Chart 2. Oneida Laws that Authorize Citations & Include Judiciary Appeals Process.*

Chapter	Law	Authority to Enforce	Example Violation
304	<i>Domestic Animals</i>	Oneida Police Department and Oneida Conservation	Dangerous animal; prohibited animal; animal running at large.
406	<i>Hunting, Fishing and Trapping</i>	Oneida Police Department and Oneida Conservation	Failure possess license; Failure to tag, Unlawfully hunting/shooting from a vehicle.
410	<i>All Terrain Vehicle</i>	Oneida Police Department and Oneida Conservation	Operating all-terrain vehicle in a careless manner, on private property without consent, on tribal lands without consent
609	<i>Public Use of Tribal Land</i>	Oneida Police Department and Oneida Conservation	Trespassing.

- 216
- 217 ■ **Laws that Authorize Citations & Refer to Citations law for Judiciary Appeals Process.** The  
 218 following laws of the Nation specifically authorize the issuance of citations and state that citations  
 219 will be processed in accordance with the procedure contained “in the Nation’s laws and policies  
 220 governing citations.” This refers to the proposed Citations law and Judiciary Law Rule No. 1 –  
 221 Oneida Trial Court Rules.
  - 222 ○ *Conclusion:* The proposed Citations will to apply to any citations issued under the  
 223 following law of the Nation:

224 *Chart 3. Oneida Laws that Authorize Citations & Reference Citations law.*

Chapter	Law	Authority to Enforce	Example Violation
308	<i>Curfew</i>	Oneida Police Department	Minor violating curfew.

226



- 227     ▪ **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process**  
 228 **with Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and  
 229 include a process for contesting citations in the Judiciary Trial Court with required timelines for  
 230 citation hearings. The proposed Citations law conforms with these timeframes and adds additional  
 231 process and requirements.  
 232         ○ *Conclusion:* The proposed Citations law appears to apply to any citations issued under the  
 233 following laws of the Nation:  
 234

235 *Chart 4. Laws that Authorize Fines and Include Judiciary Appeals Process w/Timelines.*

Chapter	Law	Authority to Enforce	Example Violation
401	<i>Tribal Environmental Response Law</i>	Environmental Health, Safety and Land Division	Violating a compliance order issued by Division for discharging hazardous substance.
404	<i>Well Abandonment Law</i>	Environmental Health, Safety and Land Division	Failure to comply within ten (10) days of written notice of violation.
407	<i>Onsite Waste Disposal Ordinance</i>	Environmental Health, Safety and Land Division (“Environmental Specialist”)	Failure to correct on-site waste disposal system, constituting threat to public health.
409	<i>Water Resources</i>	Oneida Conservation	Failure to report discharging substance to waters of reservation.

- 236
- 237     ▪ **Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.** The following  
 238 laws of the Nation specifically authorize citations but do not specify a process or timeframe for  
 239 how citations may be contested in the Judiciary. The process and timeframes included in the  
 240 Citations law will now apply to any citations issued under these laws.  
 241         ○ *Conclusion:* The proposed Citations law will apply to any citations issued under the  
 242 following law of the Nation:  
 243

244 *Chart 5. Oneida Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.*

Chapter	Law	Authority to Enforce	Example Violation
405	<i>Recycling and Solid Waste Disposal*</i>	Oneida Police Department and Oneida Conservation	Improperly dumping solid waste within reservation boundaries

245 *\*The Recycling and Solid Waste Disposal Law is currently on the LOC’s Active Files List*  
 246 *for amendments.*  
 247

- 248     ▪ **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process**  
 249 **without Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and  
 250 state that appeals may be filed with the Judiciary, but do not specify a process or timeframe for  
 251 how those appeals will be handled. It appears that the process and timeframes included in the  
 252 Citations law will likely apply to any citations issued under these laws.  
 253         ○ *Conclusion:* The proposed Citations appears to apply to any citations issued under the  
 254 following laws of the Nation:  
 255  
 256  
 257

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*Chart 6. Oneida Laws that Authorize Fines and Include Judiciary Appeals Process w/o Timelines*

Chapter	Law	Authority to Enforce	Example Violation
115	Tobacco	Oneida Police Department	Selling tobacco products in violation of the law.
302	Emergency Management and Homeland Security	Oneida Police Department	Willfully obstruct, hinder or delay the implementation of emergency response.
305	Oneida Food Service Code*	Environmental Health, Safety and Land Division and Licensing.	Selling food or food products on tribal property without a license.
306	Tattoo and Body Piercing	Environmental Health, Safety and Land Division and Licensing.	Performing tattooing or body piercing without a license.
701	Marriage	Licensing Department	False statement to obtain a marriage license.

\*The Oneida Food Service Code is currently on the LOC's Active Files List for amendments.

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- **Laws that Authorize “Fines, Penalties and Forfeitures” and Do Not Include Judiciary Appeals Process.** The following laws of the Nation authorize “fines, penalties and forfeitures” but do not specify a process or timeframe for how citations may be contested in the Judiciary. It appears that the process and timeframes included in the Citations law will likely apply to any citations issued under these laws.
  - *Conclusion:* The proposed Citations law appears to apply to any citations issued under the following laws of the Nation:

*Chart 7. Oneida Laws that Authorize Fines and Do Not Include Judiciary Appeals Process.*

Chapter	Law	Authority to Enforce	Example Violation
114	Notary Act	“Official designated by Oneida Business Committee.”	Impersonating a notary public.
408	Sanitation Ordinance	Utilities Department.	Continuing Violations.

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- **Laws that Authorize Citations but include Land Commission Appeals Process.** The following laws of the Nation authorize citations, but direct that any appeals be filed with the Land Commission rather than the Nation’s Judiciary. Therefore, the following laws are excluded from the proposed Citations law [8 O.C. 807.7-1].
  - *Conclusion:* The proposed Citations law will not apply to citations issued under the following laws of the nation.

*Chart 8. Oneida Laws that Authorize Citations and Conflict with Proposed Citations Law*

Chapter	Law	Authority to Enforce	Example Violation
402	Non-Metallic Mine Reclamation	Environmental Health, Safety and Land Division or designee.	Violating an order requiring an operator to comply with the law.
605	Zoning and Shoreland Protection	Zoning Administrator.	Public Nuisance. Failure to obtain land use permit or conditional use permit.

- 279     ▪ **Laws that include Penalties but Do Not Fall Under Proposed Citations law.** The following laws  
 280 of the Nation authorize various alternative penalties for violations of the law, but do not include a  
 281 citation process or Judiciary appeals process. It can be reasonably concluded that the following  
 282 laws would not fall under the jurisdiction of the proposed Citations law as currently drafted.  
 283         ○ *Conclusion:* The proposed Citations law does not appear to apply to penalties issued under  
 284 the following laws.  
 285

286     *Chart 9. Oneida Nation Laws with Other Penalties Where Citations Law Does Not Apply.*

Chapter	Law
403	Oneida Woodcutting Ordinance
411	Clean Air Policy
505	Motor Vehicle Registration
507	Alcohol Beverage Licensing Law
602	Leasing Law
603	Building Code

287  
 288     **B. Laws of the Nation that Authorize Citations with Land Commission Appeals Process.** The following  
 289 laws of the Nation authorize citations but direct that appeals be heard by the Land Commission rather  
 290 than the Judiciary:

- 291     ▪ **Zoning and Shoreland Protection law [6 O.C. 605]**  
 292         ○ *Purpose.* The purpose of the Zoning and Shoreland Protection law includes establish a  
 293 zoning plan for tribal lands, regulate the use of lands and buildings and provide for the  
 294 administration and enforcement of this law, among other purposes [3 O.C. 304.1-1].  
 295         ○ *Enforcement.* Any person who violates any provision of this law, or who shall take any  
 296 action on or with respect to any land or structure which is not in compliance with this law,  
 297 shall be guilty of a civil infraction and shall be issued a fine in accordance with the schedule  
 298 adopted by the Oneida Business Committee upon recommendation of the Land  
 299 Commission.  
 300         ○ *Appeals.* Any person issued a fine under this law may contest the fine by attending a  
 301 hearing before the Land Commission. The fine shall specify the date, time and place of the  
 302 hearing. The hearing shall take place at least five (5) days after the fine is issued. After the  
 303 hearing, the Land Commission shall determine whether the person is responsible for the  
 304 fine, as was issued by the Zoning Administrator and may set a new date for when the fine  
 305 shall be paid.  
 306         ○ *Conclusion.* The proposed Citations law states that citation hearings shall be heard in the  
 307 Oneida Judiciary, while the Zoning and Shoreland Protection law states that fines issued  
 308 under that law must be contested at a hearing of the Oneida Land Commission. Therefore,  
 309 this law is excluded from the proposed Citations law [8 O.C. 807.7-1]. The proposed  
 310 Citations law will not apply to citations issued under the Zoning and Shoreland Protection  
 311 law.
- 312     ▪ **Non Metallic Mine Reclamation law [4 O.C. 406]**  
 313         ○ *Purpose.* The purpose of the Non-Metallic Mine Reclamation law is to ensure the effective  
 314 reclamation of nonmetallic mining sites on which nonmetallic mining takes place within  
 315 the boundaries o the reservation [4 O.C. 402.1-1].  
 316         ○ *Enforcement.* The Oneida Zoning Department or designee may issue a citation to collect  
 317 fines to enforce this law, a permit issued pursuant to this law or a reclamation plan approved  
 318 under this law.  
 319         ○ *Appeals.* A person who is subject to a citation issued pursuant to this section shall have  
 320 sixty (60) days to either appeal the citation to the Land Commission or review or pay the  
 321 fine.



322 ○ *Conclusion.* The proposed Citations law states that citations hearings shall be heard in the  
323 Oneida Judiciary, while the Non-Metallic Mine Reclamation Law states that appeals shall  
324 be heard by the Land Commission. Therefore, this law is excluded from the proposed  
325 Citations law [8 O.C. 807.7-1]. The proposed Citations law will not apply to citations  
326 issued under the Non-Metallic Mine Reclamation law.

327 **C. Laws of the Nation that Authorize Citations.** The following laws of the Nation authorize citations, fines  
328 or forfeitures and do not conflict with the proposed Citations law. The provisions of the proposed  
329 Citations law will likely apply to citations issued under any of the following laws:

330 ■ **Domestic Animals law [3 O.C. 304]**

331 ○ *Purpose.* The purpose of the Domestic Animals law is to protect the health, safety, and  
332 welfare of the community set minimum standards for treatment of animals; prohibit certain  
333 species of animals from being brought on the reservation; regulate the keeping of livestock  
334 on lots zoned residential, and establish consequences for damages caused by domestic  
335 animals [3 O.C. 304.1-1].

336 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens have the  
337 authority to issue citations according to the fine and penalty scheduled developed in  
338 accordance with the Domestic Animals law.

339 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
340 in the Domestic Animals law. The new requirements of the proposed Citations law will  
341 now apply to any citations issued under the Domestic Animals law.

342 ■ **Curfew law [3 O.C. 308]**

343 ○ *Purpose.* to protect the health, safety, and welfare of persons and property within the  
344 Reservation by regulating the activities of minors on the Reservation during certain  
345 hours, while imposing certain obligations and responsibilities upon the parents,  
346 guardians, and/or legal custodians of a minor for the control and supervision of that  
347 minor [3 O.C. 308.1-1].

348 ○ *Enforcement.* The Oneida Police Department has the authority to enforce this law and issue  
349 citations to the minor or minor's parent for curfew violations in accordance with the law  
350 [3 O.C. 308.6].

351 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
352 in the Curfew law. The new requirements of the proposed Citations law will now apply to  
353 any citations issued under the Curfew law.

354 ■ **Hunting, Fishing and Trapping law [4 O.C. 406]**

355 ○ *Purpose.* The purpose of the Hunting, Fishing and Trapping law is to protect and conserve  
356 wildlife on the reservation and to promote respect among sportsmen and the environment  
357 [4 O.C. 406.1-1].

358 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens may issue  
359 citations to any person found in violation of the law or corresponding rules. [4 O.C. 406.5-  
360 4 and 406.10].

361 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
362 in the Hunting, Fishing and Trapping law. The new requirements of the proposed Citations  
363 law will now apply to any citations issued under the Hunting, Fishing and Trapping law.

364 ■ **All-Terrain Vehicle law [4 O.C. 410]**

365 ○ *Purpose.* The purpose of the All-Terrain Vehicle law is to govern the safe use of all-terrain  
366 vehicles within the jurisdiction of the Oneida Reservation to allow enforcement for  
367 protection of the community members and environment [4 O.C. 410.1-1].

368 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are  
369 authorized to enforce and take any appropriate action to prevent or remove a violation of  
370 this law. Citations for violations of this law and/or orders issued pursuant to this law

- 371 include sanctions, fines and penalties in accordance with the fine schedule developed in  
372 accordance with the law [4 O.C. 410.6 and 410.7].
- 373 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
374 in the All-Terrain Vehicle law. The new requirements of the proposed Citations law will  
375 now apply to any citations issued under the All-Terrain Vehicle law.
  - 376 ■ **Public Use of Tribal Land law [6 O.C. 609]**
    - 377 ○ *Purpose.* The purpose of the Public Use of Tribal Land law is to prevent improper access,  
378 use and trespass to tribal lands [6 O.C. 609.1-1].
    - 379 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are  
380 authorized to take any appropriate action to prevent or remove a violation of this law.  
381 Citations for violation of this law may include fines, penalties and other orders in  
382 accordance with the citation schedule applicable to this law [6 O.C. 609.7].
    - 383 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
384 in the Public Use of Tribal Land law. The new requirements of the proposed Citations law  
385 will now apply to any citations issued under the Public Use of Tribal Land law.
  - 386 ■ **Recycling and Solid Waste Disposal law [4 O.C. 405]**
    - 387 ○ *Purpose.* The purpose of the Recycling and Solid Waste Disposal law is to promote the  
388 health, safety and welfare of residents and members of the Oneida Nation through the  
389 establishment of standards necessary to the sanitary and environmentally sound disposal  
390 of recyclable materials [4 O.C. 405.1-1].
    - 391 ○ *Enforcement.* All Oneida Reservation Conservation Enforcement Officers and Police  
392 Officers shall be empowered to enforce the provisions of this law. Any person who violates  
393 a provision of this “ordinance” may be issued a citation by the Oneida Conservation  
394 Warden(s) [4 O.C. 405.12].
    - 395 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
396 in the Recycling and Solid Waste Disposal law. The new requirements of the proposed  
397 Citations law will now apply to any citations issued under the Recycling and Solid Waste  
398 Disposal law.
  - 399 ■ **Tribal Environmental Response law [4 O.C. 401]**
    - 400 ○ *Purpose.* The purpose of the Tribal Environmental Response law is to regulate the  
401 identification, investigation and remediation of discharges of hazardous substances to the  
402 environment, identify sites where discharge has occurred, and eliminate contamination  
403 from and control the threat of discharge of hazardous substances [4 O.C. 401.1-1].
    - 404 ○ *Enforcement.* Any person who does not comply with a compliance order issued by the  
405 Environmental Health, Safety and Land Division may receive a penalty in accordance with  
406 the fine schedule. Any order issued pursuant to this law that is not complied with may be  
407 physically enforced by the Division [4 O.C. 401.10].
    - 408 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
409 in the Tribal Environmental Response law. The new requirements of the proposed Citations  
410 law will now apply to citations issued under the Tribal Environmental Response law.
  - 411 ■ **Onsite Waste Disposal [4 O.C. 407]**
    - 412 ○ *Purpose.* The purpose of the Onsite Waste Disposal law is to establish regulations to ensure  
413 that private onsite sewage treatment systems will fulfill Oneida Tribal goals for improving  
414 environmental health and safety [4 O.C. 407.1-2].
    - 415 ○ *Enforcement.* The Environmental Specialist may issue an Administrative Enforcement  
416 Order when a violation of any provision of this law occurs... the Order shall be given to  
417 the party responsible for the violation and shall state the nature of the violation, possible  
418 penalties for failure to correct, and shall state the right to contested the matter with the  
419 Oneida Judiciary [4 O.C. 407.7-1].

- 420           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
421           in the Onsite Waste Disposal law. The new requirements of the proposed Citations law will  
422           now apply to any citations issued under the Onsite Waste Disposal law.
- 423       ■ ***Water Resources [4 O.C. 409]***
- 424           ○ *Purpose.* The purpose of the Water Resources law is to grant necessary powers and to  
425           organize a comprehensive program under a single tribal department for the enhancement  
426           of the quality management and protection of all waters of the Reservation, ground and  
427           surface, public and private [4 O.C. 409.1-2].
- 428           ○ *Enforcement.* The Oneida Conservation Department shall enforce this law, and all rules  
429           and orders issued by the Department [4 O.C. 409.6-3].
- 430           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
431           in the Water Resources law. The new requirements of the proposed Citations law will now  
432           apply to any citations issued under the Water Resources law.
- 433       ■ ***Emergency Management and Homeland Security law [3 O.C. 302]***
- 434           ○ *Purpose.* The purpose of the Emergency Management and Homeland Security law is to  
435           provide for the development and execution of plans for the protection of residents, property  
436           and the environment in an emergency or disaster [3 O.C. 302.1-1].
- 437           ○ *Enforcement.* Violators of this law may be subject to a fine of not more than two hundred  
438           dollars (\$200) per violation to be issued by the Oneida Police Department [3 O.C. 302.9].
- 439           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
440           in the Emergency Management and Homeland Security law. The new requirements of the  
441           proposed Citations law will now apply to any citations issued under the Emergency  
442           Management and Homeland Security law.
- 443       ■ ***Oneida Food Service Code [3 O.C. 305]***
- 444           ○ *Purpose.* The purpose of the Oneida Food Service Code is to protect and preserve the safety  
445           of Oneida Nation citizens and others within its jurisdiction in conjunction with the most  
446           current United States Public Health Service Food Code [3 O.C. 305.1-1].
- 447           ○ *Enforcement.* In addition to the suspension or closing down of a business that violates the  
448           law, a food service vendor who violates any provision of the code shall forfeit not less than  
449           five dollars (\$5) nor more than five hundred dollars (\$500) upon conviction. Environmental  
450           Health, Safety and Land Division, Licensing Department and Oneida Police Department  
451           have authority to enforce various provisions of this law.
- 452           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
453           in the current Oneida Food Service Code. The new requirements of the proposed Citations  
454           law will appear to apply to any citations issued under the Oneida Food Service Code.
- 455       ■ ***Tattoo and Body Piercing [3 O.C. 306]***
- 456           ○ *Purpose.* The purpose of the Tattoo and Body Piercing law is to regulate tattooists, tattoo  
457           establishments, body piercers and body piercing establishments under the jurisdiction of  
458           the Tribe in order to protect public health and safety [3 O.C. 306.1-1].
- 459           ○ *Enforcement.* Environmental Health and Safety Division and Licensing Department [3  
460           O.C. 306.13].
- 461           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
462           in the Tattoo and Body Piercing law. The new requirements of the proposed Citations law  
463           appear to apply to any citations issued under the Tattoo and Body Piercing law.
- 464       ■ ***Tobacco law [1 O.C. 115]***
- 465           ○ *Purpose.* The purpose of the Tobacco law is to regulate the sale, possession and distribution  
466           of cigarettes within the Reservation [1 O.C. 115].
- 467           ○ *Enforcement.* Violators subject to the jurisdiction of the Nation shall be subject to a fine of  
468           not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida  
469           Police Department and paid to the Nation [1 O.C. 115.8-1].

- 470           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
471 in the Tobacco law. The new requirements of the proposed Citations law will now apply  
472 to any citations issued under the Tobacco law.
- 473     ▪ **Marriage law [7 O.C. 701]**
- 474           ○ *Purpose.* The purpose of the Marriage law is to exercise the sovereign right of the Oneida  
475 Nation to regulate the rights and responsibilities relating to marriages [7 O.C. 701.1-1].
- 476           ○ *Enforcement.* The Department shall promulgate rules that establish a fine schedule for  
477 persons who violate this law [7 O.C. 701.7-1].
- 478           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
479 in the Marriage law. The new requirements of the proposed Citations law appear to apply  
480 to any citations issued under the Marriage law.
- 481     ▪ **Notary Act [1 O.C. 114]**
- 482           ○ *Purpose.* The purpose of the Notary Act is to promote, serve and protect the public interest  
483 and to simplify, clarify and modernize the law governing notaries [1 O.C. 114.1-2].
- 484           ○ *Enforcement.* A notary who knowingly and repeatedly performs or fails to perform  
485 any act prohibited or mandated, respectively, by this Act shall forfeit not less than \$50.00  
486 nor more than \$500.00... Any and all of the sections of this Act may be enforced by an  
487 official designated by the Oneida Business Committee for separate issues, or for all issues  
488 [1 O.C. 114.6-4 – 114.6-9].
- 489           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
490 in the Notary Act law. The new requirements of the proposed Citations law appear to apply  
491 to any citations issued under the Notary Act.
- 492     ▪ **Sanitation Ordinance [3 O.C. 306]**
- 493           ○ *Purpose.* The purpose of the Sanitation Ordinance is to assure that any water and sanitary  
494 utilities that are developed within the jurisdiction of the Oneida Tribe shall be operated and  
495 maintained in a manner that is fiscally responsible, responsive to customer needs,  
496 environmentally safe and governmentally functional [4 O.C. 408].
- 497           ○ *Enforcement.* Any person who shall continue any violation beyond the time limit provided  
498 for in sec. (b) may be assessed a fine of not more than \$250.00 [4 O.C. 408.11].
- 499           ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions  
500 in Sanitations Ordinance. The new requirements of the proposed Citations law appear to  
501 apply to any citations issued under the Sanitation Ordinance law.
- 502 **D. References to Other Laws.** The following laws of the Nation are referenced in the Citations law. The  
503 proposed Citations law does not conflict with any of the referenced laws.
- 504     ▪ *Garnishment law.* The defendant’s failure to satisfy a fine and/or restitution may result in per  
505 capita attachment, wage garnishment and/or other collection processes available to the Court [8  
506 O.C. 807.6-2(d)].
- 507     ▪ *Per Capita law.* The defendant’s failure to satisfy a fine and/or restitution may result in per capita  
508 attachment, wage garnishment and/or other collection processes available to the Court [8 O.C.  
509 807.6-2(d)].
- 510     ▪ *Rules of Appellate Procedure.* Any person wishing to contest the determination of the Court may  
511 appeal to the Nation’s Court of Appeals in accordance with the Rules of Appellate Procedure [8  
512 O.C. 807.6-3].
- 513 **E. Existing Judiciary Rules.** The Oneida Business Committee recently adopted Judiciary law Rule #1 –  
514 Oneida Trial Court Rules. This new rule, developed by the Judiciary and adopted by the Oneida  
515 Business Committee on September 25, 2019, includes procedures for how citation hearings are held at  
516 the Judiciary [8 O.C. 801 Judiciary law Rule #1 – 1.17 Citation Hearings].
- 517     ▪ *Conclusion.* The proposed Citations law does not conflict with the citation hearing procedures in  
518 Judiciary Law Rule No. 1 – Oneida Trial Court Rules.
- 519



520 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 521 A. *Effect on Existing Rights.* The proposed Citations law protects due process rights by:
- 522     ▪ Requiring that all citations be properly noticed, including a notice of the defendant’s rights and
  - 523     privileges, hearing dates and information;
  - 524     ▪ Ensuring that defendants have the right to contest their citations in the Nation’s Judiciary;
  - 525     ▪ Establish a formal process for stipulations that require defendants to acknowledge that they are
  - 526     waiving their rights to contest the citation in court and sign a statement that they enter into the
  - 527     agreement free of duress and coercion.
- 528

529 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

- 530 A. *Enforcement.* Each law of the Nation typically includes an “enforcement” section which gives
- 531 authority to a specific agency or department to enforce the law. Most laws of the Nation are enforced
- 532 by the Oneida Police Department or Conservation Wardens. For more information, see “Section 6:
- 533 Existing Legislation.”
- 534

535 **SECTION 9. OTHER CONSIDERATIONS**

- 536 A. *Current Citation Data.* The following data is provided for information:
- 537     ▪ *Oneida Police Department (September 2018 – August 2019)*
    - 538         ○ Nineteen (19) Domestic Animals citations issued in the past year. The most common
    - 539         citations were “mistreatment of animals” and “animal running at large.”
    - 540         ○ The department did not report issuing citations under any other laws of the Nation.
    - 541         ○ *Source: Email communication with OPD (9/9/19).*
  - 542     ▪ *Oneida Conservation Wardens*
    - 543         ○ Oneida Police Department reported that Conservation has no citations issued over the past
    - 544         year.
    - 545         ○ *Source: Email communication with OPD (9/11/19).*
- 546 B. *Laws in Progress that Include Citations.* At the time this analysis was drafted, the LOC is actively
- 547 working on drafting or amending the following laws which include citations:
- 548     ▪ The Oneida Food Service Code
  - 549     ▪ Recycling and Solid Waste Disposal law.
- 550 C. *Fiscal Impact.* A fiscal impact statement has not yet been requested.
- 551     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
  - 552     emergency legislation [1 O.C. 109.6-1].
  - 553     ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
  - 554     Committee and may be prepared by any agency who may receive funding if the legislation is
  - 555     enacted; who may administer a program if the legislation is enacted; who may have financial
  - 556     information concerning the subject matter of the legislation; or by the Finance Office, upon request
  - 557     of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

558

559



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54255-0365  
 Oneida-nsn.gov



TO: Lawrence E. Barton, Chief Financial Officer  
 Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer  
 Rae M. Skenandore, Financial Management Analyst

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: January 15, 2020

RE: Citations Law Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing a Citations law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, “*Interpreting ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative Operating Committee.

On January 15, 2020, the Legislative Operating Committee approved the final draft of the proposed Citations law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed Citations law by January 29, 2020.

A copy of the proposed Citations law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

**Requested Action**

Provide the LOC a fiscal impact statement of the proposed Citations law by January 29, 2020.



Legislative Operating Committee  
January 15, 2020

# Children’s Burial Fund Policy Amendments

<b>Submission Date:</b> 8/7/19	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> n/a

**Summary:** *This item was submitted on behalf of the Oneida Trust Enrollment Committee for the purpose of making general updates to the Law which would remove outdated restrictions for membership using benefit.*

**8/7/19 LOC:** Motion by Kirby Metoxen to add the Children’s Burial Fund Policy Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

**11/14/19:** *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was the development of a legislative plan. LRO will schedule work meeting with representatives of OTEC and Trust Enrollment Department to discuss first draft of proposed amendments.

**12/2/19:** *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Falck, Maureen Perkins, Bonnie Pigman. The purpose of this work meeting was to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC.

**12/4/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was for the LOC to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC. The LOC discussed a couple minor revisions. The LRO will update the draft and develop a legislative analysis and bring those items to an upcoming LOC meeting.

**12/18/19 LOC:** Motion by Jennifer Webster to accept the draft of the Children’s Burial Fund amendments and direct that a legislative analysis be completed and brought back to the January 15, 2020, Legislative Operating Committee meeting; seconded by Kirby Metoxen. Motion carried unanimously.

**Next Steps:**

- Accept the legislative analysis.
- Approve the public meeting packet and forward the Children’s Burial Fund amendments to a public meeting to be held on February 13, 2020.





**kaya?takenhásla ashakotiya?tátane? latiksa?shúha**  
 (ga ya day gen hasla ah sa go deeya dah da nay ladeek sa sue ha)  
*It is helpful for them to bury them the children*

**CHILDREN’S BURIAL FUND POLICY AMENDMENTS  
 LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<b>REQUESTER:</b> Oneida Trust Enrollment Committee	<b>SPONSOR:</b> Kirby Metoxen	<b>DRAFTER:</b> Clorissa N. Santiago	<b>ANALYST:</b> Maureen Perkins
<b>Intent of the Amendments</b>	The proposed amendments to the Children’s Burial Fund Policy (Law) intend to: <ul style="list-style-type: none"> <li>• remove the limitations for certain uses of the Children’s Burial Fund (Fund) which adds flexibility to the Law;</li> <li>• open the Fund to all children ages zero to six (0-6) who are not enrolled but eligible for enrollment in the Nation by removing restrictions related to children six (6) years of age at time of death;</li> <li>• add casket or coffin to the list of eligible funeral related expenses as a specific expense where it is implied under the current Law. The amendments also add casket or coffin company to the list of approved funeral related services and products eligible for use of the Fund;</li> <li>• clarify that funds are payable by invoice;</li> <li>• prohibit the use of funds for travel and/or lodging to attend a funeral;</li> <li>• update the Law in accordance with formatting requirements contained in the Legislative Procedures Act [1 O.C. 109];</li> <li>• update the Law for clarity to include minor drafting revisions; and</li> <li>• update the title of the Law to the Children’s Burial Fund.</li> </ul>		
<b>Purpose</b>	It is the purpose of this Law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation [1 O.C. 129.1-1].		
<b>Affected Entities and Individuals</b>	Oneida Trust Enrollment Committee (OTEC), Oneida Business Committee (OBC), Oneida Trust Enrollment Department, anyone who applies for funds for deceased children ages six (6) years or younger that are not enrolled but are eligible for enrollment in the Nation		
<b>Related Legislation</b>	Oneida Nation Constitution, Membership Ordinance, Legislative Procedures Act		
<b>Enforcement</b>	There are no enforcement measures in the current Law or proposed amendments.		
<b>Due Process</b>	There are no due process measures in the current Law or proposed amendments.		
<b>Public Meeting</b>	A public meeting has not yet been held.		
<b>Fiscal Impact</b>	A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.		

**SECTION 2. LEGISLATIVE DEVELOPMENT**

A. **Background.**

The Law provides burial assistance for children ages zero to six (0-6) who, upon death, were eligible for enrollment in the Nation but not enrolled.

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8 **History.**

- 9 • **Resolution BC-01-04-95-A.** The Burial Endowment Fund Policy was established by this  
10 resolution to provide a burial benefit for enrolled members of the Nation and their children aged  
11 zero to five (0-5) if the child would have been eligible for enrollment in the Nation at the time of  
12 death [*Burial Endowment Fund Policy 2-2*].
- 13 • **Resolution BC-10-01-08-A.** The OBC and OTEC jointly adopted this resolution approving the  
14 concept of the Oneida Life Insurance Plan Plus (OLIPP) to present to the General Tribal Council  
15 (GTC) for approval. OLIPP is life insurance that provides a benefit to the designated beneficiary  
16 of the enrolled member of the Nation upon death.
- 17 ○ OLIPP does not help with burial and other funeral expenses for children that are eligible for  
18 enrollment in the Nation but not enrolled.
- 19 • **Resolution GTC-01-17-09-B.** The GTC approved OLIPP for implementation in fiscal year 2010  
20 and directed that the Burial Endowment Fund Policy be repealed.
- 21 • **Resolution BC-09-23-09-E.** This Burial Endowment Fund Policy was repealed by this resolution.
- 22 • **Resolution BC-09-23-09-F.** The Children’s Burial Fund Policy (Policy) was adopted on an  
23 emergency basis by this resolution to be effective on the date of implementation of the OLIPP. The  
24 Policy included provisions recommended by OTEC to maintain a burial benefit for children ages  
25 three and under (0-3) who are not enrolled but eligible for enrollment in the Nation at the time of  
26 death.
- 27 • **Resolution BC-02-10-10-B.** The Children’s Burial Fund Policy was permanently adopted by this  
28 resolution to provide financial assistance towards funeral related expenses for children ages zero to  
29 five (0-5) that were eligible for enrollment in the Nation but not enrolled at the time of death.  
30 Additionally; children who were six (6) years of age at the time of death and approved for  
31 enrollment by OTEC, but not approved for enrollment by the OBC, were also covered under this  
32 Policy.

- 33 B. **Expected Benefits.** The amendments create flexibility by removing restrictions and funding caps for  
34 certain covered expenses. Additionally; the amendments open the Fund to all deceased children up to  
35 six years of age who are not enrolled in the Nation at the time of death but eligible for enrollment.

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37 **SECTION 3. CONSULTATION AND OUTREACH**

- 38 A. **Participation.** The Oneida Trust Enrollment Committee (OTEC) submitted a request to the LOC to  
39 consider amending the Law. The Oneida Trust Enrollment Department staff participated in the  
40 development of the amendments to this Law.
- 41 B. **Data.** The Oneida Trust Enrollment Department indicated that the fund has been used for five (5)  
42 eligible children since 2015 [*Email Communication 12/16/19*].
- 43 • **Impact.** If all five requests of the Fund were for the maximum amount available of \$3,500; the  
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- 45 C. **Other Tribal Laws.** The following tribal laws and additional resources were reviewed in the  
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- 47 • Wichita and Affiliated Tribes Burial Assistance Guidelines  
48 • Leech Lake Band of Ojibwe Funeral Assistance Program  
49 • Absentee Shawnee Tribe Burial Assistance Program  
50 • Pawnee Nation of Oklahoma Burial Assistance Policy

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62 • December 4, 2019, a work meeting was held with the Legislative Operating Committee.  
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## 64 SECTION 5. CONTENTS OF THE LEGISLATION

65 This section reviews the content of the legislation and describes proposed amendments.

66 A. ***Adoption, Amendment, Repeal [129.2].*** This section was updated to meet the formatting requirements  
67 established by the Legislative Procedures Act [*1 O.C. 109.11-1(b)*].

68 B. ***Qualifications for Financial Assistance [129.4].*** This section details qualification criteria to determine  
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- 71 • The Fund will now be available to all children ages zero to six (0-6) years of age who are  
72 not enrolled but are eligible for enrollment in the Nation at the time of death.
  - 73 ○ A requirement that is specific to deceased children who were six (6) years of age  
74 at the time of death and had their enrollment approved by the Oneida Trust  
75 Enrollment Committee, but not approved by the Oneida Business Committee, was  
76 deleted from the Law [*1 O.C. 129.4-2 of Current Law*].
  - 77 ○ ***Impact.*** The goal of removing this provision is to simplify the process for the  
78 Oneida Trust Enrollment Department. Enrollment approval by OTEC does not  
79 affect whether the child was eligible for enrollment in the Nation which is the  
80 criteria for eligibility for the remainder of children covered under this Law [*Work*  
81 *Meeting Notes December 2, 2019*].

82 C. ***Requesting Financial Assistance [129.5].*** This section details requirements related to requests for  
83 financial assistance from the Fund. The deadline for submitting requests for financial assistance from  
84 the Fund remains at three hundred and sixty-five (365) days from the date of death. The required  
85 documentation that must accompany a request for financial assistance has not changed and includes  
86 original invoices, birth certificate, death certificate or fetal death report, and voluntary paternity and/or  
87 maternity statement, if applicable. The Oneida Trust Enrollment Department is responsible for  
88 processing all paperwork for the payment of approved invoices received for payment directly to the  
89 funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or  
90 catering or food vendors. The following have been amended in this section of the Law:

- 91 • Payments from the Fund are made by invoice [*1 O.C. 129.6-2*].
  - 92 ○ ***Impact.*** Language was removed from the Law regarding including payments to  
93 vendors on the funeral home invoice [*1 O.C. 129.5 of Current Law*]. Removing  
94 this language does not change the practice of including payments to other vendors  
95 on the funeral home invoice which is still an option.
- 96 • The LOC added a casket or coffin to the list of qualified funeral related expenses and casket  
97 or coffin company to the list of approved funeral related providers of services and products  
98 eligible for use of the Fund.
  - 99 i. ***Impact.*** This change opens the use of the Fund, so Fund recipients can purchase a  
100 casket or coffin from different sources. Previously; although not specifically  
101 mentioned in the law, a coffin or casket was an eligible expense under the  
102 procedures section related to payment to the funeral home [*1 O.C. 129.5-4 of*  
103 *Current Law*].

- 104 • Provisions detailing the approved funeral related expenses were moved to the Use of Funds  
105 section.

106 D. ***Use of Funds [129.6].*** This section was reorganized and focuses on current and new acceptable funeral  
107 related expenses covered by the Fund, as well as prohibited uses of the Fund. The amount of funds  
108 available has not changed and shall not exceed three thousand five hundred dollars (\$3,500) for funeral  
109 related expenses. Funds are payable by invoice and funds are prohibited from being paid to individuals.  
110 Any expenses over three thousand five hundred dollars (\$3,500) continue to be the responsibility of the  
111 family or responsible party. The following amendments to the Law appear in this section:

- The Law was amended to state that approved expenses are payable by invoice and language was removed related to adding expenses to the funeral home invoice.
  - i. **Impact.** This amendment simplifies the language which allows for payment by invoice which may include services added to the funeral home invoice such as payment to Oneida Hymn Singers or food vendors.
- The list of approved funeral related expenses was amended to include casket or coffin costs.
  - i. **Impact.** Although not explicitly stated as an approved expense; payment for casket or coffin costs was implied under the current Law under the procedures section related to payment to the funeral home [*1 O.C. 129.5-4 of Current Law*].
- Specific limitations related to food expenses and monument and/or headstone costs were removed [*1 O.C. 129.5-4 of Current Law*].
- An amendment was added to prohibit reimbursement of travel and/or lodging expenses for attending a funeral.

## SECTION 6. RELATED LEGISLATION

### A. Laws of the Nation Related to this Legislation.

- **Oneida Nation Constitution.** The laws of the Nation are adopted under the authority of the Constitution of the Oneida Nation [*1 O.C. 129.2-5*]. The Oneida Nation Constitution requires at least one-fourth degree Oneida blood to be eligible for membership in the Nation [*Oneida Nation Constitution, Article II(c)*]. This requirement is further developed through the Membership Ordinance.
- **Membership Ordinance** [*1 O.C. 124*]. The Membership Ordinance was drafted in accordance with Article II, Section 2 of the Oneida Nation Constitution and provides the implementation of the enrollment procedures and further qualifications for membership with the Oneida Nation. The Oneida Trust Enrollment Department will use this law to determine if enrollment eligibility in the Nation has been satisfied in accordance with section 129.4(c) of this Law.
- **Legislative Procedures Act** [*1 O.C. 109*]. This law governs the required format for all laws of the Nation. The format of the amended Law was updated to meet requirements in this law.

B. There are no conflicts between the amendments and the Oneida Code of Laws.

## SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- A. The current and amended Laws do not contain any due process or enforcement provisions.
- B. Existing staff of the Oneida Trust Enrollment Department are responsible for the implementation and operation of the Law.

## SECTION 8. OTHER CONSIDERATIONS

A. ***Fiscal Impact.*** Please refer to the fiscal impact statement for any fiscal impacts.

- a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation.
  - i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee [*1 O.C. 109.6-1*].
  - ii. Fiscal Impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating Committee [*1 O.C. 109.6-1(a) and (b)*].
  - iii. The fiscal impact statement is important in the decision-making process related to legislation developed by the Legislative Operating Committee. When a fiscal impact statement is requested from the Finance Department; the Chief Financial Officer will submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of the draft legislation [*Resolution BC-09-25-19*].



**ONEIDA NATION PUBLIC MEETING NOTICE****Thursday, February 13, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room  
N7210 Seminary Rd., Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to**

LOC@oneidanation.org

**Ask Questions here**

LOC@oneidanation.org

920-869-4312

**CHILDREN'S BURIAL FUND****AMENDMENTS**

The purpose of this law is to provide financial assistance of up to \$3,500 towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment in the Nation.

**The Children's Burial Fund amendments will:**

1. Update qualifications for financial assistance from the Fund—now providing that financial assistance can be provided for any deceased child 6 years of age or younger, who was not enrolled, but eligible for enrollment with the Nation;
2. Clarify that casket or coffin costs are payable if identified on an invoice;
3. Prohibit payments from the Fund to be used for travel and/or lodging for attending a funeral; and
4. Remove the specific limitations on the use of the Fund for food expenses and monument and /or headstone costs.

**PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, FEBRUARY 20, 2020**

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

**PROVIDING EFFECTIVE PUBLIC COMMENTS**

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



**READ THE PUBLIC MEETING MATERIALS:** Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.



**PREPARE YOUR COMMENTS:** When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
The Children's Burial Fund is a good resource for families.	The amount of financial assistance provided by the Children's Burial Fund should be increased.	The \$3,500 of assistance allowed from the Children's Burial Fund provided for in section 129.6-1 should be increased to \$4,500.



**kaya?takenhásla ashakotiya?tátane? latiksa?shúha**

(ga ya day gen hasla ah sa go deeya dah da nay ladeek sa sue ha)

*It is helpful for them to bury them the children*

**CHILDREN’S BURIAL FUND POLICY AMENDMENTS  
 LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<b>REQUESTER:</b> Oneida Trust Enrollment Committee	<b>SPONSOR:</b> Kirby Metoxen	<b>DRAFTER:</b> Clorissa N. Santiago	<b>ANALYST:</b> Maureen Perkins
<b>Intent of the Amendments</b>	The proposed amendments to the Children’s Burial Fund Policy (Law) intend to: <ul style="list-style-type: none"> <li>• remove the limitations for certain uses of the Children’s Burial Fund (Fund) which adds flexibility to the Law;</li> <li>• open the Fund to all children ages zero to six (0-6) who are not enrolled but eligible for enrollment in the Nation by removing restrictions related to children six (6) years of age at time of death;</li> <li>• add casket or coffin to the list of eligible funeral related expenses as a specific expense where it is implied under the current Law. The amendments also add casket or coffin company to the list of approved funeral related services and products eligible for use of the Fund;</li> <li>• clarify that funds are payable by invoice;</li> <li>• prohibit the use of funds for travel and/or lodging to attend a funeral;</li> <li>• update the Law in accordance with formatting requirements contained in the Legislative Procedures Act [1 O.C. 109];</li> <li>• update the Law for clarity to include minor drafting revisions; and</li> <li>• update the title of the Law to the Children’s Burial Fund.</li> </ul>		
<b>Purpose</b>	It is the purpose of this Law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation [1 O.C. 129.1-1].		
<b>Affected Entities and Individuals</b>	Oneida Trust Enrollment Committee (OTEC), Oneida Business Committee (OBC), Oneida Trust Enrollment Department, anyone who applies for funds for deceased children ages six (6) years or younger that are not enrolled but are eligible for enrollment in the Nation		
<b>Related Legislation</b>	Oneida Nation Constitution, Membership Ordinance, Legislative Procedures Act		
<b>Enforcement</b>	There are no enforcement measures in the current Law or proposed amendments.		
<b>Due Process</b>	There are no due process measures in the current Law or proposed amendments.		
<b>Public Meeting</b>	A public meeting has not yet been held.		
<b>Fiscal Impact</b>	A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.		

**SECTION 2. LEGISLATIVE DEVELOPMENT**

**A. Background.**

The Law provides burial assistance for children ages zero to six (0-6) who, upon death, were eligible for enrollment in the Nation but not enrolled.

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8 **History.**

- 9 • **Resolution BC-01-04-95-A.** The Burial Endowment Fund Policy was established by this  
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- 38 A. **Participation.** The Oneida Trust Enrollment Committee (OTEC) submitted a request to the LOC to  
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101 mentioned in the law, a coffin or casket was an eligible expense under the  
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106 D. ***Use of Funds [129.6]***. This section was reorganized and focuses on current and new acceptable funeral  
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- An amendment was added to prohibit reimbursement of travel and/or lodging expenses for attending a funeral.

## SECTION 6. RELATED LEGISLATION

### A. Laws of the Nation Related to this Legislation.

- **Oneida Nation Constitution.** The laws of the Nation are adopted under the authority of the Constitution of the Oneida Nation [*1 O.C. 129.2-5*]. The Oneida Nation Constitution requires at least one-fourth degree Oneida blood to be eligible for membership in the Nation [*Oneida Nation Constitution, Article II(c)*]. This requirement is further developed through the Membership Ordinance.
- **Membership Ordinance** [*1 O.C. 124*]. The Membership Ordinance was drafted in accordance with Article II, Section 2 of the Oneida Nation Constitution and provides the implementation of the enrollment procedures and further qualifications for membership with the Oneida Nation. The Oneida Trust Enrollment Department will use this law to determine if enrollment eligibility in the Nation has been satisfied in accordance with section 129.4(c) of this Law.
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B. There are no conflicts between the amendments and the Oneida Code of Laws.

## SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- A. The current and amended Laws do not contain any due process or enforcement provisions.
- B. Existing staff of the Oneida Trust Enrollment Department are responsible for the implementation and operation of the Law.

## SECTION 8. OTHER CONSIDERATIONS

A. ***Fiscal Impact.*** Please refer to the fiscal impact statement for any fiscal impacts.

- a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation.
  - i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee [*1 O.C. 109.6-1*].
  - ii. Fiscal Impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating Committee [*1 O.C. 109.6-1(a) and (b)*].
  - iii. The fiscal impact statement is important in the decision-making process related to legislation developed by the Legislative Operating Committee. When a fiscal impact statement is requested from the Finance Department; the Chief Financial Officer will submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of the draft legislation [*Resolution BC-09-25-19*].



Title 1. Government and Finances – Chapter 129

~~CHILDREN’S BURIAL FUND POLICY~~

Kaya>takenh@la ashakotiya>t@ane> latiksa>sh&ha  
It is helpful for them to bury them the children

CHILDREN’S BURIAL FUND

129.1. Purpose and Policy

129.2. Adoption, Amendment, ~~Conflicts~~Repeal

129.3. Definitions

129.4. Qualifications for Financial Assistance

129.5. ~~Procedures~~ Requesting Financial Assistance

129.6. Use of Funds

**129.1. Purpose and Policy**

129.1-1. *Purpose.* It is the purpose of this ~~policy~~law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the ~~Oneida Tribe of Indians of Wisconsin~~Nation.

129.1-2. *Policy.* ~~The Oneida Tribe~~It is ~~committed~~the policy of the Nation to ~~providing~~provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our ~~Tribal~~members and their families.

~~129.1-3. This fund is established to provide an individual allotment, not to exceed \$3,500 per qualified individual, to defray the cost of funeral expenses.~~

**129.2. Adoption, Amendment, ~~Conflicts~~Repeal**

129.2-1. This ~~policy~~law was adopted by the Oneida Business Committee ~~by~~ resolution BC-02-10-10-B; ~~and amended by BC- - - - .~~

129.2-2. This ~~policy~~law may be amended ~~or repealed by the Oneida Business Committee and/or General Tribal Council~~ pursuant to the procedures set out in ~~Tribal Law~~the Legislatives Procedures Act.

129.2-3. Should a provision of this ~~policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law which are considered to have legal force without the invalid portions.

129.2-4. In the event of a conflict between a provision of this ~~policy~~law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this ~~policy~~law shall control. ~~Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~

129.2-5. This ~~policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

**129.3. Definitions**

129.3-1. This section shall govern the definitions of words and phrases used within this ~~policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

~~(b)~~(b) “Nation” means the Oneida Nation.

(c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

38 (ed) “Voluntary paternity/ and/or maternity statement” means the document created by the  
39 Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida  
40 parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine  
41 eligibility for enrollment.  
42

#### 43 **129.4. Qualifications for Financial Assistance**

44 129.4-1. ~~Except as provided in 129.4-2, In order~~ to be eligible for financial assistance from the  
45 Children’s Burial Fund the deceased child shall be ~~five (5);~~

46 (a) six (6) years of age or younger;

47 (b) not enrolled, but eligible for enrollment, with the Nation; and

48 ~~129.4-2. In the event the deceased is six (6) years of age, not enrolled, but eligible for enrollment,~~  
49 ~~the deceased shall be eligible for assistance if the Oneida Trust/Enrollment Committee had~~  
50 ~~approved the enrollment of the deceased prior to his or her death.~~

51 (c) eligible for enrollment with the Nation.  
52

#### 53 **129.5. Procedures Requesting Financial Assistance**

54 129.5-1. ~~The Oneida Trust Enrollment Department is designated to~~ shall process all requests for  
55 financial assistance from the Children’s Burial Fund.

56 129.5-2. Requests for ~~payment~~ financial assistance from the Children’s Burial Fund shall be made  
57 to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from  
58 the date of death.

59 129.5-3. ~~Original invoices~~ Upon making a request for financial assistance from the Children’s  
60 Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment  
61 Department ~~for payment.:~~

62 (a) all original invoices;

63 (b) birth certificate, death certificate, or fetal death report; and

64 (c) voluntary paternity and/or maternity statement in situations where paternity and/or  
65 maternity needs to be determined.

66 129.5-4. Upon receipt and verification of invoices and ~~the other~~ relevant ~~document(s) as required~~  
67 ~~under 129.5-5~~ documentation, the Oneida Trust Enrollment Department shall be responsible for  
68 processing the appropriate paper work for the payment to be made to the funeral home, monument  
69 company, casket or coffin company, cemetery, crematorium, churches, and/or catering/ or food  
70 vendors.

71 ~~129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the~~  
72 ~~Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be~~  
73 ~~submitted to the Enrollment Department prior to payment where paternity and/or maternity needs~~  
74 ~~to be determined.~~

75 ~~129.5-6. Food expenses are payable through a food voucher, added to the funeral home invoice,~~  
76 ~~or paid directly to the caterer/food vendor/restaurant, amount not to exceed \$200.00, which is~~  
77 ~~included under the \$3,500.00.~~

78 ~~129.5-7. Monument/headstone costs are payable directly to the vendor or may be added to the~~  
79 ~~funeral home invoice, amount not to exceed \$1,000.00, which is included under the \$3,500.00.~~

80 ~~129.5-8. Cemetery costs are payable directly to the vendor or may be added to the funeral home~~  
81 ~~invoice, amount to be included under the \$3,500.00.~~

82 ~~129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home~~  
83 ~~invoice, amount to be included under the \$3,500.00.~~

84 ~~129.5-10.~~

85 **129.6. Use of Funds**

86 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased  
87 child shall not exceed three thousand five hundred dollars (\$3,500).

88 129.6-2. The following funeral related expenses are payable if identified on an invoice:

89 (a) monument and/or headstone costs;

90 (b) casket or coffin costs;

91 (c) cemetery costs;

92 (d) church costs; and/or

93 (e) food costs.

94 129.6-3. Under no circumstances ~~will~~shall there be any payments from the Children’s Burial Fund  
95 for reimbursements ~~for~~of:

96 (a) funeral costs to individuals~~;~~ and/or

97 (b) travel and/or lodging for attending a funeral.

98 ~~129.5-11~~6-4. Any unexpended monies after payment(s) have been made ~~will~~shall remain in the  
99 ~~fund~~Children’s Burial Fund for other burials.

100 ~~129.5-12. Under no circumstances will funding exceed \$3,500.00.~~

101 ~~129.5-13. Total~~129.6-5. Any expenses over \$3,500.00 or expenses over the designated amounts  
102 payable arethree thousand five hundred dollars (\$3,500) shall be the responsibility of the family  
103 or responsible party.

104  
105 *End.*

106 ~~Emergency Adopted – BC-09-23-09-F~~

107 ~~Permanently Adopted – BC-02-10-10-B~~

108 ~~Amended – BC- - - -~~

**Title 1. Government and Finances – Chapter 129**  
**Kaya>takenh@la ashakotiya>t@ane> latiksa>sh&ha**  
*It is helpful for them to bury them the children*  
**CHILDREN’S BURIAL FUND**

129.1. Purpose and Policy

129.2. Adoption, Amendment, Repeal

129.3. Definitions

129.4. Qualifications for Financial Assistance

129.5. Requesting Financial Assistance

129.6. Use of Funds

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**129.1. Purpose and Policy**

129.1-1. *Purpose.* It is the purpose of this law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.

129.1-2. *Policy.* It is the policy of the Nation to provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our members and their families.

**129.2. Adoption, Amendment, Repeal**

129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B and amended by BC-\_\_-\_\_-\_\_-\_\_.

129.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislatives Procedures Act.

129.2-3. 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.

129.2-4. 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.

129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**129.3. Definitions**

129.3-1. 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) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

(b) “Nation” means the Oneida Nation.

(c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(d) “Voluntary paternity and/or maternity statement” means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

**129.4. Qualifications for Financial Assistance**

129.4-1. In order to be eligible for financial assistance from the Children’s Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;

- 41 (b) not enrolled with the Nation; and
- 42 (c) eligible for enrollment with the Nation.

43

44 **129.5. Requesting Financial Assistance**

45 129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial  
46 assistance from the Children’s Burial Fund.

47 129.5-2. Requests for financial assistance from the Children’s Burial Fund shall be made to the  
48 Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the  
49 date of death.

50 129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the  
51 following documentation shall be provided to the Oneida Trust Enrollment Department:

- 52 (a) all original invoices;
- 53 (b) birth certificate, death certificate, or fetal death report; and
- 54 (c) voluntary paternity and/or maternity statement in situations where paternity and/or  
55 maternity needs to be determined.

56 129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida  
57 Trust Enrollment Department shall be responsible for processing the appropriate paper work for  
58 the payment to be made to the funeral home, monument company, casket or coffin company,  
59 cemetery, crematorium, churches, and/or catering or food vendors.

60

61 **129.6. Use of Funds**

62 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased  
63 child shall not exceed three thousand five hundred dollars (\$3,500).

64 129.6-2. The following funeral related expenses are payable if identified on an invoice:

- 65 (a) monument and/or headstone costs;
- 66 (b) casket or coffin costs;
- 67 (c) cemetery costs;
- 68 (d) church costs; and/or
- 69 (e) food costs.

70 129.6-3. Under no circumstances shall there be any payments from the Children’s Burial Fund  
71 for reimbursements of:

- 72 (a) funeral costs to individuals; and/or
- 73 (b) travel and/or lodging for attending a funeral.

74 129.6-4. Any unexpended monies after payment(s) have been made shall remain in the  
75 Children’s Burial Fund for other burials.

76 129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the  
77 responsibility of the family or responsible party.

78

79 *End.*

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80 Emergency Adopted – BC-09-23-09-F

81 Permanently Adopted – BC-02-10-10-B

82 Amended – BC-\_\_-\_\_-\_\_-\_\_





Legislative Operating Committee  
January 15, 2020

## Oneida Food Service Code

<b>Submission Date:</b> 9/19/18	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Ernest 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 Betters. 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 & 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 groups.

**1/25/19:** *Work Group Meeting.* Present: Jeff Mears, Kristen 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 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 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: (1) the LRO to follow up on the questions/concerns raised by the LOC during its review; (2) the LRO to bring responses back to a LOC work meeting; and (3) for LRO to go through the second half of the draft with the LOC during that meeting.

**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 provide the LOC with responses to the questions/issues it raised during the previous LOC work meeting and to finish going through the draft of the amendments to the Oneida Food Service Code.

**12/4/19 LOC:** Motion by Jennifer Webster to approve the draft of the amendments to the Oneida Food Service Code with one change and direct a legislative analysis to be completed; Seconded by Kirby Metoxen. Motion carried.

**12/18/19 LOC:** Motion by Kirby Metoxen to approve the draft amendments to the Oneida Food Service Code and the legislative analysis and to defer to a work meeting; Seconded by Ernest Stevens III. Motion carried.

**12/18/19:** *LOC Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to discuss the considerations raised in the Food Service Code Amendments Legislative Analysis. The next step is for the LRO to update the draft, as well as the legislative analysis, based on the discussions and to prepare a public meeting packet to be presented at the next LOC meeting.

**Next Steps:**

- Approve the public meeting packet and forward the Amendments to the Oneida Food Service Code to a public meeting to be held on February 6, 2020.

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2  
3 **Title 3. Health and Public Safety – Chapter 305**  
4 **Kahkwa’ó·ku**  
5 *about the food*  
6 **ONEIDA FOOD SERVICE**

7 305.1. Purpose and Policy	305.7. Licensing
8 305.2. Adoption, Amendment, Repeal	305.8. Exemptions
9 305.3. Definitions	305.9. Inspections
10 305.4. Jurisdiction	305.10. Violations, Enforcement
11 305.5. Compliance	305.11. Appeal Rights
12 305.6. Authority	

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15 **305.1. Purpose and Policy**

16 305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to  
17 consumers at retail or through an Oneida Nation Food Service Program by establishing a system  
18 of overlapping safeguards designed to minimize foodborne illness; ensure employee health,  
19 industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable  
20 levels of sanitation on the premises of food service businesses; and promote fair dealings with  
21 members of the community through adoption of licensing requirements, exemptions, regulation,  
22 control, supervision and enforcement procedures that govern food service businesses within the  
23 jurisdiction of the Nation.

24 305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the  
25 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its  
26 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or  
27 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
28 and honestly presented.

29  
30 **305.2. Adoption, Amendment, Repeal**

31 305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B  
32 and amended by resolutions BC-02-25-15-C and BC-\_\_-\_\_-\_\_-\_\_.

33 305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
34 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

35 305.2-3. Should a provision of this law or the application thereof to any person or circumstances  
36 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
37 to have legal force without the invalid portions.

38 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
39 the provisions of this law shall control.

40 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

41  
42 **305.3. Definitions**

43 305.3-1. This section shall govern the definitions of words and phrases used within this law. All  
44 words not defined herein shall be used in their ordinary and everyday sense.

45 (a) “Citation” means a legal document that serves as a notice or summons to appear in a  
46 court of the Nation in response to a charge against a person of a violation of law.

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

50 (bc) “Consumer” means an individual who is a member of the public; takes possession of  
51 food; is not functioning in the capacity of a food service business, a cottage food operator,  
52 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

53 (ed) “Cottage food operator” means an individual who, exclusively within the home  
54 kitchen of his or her domestic residence, produces cottage food products for direct sale only.

55 (de) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
56 residence, that are non-potentially hazardous, including non-perishable baked goods such  
57 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
58 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
59 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
60 the Department characterizes as cottage food products for purposes of this law.

61 (ef) “Department” means the Environmental, Health and Safety Department within the  
62 Nation’s Environmental, Health, Safety and Land Division.

63 (fg) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product  
64 from a cottage food operator that does not include purchases through consignment, mail order,  
65 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
66 from using the internet for the sole purpose of advertising his or her cottage food products.

67 (gh) “Domestic residence” means the single-family house or unit in a multiunit residential  
68 structure located at the address that the applicant lists as being his or her primary residence  
69 when applying to the Department for a cottage food exemption under this law.

70 (hi) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
71 immediate attention, the absence of which could endanger the health or safety of others.

72 (ij) “Federal Food Code” means the most current edition of the United States Public Health  
73 Service, Food and Drug Administration Food Code.

74 (jk) “Fine” means a monetary punishment issued to a person for violation of this law.

75 (kl) “Food” means a raw, cooked or processed edible substance; ice; beverage; or  
76 ingredient used or intended for use or for sale in whole or in part for human consumption or  
77 chewing gum.

78 (lm) “Food service business” means, whether individually or collectively, a permanent  
79 food service establishment; a temporary food service establishment; and/or an independent food  
80 service operator. The following shall not qualify as a food service business under this law:

- 81 (1) Private rummage sales;
- 82 (2) Community sponsored non-profit fundraising and/or charity events;
- 83 (3) Cottage food operators who satisfy the requirements of this law; and/or
- 84 (4) Prepackaged restaurants that satisfy the requirements of this law.

85 (mn) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
86 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
87 or lower.

88 (no) “Independent food service operator” means a person, other than one who qualifies as  
89 a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
90 permanent establishment, at or within a location approved by the Department.

91 (op) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
92 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
93 the judicial authorities and responsibilities of the Nation.



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

97 (qr) “Nation” means the Oneida Nation.

98 (rs) “Penalty” means a punishment, other than a fine, imposed on a person for violation of  
99 this law.

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

- 103 (1) A restaurant or other eating/drinking establishment that does not qualify as a  
104 prepackaged restaurant;
- 105 (2) A market or grocery store;
- 106 (3) A catering business;
- 107 (4) A bakery or confectionary;
- 108 (5) A convenience store or gas station store;
- 109 (6) An Oneida Nation Food Service Program; and/or
- 110 (7) A mobile food truck that requires a Department approved service base to  
111 operate.

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

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

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

119 (wx) “Reservation” means all the property within the exterior boundaries of the  
120 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat.  
121 566, and any lands added thereto pursuant to federal law.

122 (xy) “Temporary food service establishment” means a non-permanent food service  
123 establishment that operates at a fixed location for a limited number of consecutive days in  
124 conjunction with a single event.

### 125 126 **305.4. JurisdictionApplication**

127 305.4-1. ~~Personal Jurisdiction.~~ This law applies to:

128 ~~(a) All members of the Nation; the Nation’s entities and corporations; and members of~~  
129 ~~other federally recognized tribes;~~

130 ~~(b) Individuals and~~shall apply to all food service businesses ~~leasing, occupying,~~  
131 prepackaged restaurants and cottage food operators located or otherwise using fee land owned by  
132 ~~the Nation or by individual members of the Nation; and/or lands held in trust on behalf of~~  
133 ~~the Nation or individual members of the Nation; and~~

134 ~~(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise~~  
135 ~~consistent with federal law. An individual shall be considered to have consented to the~~  
136 ~~jurisdiction of the Nation:~~

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

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

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

~~305.4-3~~2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

### 305.5. Compliance

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

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

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

305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should ~~apply to govern~~ all food service businesses ~~within its jurisdiction~~to which this law applies.

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

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

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

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

### 305.6. Authority

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

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

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

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

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

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

186 **305.7. Licensing**

187 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to  
188 operate a food service business ~~within the jurisdiction of the Nation:~~

189 (a) *License Application.* Persons shall be required to apply to the Department to receive or  
190 renew a license to operate a food service business pursuant to the application process  
191 established by the Department through adoption of a standard operating procedure that  
192 conforms to this law and includes, at a minimum, the following:

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

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

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

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

206 (b) *License Period.*

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

210 (2) Licenses for temporary food service establishments shall be issued by the  
211 Department to cover one (1) single event for a period of not more than fourteen  
212 (14) consecutive days.

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

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

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

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

227 (C) Unless otherwise provided herein, if an application for licensure or  
228 license renewal is ~~denied by the~~  
229 Department, the licensing fee submitted ~~with the application~~  
230 ~~shall be returned to the applicant in full.~~

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

233 (A) The licensing fee schedule shall include the fee established by the  
234 Department to operate a prepackaged restaurant pursuant to section 305.8  
235 of this law.

236 (B) The Department may amend the licensing fee schedule as it deems  
237 necessary, subject to approval by the Oneida Business Committee through  
238 adoption of a resolution.

239 (3) *Exemptions.*

240 (A) The Oneida Nation Food Service Programs and other non-profit  
241 service \_\_\_\_\_ programs of the Nation shall not be required  
242 to pay a licensing fee to obtain \_\_\_\_\_ a license under this law.

243 (AB) The Department ~~may, within its discretion,~~ shall waive the licensing  
244 fee for \_\_\_\_\_ other required hereunder upon \_\_\_\_\_ proof from a  
245 food service ~~businesses~~ business or prepackaged restaurant of payment to ~~obtain or renew a~~  
246 another governmental unit located within the boundaries of the Reservation  
247 for a similar license ~~when justifiable~~  
248 \_\_\_\_\_ circumstances exist or permit to operate that covers the same term.

249 305.7-2. *License Eligibility.*

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

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

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

- 259 (1) Submit the appropriate licensing fee with their application;  
260 (2) Submit proof of having undergone either:  
261 (A) Certification under the applicable food safety training offered through  
262 the Department; or  
263 (B) Certification or training that the Department, in its discretion, deems  
264 equivalent to the corresponding food safety training offered through the  
265 Department.

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

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

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

- 272 (1) Submit the appropriate licensing fee with their application;  
273 (2) Submit proof of having undergone either:  
274 (A) Certification under the applicable food safety training offered through  
275 the Department; or

276 (B) Certification or training that the Department, in its discretion, deems  
277 equivalent to the corresponding food safety training offered through the  
278 Department.

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

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

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

286  
287  
288

289 **305.7-3. License Placement.**

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

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

296

297 **305.8. Exemptions**

298 **305.8-1. Cottage Food Sales**. Cottage food operators are exempt from the requirements of this  
299 law, except as follows:

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

302 (1) Full name;

303 (2) Address of domestic residence; and

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

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

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

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

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

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

315 (c) *Home-canned ~~foods~~ Foods*. Individuals who intend to sell home-canned foods under the  
316 cottage food sales exemption must first complete the food safety training approved by the  
317 Department.

318 **305.8-2. Prepackaged Restaurants**. Prepackaged restaurants are exempt from the requirements of  
319 this law, except as follows:

320 (a) *Authorization*. Before selling or serving any prepackaged foods, persons must apply to  
321 the Department for permission to operate as a prepackaged restaurant pursuant to the



322 application process established by the Department through adoption of a standard operating  
323 procedure that conforms to this law and includes, at a minimum, the following:

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

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

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

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

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

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

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

343 305.8-3. *Enforcement.* Violations of this section shall be enforced ~~in accordance with~~ pursuant to  
344 section- 305.10 of this law.

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

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

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

### 355 **305.9. Inspections**

356 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
357 (2) times per license term, the Department may, for any reason, enter a food service business to  
358 conduct an inspection, so long as at a reasonable hour.

359 305.9-2. The Department may, at any time during the term of a license, enter a food service  
360 business to conduct an unscheduled inspection based on the following:

361 (a) Receipt of a complaint;

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

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

364 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
365 this law, will result in an additional fee as set forth in the license fee schedule.

### 367 **305.10. Violations, Enforcement**

368 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following  
369 as determined by the Department:

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

371 (b) ~~The issuance of a corrective order, including, but not limited to, an order to close-~~  
372 ~~down; and/or~~

373 (c) The issuance of a citation that may include one or more of the fines, penalties and/or  
374 ~~other~~ corrective orders set forth in the fine and penalty schedule established by the  
375 ~~Department, subject to approval of~~ by the Oneida Business Committee through adoption  
376 ~~by~~ of a resolution. ~~\_\_\_\_\_~~

377 (1) Failure to pass an inspection conducted pursuant to this law may be cause for  
378 the issuance of ~~a citation hereunder~~ one or more of the enforcement mechanisms set  
379 forth herein.

380 (2) ~~Citations shall be~~ issued and processed in accordance with the procedure  
381 procedures contained in the ~~\_\_\_\_\_~~  
382 ~~\_\_\_\_\_~~ Nation's laws and policies governing citations.

383 305.10-2. In addition to satisfying any other ~~corrective order~~ mandate issued by the Department  
384 ~~under section 305.10-1 of this law~~ hereunder, a food service business, cottage food operator or  
385 prepackaged restaurant that has been closed ~~-~~ down due to a violation of this law must further pass  
386 a reinspection by the Department before being ~~re-~~ eligible for operation.

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

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

392 (b) A food service business or prepackaged restaurant that has had its license or license  
393 exemption status suspended or has become subject to a close ~~-~~ down order shall not be  
394 entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance  
395 with the licensing fee ~~or fees~~ schedule.

396 305.10-3. *Emergency.* The Department may order a close ~~-~~ down of a food service business,  
397 cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon  
398 evidence of a serious health and/or safety threat to the community.

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

402  
403 **305.11. Appeal Rights**

404 305.11-1. ~~Persons who disagree with the decisions of the Department regarding license or license~~  
405 ~~exemption eligibility, inspections, orders to close down and/or license or license exemption~~  
406 ~~suspensions or revocations may appeal to the Trial Court of the Judiciary~~ Decisions Not Issued  
407 Pursuant to a Citation. Decisions of the Department that are not issued pursuant to a citation may  
408 be appealed, in writing, to the Department's Area Manager.

409 (a) ~~Hearings by the Judiciary will~~ The written appeal shall be pursuant submitted to the  
410 rules established for Area Manager within ten (10) business days of receiving the decision  
411 upon which the Judiciary appeal is based.

412 (b) The Area Manager shall render a decision within five (5) business days of receiving  
413 the appeal. The decision shall be sent by registered mail (return receipt requested) or  
414 delivered in person to the appellant.

415 (1) The Area Manager may suspend the time limits for rendering a decision if he  
416 or she determines that more investigation on the matter is necessary.

417 (c) The Area Manager's decision shall be final unless a good faith argument exists to  
418 appeal to the Trial Court of the Judiciary on one or more of the following grounds:

419 (1) That, the decision is contrary to ~~305.11-2. Persons who disagree with the~~  
420 issuance of a citation for violations of this law;

421 (2) That, the decision is without any reasonable factual basis; and/or

422 (3) That, the decision constitutes an abuse of power.

423 (A) Appeals initiated hereunder shall ~~contest the citation~~ be conducted in  
424 accordance with the \_\_\_\_\_ Judiciary law and any applicable rules of procedure.

425 \_\_\_\_\_  
426 ~~305.11-2. Decisions Issued Pursuant to a Citation. Decisions of the Department that are issued~~  
427 pursuant to a citation may be contested in accordance with the procedures contained in the Nation's  
428 laws and policies governing citations.—

429 (a) A mandatory appearance at the citation pre-hearing is required of all persons wishing  
430 to contest a citation issued by the Department hereunder.

431  
432 *End.*

433 \_\_\_\_\_  
434 Adopted – BC-06-13-01-B  
435 Amended – BC-02-25-15-C  
436 Amended – BC-\_\_-\_\_-\_\_-\_\_  
437

**ONEIDA NATION PUBLIC MEETING NOTICE****Thursday, February 6, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room  
N7210 Seminary Rd., Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to**

LOC@oneidanation.org

**Ask Questions here**

LOC@oneidanation.org

920-869-4312

**ONEIDA FOOD SERVICE CODE AMENDMENTS**

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 and to 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.

**The Amendments to the Oneida Food Service Code will:**

1. Include mobile food trucks within the category of permanent food service establishments;
2. Add deadline, notice and other procedural requirements to the processing of applications for licensure to operate a food service business;
3. Create exemptions for cottage food sales and prepackaged restaurants;
4. Afford licensing fee waivers to protect food service businesses or prepackaged restaurants from duplicative payments that would be caused by overlapping jurisdictions; and
5. Allow the area manager the final determination on appeals of non-citation issued decisions unless one (1) of the three (3) express grounds exist to further appeal the decision.

**PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, FEBRUARY 13, 2020**

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

**PROVIDING EFFECTIVE PUBLIC COMMENTS**

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



**READ THE PUBLIC MEETING MATERIALS:** Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes: (1) a notice with the date, time and location; (2) a draft of the proposed legislation; and (3) a plain language review of the legislation and its impact on the Oneida Nation.



**PREPARE YOUR COMMENTS:** When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
The Oneida Food Service Code is too lenient.	The Oneida Food Service Code is too lenient on temporary food service establishments	In section 305.7-1, the license period for temporary food service establishments should be decreased from 14 days to 10 days.



**kahkwa?ó·ku**  
**(gah kwa oh goo)**  
*about the food*

## ONEIDA FOOD SERVICE CODE AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<b>REQUESTER:</b> Environmental, Health and Safety and Licensing Departments	<b>SPONSOR:</b> Ernest Stevens III	<b>DRAFTER:</b> Kristen M. Hooker	<b>ANALYST:</b> Maureen Perkins
<b>Intent of the Amendments</b>	<p>The proposed amendments to the Oneida Food Service Code (Law) intend to:</p> <ul style="list-style-type: none"> <li>▪ update the outdated Oneida Food Service Code including formatting required by the Legislative Procedures Act;</li> <li>▪ update the exclusive authority of the Environmental, Health and Safety (EHS) Department to develop license fee and penalty schedules; both adopted by OBC resolution. The EHS Department is within the Environmental, Health, Safety and Land Division (EHSLD);</li> <li>▪ include exemptions for cottage food sales and prepackaged restaurants;</li> <li>▪ include mobile food trucks in the definition of permanent food service operators;</li> <li>▪ include a waiver of license fees by the EHS Department when an applicant provides proof of payment to a governmental unit within the Reservation boundaries for the same term;</li> <li>▪ include a thirty (30) day response time for EHS to make determinations regarding eligibility;</li> <li>▪ require the EHS Department to provide applicants who have been denied licensure or license renewal a written explanation of the denial and an explanation of the appeals process;</li> <li>▪ allow the EHS Department the discretion to accept alternate training options;</li> <li>▪ include an internal appeal process at the division level (EHSLD) for certain decisions of the EHS Department; and</li> <li>▪ update the title to Oneida Food Service.</li> </ul>		
<b>Purpose</b>	<p>To ensure the safety of food that is provided at retail or through Oneida Nation Food Service Programs to members of the community 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 consumers through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation [1 O.C. 305.1-1].</p>		
<b>Affected Entities and Individuals</b>	<p>Environmental, Health and Safety Department, Environmental, Health, Safety and Land Division, Oneida Nation Judiciary, Oneida Business Committee (OBC), Oneida Nation Members, Oneida Nation Food Service Programs, Cottage Food Operators, Independent Food Service Operators, Permanent Food Service Establishments, Prepackaged Restaurants, Licensing Department, Oneida Police Department, Risk Management Department</p>		
<b>Related Legislation</b>	<p>Judiciary law, Oneida Judiciary Rules of Civil Procedure, Rules of Appellate Procedure, Legislative Procedures Act</p>		
<b>Public Meeting</b>	<p>A public meeting has not yet been held.</p>		
<b>Fiscal Impact</b>	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.</p>		



## SECTION 2. LEGISLATIVE DEVELOPMENT

A. **Background.** The Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law was adopted by the Oneida Business Committee on January 18, 1985 to regulate food preparation and sales by departments, enterprises and programs of the Nation and Oneida Tribal members. The Oneida Food Service Code was adopted on October 3, 2001 by resolution BC-10-03-01-D and replaced the Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law. The Oneida Food Service Code was amended on February 25, 2015, by resolution BC-02-25-15-C to remove reference to the Oneida Appeals Commission and add reference to the Oneida Judiciary as the hearing body authorized to hear appeals to decisions of the EHS, Risk Management and Licensing departments.

B. **Expected Benefits.** The amendments comprehensively update the Oneida Food Service law with current food service standards and provides members of the Nation the opportunity to register for an exemption to sell cottage food products from their residence. The Oneida Nation is one of the first tribes in the country to offer cottage food exemptions [3 O.C. 305.8-1]. The cottage food amendments can be viewed as an act of food sovereignty exercised by the Nation because the amendments deviate from the model Federal Food Code intended to be used as guidance to develop state or tribal food codes [3 O.C. 305.5-2(a)(2)].

Additionally; the amendments add mobile food trucks to the definition of permanent food service establishment [3 O.C. 305.3-1(t)] which insures mobile food trucks operating within the Nation’s jurisdiction are regulated by the EHS Department.

## SECTION 3. CONSULTATION AND OUTREACH

A. **Departments.** Representatives from the following departments participated in the development of this Law:

- Environmental, Health and Safety Department
- Licensing Department
- Risk Management Department
- Community Health Nursing
- Oneida Cannery Department

B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws of the Nation: Judiciary [8 O.C. 801], Oneida Judiciary Rules of Civil Procedure [8 O.C. 803], Rules of Appellate Procedure [8 O.C. 805] and Legislative Procedures Act [1 O.C. 109].

C. **Area and Tribal Laws.** The following state and tribal laws were reviewed in the development of this legislative analysis:

- 2009 Wisconsin Act 101
- University of Arkansas Model Tribal Cottage Food Law
- Minnesota Cottage Foods Law
- Stockbridge-Munsee Food Service Code
- Jamestown S’Klallam Tribe Tribal Food Code
- Montana Code 50-50-101-403

D. **Current Licenses Issued by the Nation**

- The Nation currently provides food service business licenses and inspections for thirty-four (34) food service businesses. Fifteen (15) of these food services are Oneida Nation Food Service Programs. The Nation has authority to license all entities within the jurisdiction of the Nation.

## SECTION 4. PROCESS

A. The Oneida Food Service Code amendments have thus far followed the required process contained in the Legislative Procedures Act.

- 53 B. On September 19, 2018, the LOC added the Oneida Food Service Code Amendments to the active files  
54 list and assigned Ernest Stevens III as the sponsor.
- 55 C. The following work meetings were held by Legislative Reference Office staff in the development of  
56 the amendments to the Law:
- 57     ▪ October 4, 2018, a work meeting was held with EHS Department staff, Cannery Department  
58 staff and Community Health Nursing Program staff.
  - 59     ▪ November 29, 2018, a work meeting was held with EHS Department staff and Licensing  
60 Department staff.
  - 61     ▪ January 25, 2019, a work meeting was held with EHS Department staff.
  - 62     ▪ February 28, 2019, a work meeting was held with EHS Department staff and Licensing  
63 Department staff.
  - 64     ▪ June 6, 2019, a work meeting was held with EHS Department staff.
  - 65     ▪ November 6, 2019, a work meeting was held with the LOC.
  - 66     ▪ November 15, 2019, a work meeting was held with the LOC.
  - 67     ▪ December 18, 2019, a work meeting was held with the LOC.
  - 68

## 69 SECTION 5. CONTENTS OF THE LEGISLATION

### 70 A. *Purpose and Policy* [3 O.C. 305.1]

- 71     • The Law was amended to meet the requirements in the Legislative Procedures Act related to  
72 consistency in format and required sections [1 O.C. 109.11-1].
- 73     • The purpose and policy sections were updated to include Oneida Nation Food Service  
74 Programs and to clearly state that the policy of the Law is to exercise the Nation’s inherent  
75 sovereignty over the Nation’s resources and membership, as well as to strengthen self-  
76 governance.
- 77     • The term vendor was removed from the purpose and policy section, as well as throughout the  
78 Law [3 O.C. 305.1-2 of Current Law]. By removing the term vendor and the Licensing  
79 Department from the Law; the application process is streamlined with the EHS Department  
80 [Work Meeting 01/25/19].
- 81

82 B. *Definitions* [3 O.C. 305.3]. Distinction was made between the various types of licenses issued by the  
83 EHS Department to indicate whether the business is permanent or temporary, as well as removing the  
84 term vendor from the definitions. The definitions for licenses in the Law now include permanent food  
85 service establishments, temporary food service establishments and independent food service operators.  
86 Food service businesses include, both individually and collectively, permanent food service  
87 establishments, temporary food service establishments and independent food service operators.  
88 Permanent food service establishments now include Oneida Nation Food Service Programs and mobile  
89 food trucks. The term food service business excludes private rummage sales and community sponsored  
90 non-profit fundraising and/or charity events which are not governed by the Law, as well as cottage food  
91 operators and prepackaged restaurants that satisfy the requirements in this Law and obtain an exemption  
92 from the EHS Department [3 O.C. 305.3-1(l)]. The term permanent was added to the definition of food  
93 service establishment for clarity [3 O.C. 3-1(e)].

- 94
- 95     ▪ The terms consumer, food and person were added and used in the Law to provide clarity.
- 96
- 97     ▪ The following definitions were added to reflect the addition of the cottage foods exemption [3  
98 O.C. 305.8-1]: cottage food operator, cottage food products, direct sale, domestic residence,  
99 home-canned foods, and potentially hazardous food.
- 100
- 101     ▪ The definition for prepackaged restaurant was added to reflect the prepackaged restaurant  
102 exemption [3 O.C. 305.8-2].
- 103
- 104     ▪ Definitions were added for citation, fine and penalty.
- 105

- Definitions for Licensing Department and Risk Management were removed from the Law because these departments are no longer referenced in the Law. The Oneida Business Committee and the Oneida Police Department were removed from the definition of close down because these two entities are no longer involved in the decision or act of closing a food service business down. The term tribal property was removed as it is not used in the amended Law. The term compliance was removed as this word is used in the everyday sense and does not require a definition.

C. **Application** [3 O.C. 305.4]. A separate section was added detailing that the Law applies to food service businesses, cottage food operators and prepackaged restaurants located or operating within the Reservation. A provision was added titled Liberal Construction which means the words are interpreted in a loose way which allows the Nation to exercise its sovereign jurisdiction to the fullest extent [3 O.C. 305.4-2].

D. **Compliance** [3 O.C. 305.5]. This section was updated to provide clarity to the Law. The Law continues to adopt the current Federal Food Code and any additions or deviations from the Federal Food code are designed to be specific to the Nation. The Law will have priority with respect to any conflicts between the Law and the Federal Food Code [3 O.C. 305.5-2].

E. **Authority** [3 O.C. 305.6]. This section of the Law has been amended. This section in the current Law is titled Responsibilities and Duties. The EHS Department is now responsible for issuing all licenses pursuant to this Law [3 O.C. 305.6-1(a)]. Previously; the Licensing Department was responsible to issue licenses [3 O.C. 305.4-5 of Current Law]. Additionally; the EHS Department is now required to set licensing fees [3 O.C. 305.6-1(b)] which are approved by OBC resolution [3 O.C. 305.7-1(c)]. Previously, the Licensing Department and the EHS Department jointly determined licensing fees updated on an annual basis with OBC approval [3 O.C. 305.4-7 and 305.9-9 of Current Law].

- The current license fee schedule and fine and penalty schedule will be void with the adoption of the amended Law because these schedules are no longer included in the Law [3 O.C. 305 Attachment A and Attachment B of Current Law]. These schedules were removed from the law and implemented by OBC resolution to make them easier to update without requiring an amendment to the Law.

The requirement for EHS to conduct food handling classes was removed from this section [3 O.C. 305.4-2 of Current Law] and moved to the license eligibility section [3 O.C. 305.7-2(b)(2)(B) and (c)(2)(B)]. The Risk Management Department and the requirement to obtain insurance coverage was removed [3 O.C. 305.4-6 of Current Law].

F. **Licensing** [3 O.C. 305.7]. This section was amended. The licensing and fees sections have been combined [3 O.C. 305.6 and 305.5-9 of Current Law]. The EHS Department was granted authority to receive, issue and renew licenses [3 O.C. 305.7-1(a)]. A provision was added requiring the EHS Department to waive a licensing fee when a food service business provides proof of payment to another governmental unit located within the boundaries of the Reservation for a similar license that covers the same term [3 O.C. 305.7-1(c)(3)(B)]. The Licensing Department was removed from the Law as the authority to issue licenses and all licenses will now be processed by the EHS Department instead.

- **Impact.** This change makes the process of issuing licenses more efficient for the EHS Department and license applicants.

A process was added requiring the EHS Department to make a determination to issue or deny an application for a license or license renewal within thirty (30) days following the submission of a complete application including the payment of all applicable fees and any information contained in the standard operating procedure created by the EHS Department [3 O.C. 305.7-1(a)].

- **Impact.** This requirement ensures applicants for new and renewal licenses receive a timely response from the EHS Department to avoid any potential delays by the EHS Department that could impact the applicant’s food service business. The current Law does not contain a timeframe for issuing decisions regarding decisions of license eligibility.

159 The license issued may be conditional upon a correction of a violation within a set period and if  
160 not corrected within that time will nullify the license. If an application is denied, the EHS Department  
161 will provide the applicant with the reason for the denial in writing and instructions on how to appeal the  
162 decision [3 O.C. 305.7-1(a)(2)].

- 163 • The current Law does not require written notification of the reason for the denial of a  
164 license.

165 The license fee schedule will be updated as necessary by the EHS Department and approved by the  
166 OBC by resolution [3 O.C. 305.7-1(c)].

167 The prorated formula used by the EHS Department related to a reduction of a license fee when the  
168 application is received after October 1<sup>st</sup> will be added to the required standard operating procedure [3  
169 O.C. 305.7-1(c)(1)(B)]. A provision was added that grants the EHS Department discretion to approve  
170 equivalent training to satisfy the Temporary Food Service establishment requirements [3 O.C. 305.7-  
171 2(b)(2)(B)] and the Independent Food Service Operator requirements [3 O.C. 305.7-2(c)(2)(B)].

- 172 • **Impact.** This process alleviates the burden of duplicate training for applicants and the  
173 department when sufficient training has already been obtained by the applicant.

174 Oneida Food Service Programs are exempt from license fees. Additionally; the EHS Department  
175 will waive licensing fees when provided with proof that another governmental entity has already  
176 received payment [3 O.C. 305.7-1(c)(3)].

- 177 • **Impact.** This provision eliminates double payments of licensing fees when an overlapping  
178 jurisdiction has already collected a fee.

179 The requirement that vendor fees be used for the operational budget of the EHS Department (80%)  
180 and the administrative budget of the License Department (20%) was removed [3 O.C. 305.9-9 of *Current*  
181 *Law*]. The amended Law is silent regarding where licensing fees are allocated which means these funds  
182 will be directed to the General Fund.

183 Oneida Tribal Enterprises and Oneida Tribal Businesses were removed from the licensing section  
184 of the Law [3 O.C. 305.9-10 and 9-11 of *Current Law*]. Although it is unclear what Oneida Tribal  
185 Enterprise Units and Oneida Tribal Business Units is referring to because there are no definitions  
186 provided for these entities in the current Law; it can be assumed that these entities are included in the  
187 amended Law under the definition of permanent food service establishment which includes restaurants,  
188 a market or grocery store, a convenience store, and Oneida Nation Food Service Programs. Permanent  
189 food service establishments are required to adhere to the amended Law [3 O.C. 305.7-2(a)].

## 191 **Licensing Timeframes**

192 October 1 to September 31. The food service licenses issued by the Oneida Nation under this Law run  
193 from October 1 to September 31 of each year to match the Nation’s fiscal year.

194 July 1 to June 30. Food service licenses in the State of Wisconsin and local municipalities within and  
195 around the Oneida Nation reservation run from July 1 to June 30 of each year.

197 G. **Exemptions** [3 O.C. 305.8]. This section was amended. The amended Law provides exemptions to  
198 cottage food operators and prepackaged restaurants if certain requirements contained in the Law are  
199 met. The meaning of exemption in an everyday sense is the process of freeing from an obligation  
200 imposed on others.

### 202 Exemptions in the Current Law were Removed and are not Governed by the Amended Law

- 203 • The private rummage sales, community sponsored non-profit fund raising and/or charity events  
204 in the exemption section of the current Law [3 O.C. 305.11 of *Current Law*] were moved to the  
205 definition section of the amended Law [3 O.C. 305.3-1(m)] as an example of what does not  
206 qualify as a food service business and is therefore; although not explicitly stated in the Law, not  
207 governed by the Law.
- 208 • Food sold at GTC meetings was removed from the Law because this practice is not allowed.
- 209 • Food sold on land other than tribally owned land was removed because it is not necessary under  
210 the amended Law.

212 **Chart 1: Explanation of Exemptions**

<p>The definition of food service business means, whether individually or collectively, a permanent food service establishment, a temporary food service establishment, and/or an independent food service operator. The following shall not qualify as a food service business under this Law [3 O.C. 305.3-1(m)]:</p>	
<p>The amended Law does not apply to the events listed below, so the exemption detailed in the current Law is no longer required [3 O.C. 305.11 of Current Law]. These events do not have to follow this Law. This has not changed from the current Law.</p>	<p>The entities listed below do not qualify for a food service business license, but are eligible for an exemption by meeting specific requirements further described in section 305.11:</p>
<ul style="list-style-type: none"> <li>• private rummage sales</li> <li>• community sponsored non-profit fundraising and/or charity events</li> </ul>	<ul style="list-style-type: none"> <li>• cottage food operators</li> <li>• prepackaged restaurants</li> </ul>

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- Private rummage sales, community sponsored non-profit fundraising and/or charity events were moved to the definition section as examples of events that do not qualify as a food service business because these events are not governed by the amended Law.
  - Cottage food operators and prepackaged restaurants do not qualify as a food service business under the Law and are eligible for an exemption if specific requirements contained in the Law are met. The purpose of the exemption in the amended Law is to remove much of the requirements of the Law for these particular entities. The Nation is still afforded the opportunity to have some oversight over these entities in certain circumstances such as inspection of an entity if an outbreak of a foodborne illness occurs that can be tied back to the exempted entity.

<p><u>Cottage Food Sales [3 O.C. 305.8-1].</u> The EHS Department has the authority under the amended Law to add or subtract any additional qualifying foods from the list of cottage foods [3 O.C. 305.3-1(e)] that are processed or packaged at a person’s home kitchen of a domestic residence and only for direct sale to the consumer [3 O.C. 305.3-1(d)]. Cottage food operators are exempt from the requirements of the Law upon registering with the EHS Department, which requires that they disclose the cottage food operator’s name and domestic address where products will be produced. Additionally, the cottage food operator is required to package and label their cottage food products with the name and address of the operator, date processed, name of food product, and display a sign that states that the products are homemade and not subject to inspection by the Nation [3 O.C. 305.8-1]. Home canned foods require a food safety training approved by the EHS Department [3 O.C 308.8-1(c)]. The EHS Department has the authority to inspect the cottage food operator’s domestic residence, if a complaint is received or event giving rise to the EHS Department’s reasonable suspicion of noncompliance of the cottage food exemption [3 O.C. 305.8-3].</p>	<p><b>Cottage Food Sales</b>                  What Are Cottage Food Products?                  Cottage food products are foods produced in a home kitchen of a domestic residence that are non-potentially hazardous which means that it does not require any type of temperature control to prevent it from going bad. Cottage food products include:</p> <ol style="list-style-type: none"> <li>1. Home baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins, dry mixes, dried fruit;</li> <li>2. Home canned naturally acidic fruits and vegetables or with a pH of 4.6 or lower such as apples, peaches and lemons;</li> <li>3. Acidified by pickling or fermenting home canned salsas, pickled vegetables and hot sauces with a pH of 4.6 or lower;</li> <li>4. Jams, jellies and applesauce; and</li> <li>5. Other non-potentially hazardous foods the EHS department characterizes as cottage food products for purposes of this law.</li> </ol> <p>Cottage food products have a low risk to health and most states in the country have exempted these products with varying levels of oversight, permit, license, or inspection requirements. Cottage food laws function as an exemption to general food safety laws and allow small processors to sell their products directly to consumers on a small scale [University of Arkansas Cottage Foods Model Food Code]. Some states have implemented a requirement to register an address and the name of the individual preparing cottage foods [Montana Code 50-50-116, page 10] to conduct some type of inspection should an outbreak occur directly linked to cottage food products [Montana Code 50-50-301(3), page 18].</p>
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223 **Chart 2: Cottage Foods License Exemptions Comparison**

Cottage Foods License Exemptions Comparison						
Home Bakers and Home Canners						
Provision	Oneida Nation Reservation		State of Wisconsin		State of Minnesota	
	Home Bakers	Home Canners	Home Bakers	Home Canners	Home Bakers	Home Canners
License	No	No	No	No (under \$5000 in sales)	No (under \$18,000 in sales)	No (under \$18,000 in sales)
Registration	Yes	Yes	No	No	Yes	Yes
Required Training	No	Yes	No	No (training is recommended)	Yes	Yes
Inspections	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion
Label Requirements	Yes	Yes	Yes	Yes	Yes	Yes

224 Although cottage food producers are exempt from the requirements of the Law, there will be some  
 225 oversight to protect the Nation from potential foodborne illness that may arise from the production of  
 226 cottage foods. The LOC decided that some oversight for cottage food producers would be in the best  
 227 interest of the Nation. The Law will require home bakers and canners to label their products, register  
 228 with their name and address of domestic residence where cottage foods are produced and undergo  
 229 inspections if a complaint is made or if the EHS Department has reasonable suspicion of noncompliance  
 230 with the requirements for a cottage food sales exemption [3 O.C. 305.8-3]. For comparison; the State  
 231 of Wisconsin exemption requires labeling of cottage food products but does not require a license,  
 232 registration or training for cottage food producers that make less than \$5,000 from the sale of cottage  
 233 foods per year. Inspections are limited to certain circumstances. The State of Minnesota requires the  
 234 labeling of cottage food products, registration of cottage foods producers with the local health authority  
 235 in the county where the domestic residence is located, training requirements related to the production  
 236 of cottage foods and inspections under certain circumstances.  
 237

238  
 239 Prepackaged Restaurants [3 O.C. 305.8-2]. Prepackaged restaurants are establishments that serve  
 240 and/or sell only prepackaged foods with preparation on site limited to heating and serving [3 O.C.  
 241 305.3-1(w)]. The LOC added an exemption to the Law for prepackaged restaurants with the following  
 242 criteria: a reduced fee, fewer inspections and no training requirement [LOC Work Meeting 11/15/19].  
 243 Prepackaged restaurants are exempt from the requirements of the Law except that they must apply with  
 244 the EHS Department which includes a requirement for an inspection and agree to sell only prepackaged  
 245 foods approved by the Department [3 O.C. 305.8-2]. The EHS Department has discretion to draft a  
 246 standard operating procedure for the application process and will determine how the EHS Department  
 247 will keep track of prepackaged restaurants [3 O.C. 305.8-2(a)]. The Food safety training or  
 248 certification is not required but can be ordered by the EHS Department by the issuance of a corrective  
 249 order [3 O.C. 305.8-2(b)]. The reason the training requirement was removed for prepackaged  
 250 restaurants is because these establishments are limited to heating precooked foods according to  
 251 directions on the package and the LOC determined this doesn't require food handling training due to  
 252 low risk to public health. The EHS Department will provide written notice to the public of prepackaged  
 253 foods allowed under this exemption [3 O.C. 305.8-2(a)(3)(A)]. The EHS Department may inspect  
 254 prepackaged restaurants as often as deemed necessary for cause; but only once per year without cause  
 255 [3 O.C. 305.8-2(c)].  
 256

257 Enforcement of cottage food operations and prepackaged restaurants includes an inspection by the EHS  
 258 Department based on a receipt of a complaint or reasonable suspicion by the EHS Department [3 O.C.  
 259 305.8-3(a)] which may result in an action by the EHS Department according to the Violations,  
 260 Enforcement section detailed below [3 O.C. 305.10]. Exemption status does not limit the liability of  
 261 the owner of a cottage food operator or a prepackaged restaurant from damages that may happen due  
 262 to the sale of their products [3 O.C. 305.8-3(c)].

263  
264 H. **Inspections** [3 O.C. 305.9]. This section has been clarified. The EHS Department is authorized to  
265 conduct two (2) inspections at any time during reasonable hours per license term for any reason; in  
266 addition to any inspections required for the issuance of a license under section 305.7 of this Law [3 O.C.  
267 305.9-1]. Additionally; the amendments clarify that the EHS Department may conduct an unscheduled  
268 inspection based on the receipt of a complaint, an outbreak of a foodborne illness or reasonable suspicion  
269 of a violation of this Law or an emergency [3 O.C. 305.9-2]. Any reinspection as a result of a violation  
270 of this Law requires additional fees [3 O.C. 305.9-3].  
271

272 I. **Violations, Enforcement** [3 O.C. 305.10]. This section has been amended. The amendments authorize  
273 EHS Department as the sole entity to issue and enforce violations of this Law. Non-compliance with  
274 the Law may result in the EHS Department issuing the following: a license suspension or revocation, a  
275 corrective order which may include an order to close down, and/or a citation [3 O.C. 305.10-1]. Any  
276 food service business or prepackaged restaurant ordered to close down must comply with the corrective  
277 order issued, pass a reinspection and pay any applicable fees by the EHS Department before being  
278 eligible for operation. Citations were added to the Law and include fines, penalties and/or corrective  
279 orders as set forth in the fine and penalty schedule established by the EHS Department, subject to  
280 approval by the OBC resolution [3 O.C. 305.10-1(c)]. Any food service business or prepackaged  
281 restaurant ordered to close down will only be eligible for a probationary license for six (6) months which  
282 is the same as the current Law [3 O.C. 305.10-2(a)]. Food services business ordered to close down are  
283 not entitled to a reimbursement of any portion of the licensing fee or fees [3 O.C. 305.10-2(b)].  
284

285 The Licensing Department, Oneida Police Department and Oneida Business Committee were removed  
286 from this section of the Law to streamline this process within the EHS Department [3 O.C. 305.12-5 of  
287 Current Law]. Forfeitures were removed from the Law [3 O.C. 305.12-7(d) of Current Law].  
288

289 J. **Appeal Rights** [2 O.C. 305.11]. Persons who disagree with the decisions of the EHS Department  
290 regarding anything other than a citation can appeal the decision to the Area Manager of the  
291 Environmental, Health, Safety and Land Division [3 O.C. 305.11-1].

292     ▪ The appeal must be made within ten (10) business days of receiving the decision from the  
293 EHS Department. The Area Manager has five (5) business days to make a determination  
294 and will send the decision in writing by registered mail (return receipt requested) or deliver  
295 the written determination in person to the person who filed the appeal. The Area Manager  
296 may suspend the time frames if an investigation is necessary [3 O.C. 305.11-1(b)(1)]. The  
297 Area Manager’s decision is final unless appealed to the Trial Court of the Judiciary if it is  
298 believed that the decision was:

- 299         ○ contrary to law;
- 300         ○ without any reasonable basis; and/or
- 301         ○ an abuse of power.

302         ▪ This Law authorizes the Trial Court to exercise jurisdiction over appeals  
303 of the Area Manager’s decision [8 O.C. 801.5-2] when the above exist;  
304 following the Oneida Judiciary Rules of Civil Procedure [8 O.C. 803].

305     ▪ Decisions of the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)]  
306 following the Rules of Appellate Procedure [8 O.C. 805]. Decisions of the Court of  
307 Appeals are final.

308 Persons who wish to contest the issuance of a citation for violation of this Law must appear in person  
309 and will follow the procedure contained in the Nation’s laws and policies governing citations [3 O.C.  
310 305.11-2].

- 311     • There are not currently any laws of the Nation governing citations. A law is currently being  
312 developed governing citations.

313  
314 K. **Minor Drafting Changes.** The Law has been clarified through additional minor drafting changes.  
315

316 L. **Insurance** [3 O.C. 305.7 of Current Law]. Insurance requirements and the Risk Management  
317 Department was removed from the Law. Insurance is no longer referenced in the Law. The LOC has  
318 determined that each individual food service business is liable for any damages caused by the food they  
319 sell, and insurance is obtained at the discretion of each food service business.

320

## 321 SECTION 6. RELATED LEGISLATION

322 A. **Reference to Other Laws.** The following laws of the Nation are referenced in this Law and legislative  
323 analysis and are required to be followed:

- 324 • Judiciary [8 O.C. 801]. The Trial Court of the Judiciary has subject matter jurisdiction  
325 where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction [8  
326 O.C. 801.5-2]. The Oneida Food Service law authorizes the Trial Court to hear appeals of  
327 EHSLD Area Manager decisions related to anything not issued by citation and when the  
328 Area Manager’s decision is believed to be contrary to law, without any reasonable basis or  
329 an abuse of power [3 O.C. 305.11]. The Judiciary law authorizes the Court of Appeals to  
330 review final orders and judgments of the Trial Court [8 O.C. 801.8-2(a)(1)].
- 331 • Oneida Judiciary Rules of Civil Procedure [8 O.C. 803]. This Law governs the procedure  
332 used when filing an action with the Oneida Judiciary.
- 333 • Rules of Appellate Procedure [8 O.C. 805]. This Law governs the procedure used when filing  
334 an action with the Court of Appeals and is used in conjunction with the Oneida Judiciary Rules  
335 of Civil Procedure.
- 336 • Legislative Procedures Act [1 O.C. 109]. This Law governs the format that will be followed  
337 for all Laws of the Nation. The format of the amended law was updated to meet requirements  
338 in this Law.

339 B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.

340

## 341 SECTION 7. IMPLEMENTATION

342 A. **Inspections.** Inspection authority has not changed. The EHS Department has authority to conduct  
343 inspections twice per year at their discretion [3 O.C. 305.9-2].

344 B. **Resources and Implementation.** The EHS Department will utilize existing staff to implement and  
345 enforce this Law [3 O.C. 305.6]. The Licensing Department staff and Risk Management Department  
346 staff were removed from the Law.

347 C. **Due Process.** Parties who disagree with decisions of the EHS Department regarding any decisions not  
348 issued by citation can appeal to the Area Manager of the Environmental, Health, Safety and Land  
349 Division. Area Manager decisions that are believed to be contrary to law, without any reasonable basis  
350 or an abuse of power can be appealed to the Trial Court of the Judiciary [3 O.C. 305.11]. Decisions of  
351 the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)]. Citations issued can be  
352 appealed in person in accordance with the procedure contained in the Nation’s laws and policies  
353 governing citations [3 O.C. 305.11-2].

354

## 355 SECTION 8. OTHER CONSIDERATIONS

356 A. **Citations Law.** A citation for a violation of this Law will be processed in accordance with the procedure  
357 contained in the Nation’s laws and policies governing citations [3 O.C. 305.10-1(c)(2)].

358 ■ There are currently no laws of the Nation governing citations. There is a Citations law on the  
359 LOC’s active files list that is currently being developed.

360 B. **Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

361 ■ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation  
362 except emergency legislation.

363 i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative  
364 Operating Committee [1 O.C. 109.6-1].

365 ii. Fiscal impact statements may be prepared by any agency who may receive funding if  
366 the legislation is enacted, any agency who may administer a program if the legislation  
367 is enacted, any agency who may have financial information concerning the subject

368 matter of the legislation, or by the Finance Office, upon request of the Legislative  
369 Operating Committee [1 O.C. 109.6-1(a) and (b)].  
370 iii. The fiscal impact statement is important in the decision-making process related to  
371 legislation developed by the Legislative Operating Committee. When a fiscal impact  
372 statement is requested from the Finance Department; the Chief Financial Officer will  
373 submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of  
374 the draft legislation [Resolution BC-09-25-19].

375 **Research Citations**

376 Cottage Food Exemption, 2019 Minnesota Statutes. <https://www.revisor.mn.gov/statutes/cite/28A.152>

377  
378 FDA Food Code <https://www.fda.gov/food/retail-food-protection/fda-food-code>

379  
380 Montana Code Annotated Statute for: Retail Food, Temporary Event Permitting and Cottage Foods  
381 <https://dphhs.mt.gov/Portals/85/publichealth/documents/FCS/Retail%20food%20MCAs.pdf>

382  
383 2009 Wisconsin Act 101 <http://docs.legis.wisconsin.gov/2009/related/acts/101>

384  
385 University of Arkansas Cottage Foods Model Food Code. <https://www.tribalfoodcode.com/>

386

**Title 3. Health and Public Safety – Chapter 305**

~~ONEIDA FOOD SERVICE CODE~~

**Kahkwa’ó·ku**

*about the food*

**ONEIDA FOOD SERVICE**

305.1-1. Purpose <del>and Policy</del>	305.7. <del>Licensing</del> <del>8-1</del> <del>Inspections</del>
305.2-1. Adoption, Amendment, Repeal	305.8. <del>Exemptions</del> <del>9-1</del> <del>Fees</del>
305.3-1. Definitions	305.9. <del>Inspections</del> <del>10-1</del> <del>Independent</del> <del>Food</del>
	<del>Service Vendors Badge</del>
305.4-1 Responsibilities and Duties	305.10. <del>Exemptions</del>
	305.11-1 Exceptions and <del>Jurisdiction</del>
<del>305.5-1 Compliance</del>	305.12-1 Violations, Enforcement
305.6-1 Requirements for registering	305.13-1 <del>11.</del> Appeal Rights
305.7-1 Insurance	

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



51 305.1-2. Policy. It is the policy of the Nation to protect the health, welfare and safety of the  
52 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its  
53 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or  
54 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
55 and honestly presented.

56  
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 Administrative~~Legislative~~ 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  
72 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
73 the provisions of this law shall control.

74 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

75  
76 **305.3. — Definitions**

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

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

80 ~~(b) —“Tribal Property” means property that is owned by.~~ (a) “Citation” means a legal  
81 document that serves as a notice or summons to appear in a court of the Nation in response to a  
82 charge against a person of a violation of law.

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

86 (c) “Consumer” means an individual who is a member of the public; takes possession of  
87 food; is not functioning in the capacity of a food service business, a cottage food operator,  
88 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

89 (d) “Cottage food operator” means an individual who, exclusively within the home kitchen  
90 of his or her domestic residence, produces cottage food products for direct sale only.

91 (e) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
92 residence, that are non-potentially hazardous, including non-perishable baked goods such  
93 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
94 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
95 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
96 the Department characterizes as cottage food products for purposes of this law.

97 (f) “Department” means the Environmental, Health and Safety Department within the  
98 Nation’s Environmental, Health, Safety and Land Division.

99 (g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from  
100 a cottage food operator that does not include purchases through consignment, mail order,  
101 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
102 from using the internet for the sole purpose of advertising his or her cottage food products.

103 (h) “Domestic residence” means the single-family house or unit in a multiunit residential  
104 structure located at the address that the applicant lists as being his or her primary residence  
105 when applying to the Department for a cottage food exemption under this law.

106 (i) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
107 immediate attention, the absence of which could endanger the health or safety of others.

108 (j) “Federal Food Code” means the most current edition of the United States Public Health  
109 Service, Food and Drug Administration Food Code.

110 (k) “Fine” means a monetary punishment issued to a person for violation of this law.

111 (l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient  
112 used or intended for use or for sale in whole or in part for human consumption or chewing  
113 gum.

114 (m) “Food service business” means, whether individually or collectively, a permanent food  
115 service establishment; a temporary food service establishment; and/or an independent food  
116 service operator. The following shall not qualify as a food service business under this law:

117 (1) Private rummage sales;

118 (2) Community sponsored non-profit fundraising and/or charity events;

119 (3) Cottage food operators who satisfy the requirements of this law; and/or

120 (4) Prepackaged restaurants that satisfy the requirements of this law.

121 (n) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
122 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
123 or lower.

124 (o) “Independent food service operator” means a person, other than one who qualifies as a  
125 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
126 permanent establishment, at or within a location approved by the Department.

127 (p) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
128 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
129 the judicial authorities and responsibilities of the Nation.

130 (q) “License” means the tangible proof of authorization from the Department to operate a  
131 permanent food service establishment, operate a temporary food service establishment and/  
132 or function as an independent food service operator.

133 (r) “Nation” means the Oneida Nation ~~in fee or held in trust for the~~.

134 (s) “Penalty” means a punishment, other than a fine, imposed on a person for violation of  
135 this law.

136 (t) “Permanent food service establishment” means a permanent unit and/or location where  
137 food is processed on the premises, usually for retail sale, and intended for individual  
138 consumption, whether on or off the premises, including, but not limited to, the following:

139 (1) A restaurant or other eating/drinking establishment that does not qualify as a  
140 prepackaged restaurant;

141 (2) A market or grocery store;

142 (3) A catering business;

- 143 (4) A bakery or confectionary;  
144 (5) A convenience store or gas station store;  
145 (6) An Oneida Nation ~~by the United States of America.~~Food Service Program;  
146 and/or  
147 ~~(e) —~~ (7) A mobile food truck that requires a Department approved service base  
148 to operate.  
149 (u) “Person” means a natural person(s), sole proprietorship, partnership, corporation,  
150 limited liability company or any other form of a legal entity.  
151 (v) “Potentially hazardous food” means food that requires time and temperature control  
152 for safety to limit toxin formation or the growth of pathogenic microorganisms.  
153 (w) “Prepackaged restaurant” means an establishment that serves or sells only packaged  
154 foods that are prepared and packaged off-premise by a licensed processor with preparation  
155 on the premise limited to heating and serving.  
156 (x) “Reservation” means ~~that area in Wisconsin~~all the property within the exterior  
157 boundaries ~~as set out in the~~of the Reservation of the Oneida Nation, as created pursuant to  
158 the 1838 Treaty with the ~~United States of America.~~Oneida 7 Stat. 566, and any lands added  
159 thereto pursuant to federal law.  
160 ~~(d) “Federal Food Code” means the most current United States Public Health Service~~  
161 ~~Model Food Code.~~  
162 ~~(e) “Food Service Establishment” means a permanent unit or location on tribal property~~  
163 ~~which food is processed on site and intended for individual consumption usually for retail~~  
164 ~~sale. The term includes any such place whether consumption is on or off premises,~~  
165 ~~including, but not limited to the following:~~  
166 ~~(1) A restaurant or eating/drinking establishment~~  
167 ~~(2) A market or grocery~~  
168 ~~(3) A catering business~~  
169 ~~(4) A bakery or confectionary~~  
170 ~~(5) A convenience store or gas station store~~  
171 ~~(f) “Independent Food Service Vendors” are those individuals who sell food on tribal~~  
172 ~~property for profit that prepare food off site independent of a permanent establishment~~  
173 ~~such as a restaurant, at a source that has been approved by the Environment Health and~~  
174 ~~Safety Department.~~  
175 ~~(g) —~~ (y) “Temporary Food Service” means a food service establishment” means a non-  
176 permanent food service establishment that operates at a fixed location for a limited number  
177 of consecutive days in conjunction with a single event.

#### 179 **305.4. Application**

180 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage  
181 food operators located or operating within the Reservation.

182 305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the  
183 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
184 objectives and purposes for which it was enacted.

#### 186 **305.5. Compliance**

187 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
188 the Department.

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

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

192 305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level  
193 of stringent food and beverage handling safety standards that should govern all food service  
194 businesses to which this law applies.

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

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

199 (2) Should a provision of this law conflict with a provision of the Federal Food  
200 Code, the provision of this law shall have priority over the Federal Food Code and  
201 govern.

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

205  
206 **305.6. Authority**

207 305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions  
208 contained in this or any other governing law of the Nation, the Department shall be responsible for  
209 the administration and enforcement of this law, including, but not limited to, that the Department  
210 shall have the power to:

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

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

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

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

218 (e) Issue citations and corrective orders for violations of this law and/or when necessary  
219 to protect the welfare of the community.

220  
221 **305.7. Licensing on tribal property**

222 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to  
223 operate a food service business:

224 (a) *License Application.* Persons shall be required to apply to the Department to receive or  
225 renew a license to operate a food service business pursuant to the application process  
226 established by the Department through adoption of a standard operating procedure that  
227 conforms to this law and includes, at a minimum, the following:

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

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

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

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

241 ~~(b) License Period.~~

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

245 ~~(2) Licenses for temporary food service establishments shall be issued by the~~  
246 ~~Department to cover one (1) single event for a period of not more than fourteen~~  
247 ~~(14) consecutive days in conjunction with a single event or celebration.~~

248 ~~(h) “Environmental Department” means the Oneida Environment Health and Safety~~  
249 ~~Department, hereinafter, EHS.~~

250 ~~(i) “(c) License Fee. The Compliance” means to operate a food service business, i.e. a~~  
251 ~~food service establishment, an independent food service or a temporary food service in~~  
252 ~~conformity with the requirements of this Code, the Federal Food Code and the EHS~~  
253 ~~standard operating procedures.~~

254 ~~(j) The “Licensing Department” means that department within the organizational structure of~~  
255 ~~the Compliance Division of the Oneida Nation responsible for administering and issuing~~  
256 ~~licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and~~  
257 ~~Codes.~~

258 ~~(k) “The Business Committee” means the Oneida Business Committee~~

259 ~~(l) “Risk Management” means the Oneida Risk Management Department.~~

260 ~~(m) “Emergency” means that situation an unforeseen occurrence that requires immediate~~  
261 ~~attention, the absence of which would endanger the health or safety of others due to the~~  
262 ~~imminent nature of the circumstance.~~

263 ~~(n) “Close down” means that the food service vendor, by order of the Compliance Division~~  
264 ~~in conjunction with the Business Committee and the Oneida Police Department, based~~  
265 ~~upon the recommendation of the EHS, will be prohibited to be open for business to the~~  
266 ~~public for the protection of the health, safety or welfare of the community.~~

267 ~~(o) “Judiciary” means the judicial system that was established by Oneida General Tribal~~  
268 ~~Council resolution GTC-01-07-13-B to administer the judicial authorities and~~  
269 ~~responsibilities of the Tribe.~~

270 ~~(p) Adopt all other definitions as written in the Federal Food Code.~~

271  
272 **~~305.4. Responsibilities and Duties~~**

273 ~~305.4 1. The EHS Department shall administer and regulate the requirements of this Code~~  
274 ~~and the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter,~~  
275 ~~“SOP’s”, for Food Service Vendors.~~~~be~~

276 ~~305.4 2. The EHS Department shall conduct food handling classes that are required for to set a~~  
277 ~~licensing of independent and temporary food vendors. Food service establishment vendors are~~  
278 ~~exempt from this requirement but are to uphold other requirements per the Federal Food Code.~~



279 ~~305.4 3.— The EHS Department shall have a copy of the most current Federal Food Code~~  
280 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
281 ~~business hours.~~

282 ~~305.4 4.— The EHS Department shall have a copy of their SOP's for Food Service Vendors~~  
283 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
284 ~~business hours.~~

285 ~~305.4 5.— Risk Management shall make the determination to ensure that the vendor has adequate~~  
286 ~~insurance coverage.~~

287 ~~305.4 6.— The fee schedule, subject to **Licensing** Department shall issue a Food Service License,~~  
288 ~~Temporary Food Service License, and a badge for Independent Food Vendors upon successful~~  
289 ~~compliance of the requirements of this Code and the Federal Food Code.~~

290 ~~305.4 7.— The Licensing Department, in conjunction with the EHS Department, shall determine~~  
291 ~~the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing~~  
292 ~~Department.~~

293 ~~305.4 8.— The Licensing Department shall determine the monetary fines for noncompliance with~~  
294 ~~this Code as approved by the Business Committee.~~

295  
296 ~~**305.5.— Compliance**~~

297 ~~305.5 1.— Strict compliance with the specific laws found in this Code and the Federal Food Code~~  
298 ~~are required.~~

299 ~~305.5 2.— Additions or modifications to the Federal Food Code found in this Code are designed~~  
300 ~~to be Oneida specific.~~

301 ~~305.5 3.— Non-compliance with this Code or the Federal Food Code will be addressed by the~~  
302 ~~License Department of the Compliance Division upon written complaint and or recommendation~~  
303 ~~from the EHS or Risk Management Departments.~~

304  
305 ~~**305.6.— Requirements for Licensing**~~

306 ~~305.6 1.— No person or person, corporation or firm shall operate a food service establishment~~  
307 ~~either permanent or temporary, or sell food as an independent food service vendor on tribal~~  
308 ~~property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License~~  
309 ~~issued by the License Department.~~

310 ~~305.6 2.— Only a person or persons, corporation or firm that complies with the requirements of~~  
311 ~~this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food~~  
312 ~~Vendors License.~~

313 ~~305.6 3.— A valid license shall be posted in every food service establishment or temporary food~~  
314 ~~service premises; and every independent food vendor shall prominently display the valid badge~~  
315 ~~issued by the EHS Department.~~

316 ~~305.6 4.— A Food Service License will be issued as follows:~~

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

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

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

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

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

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

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

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

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

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

346 ~~(j) Independent Food Service Vendors must display their badges. (See 305.10, below.)~~

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

349 ~~305.6-5.— Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to~~  
350 ~~adhere to the requirements of this code when selling food for profit on tribal property.~~

351 ~~305.6-6.— Food Service Licenses are non-transferable.~~

352  
353 **~~305.7. Insurance~~**

354 ~~305.7-1.— Food Service Establishments and Independent Vendors are required to have adequate~~  
355 ~~insurance as determined by the Risk Management Department's Standard Operating Procedures.~~

356 ~~305.7-2.— Upon satisfying the requirements of the EHS Department, Food Service Establishments~~  
357 ~~and Independent Food Service Vendors must provide the necessary documents of insurance to~~  
358 ~~Risk Management Department.~~

359 ~~305.7-3.— At any time during the term of the food service license, if the vendor loses his or her~~  
360 ~~insurance coverage, this must be reported immediately by the vendor to Risk Management and/or~~  
361 ~~the License Department.~~

362 ~~305.7-4.— Temporary Food Service vendors are exempt from the requirement for additional~~  
363 ~~insurance under this section.~~

364  
365  
366 **~~305.8.— Inspections~~**

367 ~~305.8 1. Food Establishment Vendors and Temporary Food Service Vendors who apply for a~~  
368 ~~license must undergo a pre-inspection of the permanent or temporary establishment by the EHS~~  
369 ~~Department inspector that results in a satisfactory score under the Federal Food Guidelines.~~

370 ~~305.8 2. Independent Food Service Vendors who apply for a license must undergo a pre-~~  
371 ~~inspection of the kitchen or original food preparation premises by the EHS Department inspector~~  
372 ~~that results in a satisfactory score under the Federal Guidelines.~~

373 ~~305.8 3. Inspections of the food service premises by the EHS Department will be scheduled~~  
374 ~~twice a year.~~

375 ~~305.8 4. At any time during the term of the license, either upon receipt of a complaint or upon~~  
376 ~~their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food~~  
377 ~~preparation site.~~

378 ~~305.8 5. A reinspection conducted as a result of a prior violation of this code or the Federal Food~~  
379 ~~Code, will be an additional fee to the vendor and must achieve a satisfactory score under the~~  
380 ~~Federal guidelines to cure the violation.~~

381  
382 ~~**305.9. Fees**~~

383 ~~305.9 1. The Food Service license fees shall cover a twelve (12) month period and shall be paid~~  
384 ~~in advance with the application for licensure.~~

385 ~~305.9 2. The fee shall be paid annually at the beginning of each fiscal year which is October~~  
386 ~~1 Committee through September 30 of the following year adoption of a resolution, that is~~  
387 ~~applicable to all food service businesses.~~

388 ~~305.9 3. The license fees will be prorated for those applicants who start up their business prior~~  
389 ~~to the beginning of the fiscal year.~~

390 ~~305.9 4. The fee shall be returned in full if the application is denied.~~

391 ~~305.9 5. The licensing agent shall keep fee records.~~

392 ~~305.9 6. Food Service vendors that have had their license suspended or their businesses closed~~  
393 ~~will not be entitled to a refund of their fees.~~

394 ~~305.9 7. The fee for a food service license shall be pursuant to an equitable fee schedule as~~  
395 ~~established by the EHS and License Department as reviewed and approved by the Business~~  
396 ~~Committee and shall be available in the Licensing and EHS Departments for review.~~

397 ~~305.9 8. The fee schedules may be adjusted annually.~~

398 ~~305.9 9. Food Service vendor fees shall be used for the operational budget of the EHS (80%)~~  
399 ~~and administrative budget of the License Department (20%).~~

400 ~~305.9 10. Oneida Tribal Enterprise Units are required to pay the license fees under this code.~~

401 ~~305.9 11. Oneida Tribal Business Units are exempt from the fee requirements.~~

402  
403 ~~**305.10. Independent Food Service Vendors Badge**~~

404 ~~305.10 1. Upon compliance with the requirements of this Code and the Federal Food Code, the~~  
405 ~~Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS~~  
406 ~~with the vendors/employee's photograph and license number clearly visible.~~

407 ~~305.10 2. The badge must be worn by the licensed Independent Food Service Vendor and~~  
408 ~~employees in a manner that is clearly visible to the public at all times while engaging in the sale~~  
409 ~~of their food product.~~

410 ~~(1) The fee amount shall cover the initial license term for permanent food service~~  
411 ~~establishments and independent food service operators and shall cover a single~~

412 event of not more than fourteen (14) consecutive days for temporary food service  
413 establishments.

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

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

421 (C) Unless otherwise provided herein, if an application for licensure or  
422 license renewal is denied by the Department, the licensing fee submitted  
423 with the application shall be returned to the applicant in full.

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

426 (A) The licensing fee schedule shall include the fee established by the  
427 Department to operate a prepackaged restaurant pursuant to section 305.8  
428 of this law.

429 (B) The Department may amend the licensing fee schedule as it deems  
430 necessary, subject to approval by the Oneida Business Committee through  
431 adoption of a resolution.

432 (3) ~~305.10-3. Independent Food Service vendor badges are non-~~  
433 ~~transferable and must be worn only by the individual to whom it was issued.~~

434  
435  
436 **305.11. Exceptions and Exemptions.**

437 ~~305.11-1.~~ (A) The following Oneida Nation Food Service Programs  
438 and other non-profit service programs of the Nation shall not be required  
439 to pay a licensing fee to obtain a license under this law.

440 (B) The Department shall waive the licensing fee required hereunder upon  
441 proof from a food service vendors will be business or prepackaged restaurant  
442 of payment to another governmental unit  
443 located within the boundaries of the Reservation for a similar license or  
444 permit to operate that covers the same term.

445 **305.7-2. License Eligibility.**

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

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

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

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

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

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

456 (2) Submit proof of having undergone either:

- 457 (A) Certification under the applicable food safety training offered through  
458 the Department; or  
459 (B) Certification or training that the Department, in its discretion, deems  
460 equivalent to the corresponding food safety training offered through the  
461 Department.  
462 (3) Pass an inspection by the Department of the proposed premises for the  
463 temporary food service establishment; and  
464 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
465 for licensure to operate a temporary food service establishment.  
466 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as  
467 an independent food service operator, applicants must:  
468 (1) Submit the appropriate licensing fee with their application;  
469 (2) Submit proof of having undergone either:  
470 (A) Certification under the applicable food safety training offered through  
471 the Department; or  
472 (B) Certification or training that the Department, in its discretion, deems  
473 equivalent to the corresponding food safety training offered through the  
474 Department.  
475 (3) Pass an inspection by the Department of the proposed premises designated in  
476 writing by the applicant as the food preparation site; and  
477 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
478 for licensure to function as an independent food service operator.  
479 (d) *Training.* The Department shall provide reasonable opportunities for persons to  
480 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
481 of this law.

482 **305.7-3. License Placement.**

- 483 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all  
484 times, be posted in a conspicuous area within the premises of every permanent food service  
485 establishment and every temporary food service establishment.  
486 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently  
487 displayed on the body of the license holder whenever functioning as an independent food  
488 service operator.

489  
490 **305.8. Exemptions**

491 **305.8-1. Cottage Food Sales.** Cottage food operators are exempt from the requirements of this  
492 ~~Code~~ law, except as follows:

- 493 (a) *Registration.* Before selling any cottage food products, individuals must register with  
494 the Department as a cottage food operator by providing, at a minimum, their:  
495 (1) Full name;  
496 (2) Address of domestic residence; and  
497 (3) Any additional information required by a standard operating procedure that the  
498 Department may establish, consistent with this law, to govern cottage food sales.  
499 (A) By registering as a cottage food operator, the individual is confirming  
500 that the information he or she provided is correct and agreeing to operate  
501 within the confines of the exemption.  
502 (b) *Labeling.* Cottage food products must be labeled with the following information:



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

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

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

508 (c) Home-canned Foods. Individuals who intend to sell home-canned foods under the  
509 cottage food sales exemption must first complete the food safety training approved by the  
510 Department.

511 305.8-2. Prepackaged Restaurants. Prepackaged restaurants are exempt from the requirements of  
512 this law, except as follows:

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

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

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

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

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

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

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

532 (c) The Department may reinspect the prepackaged restaurant premises during reasonable  
533 hours as often as it deems necessary so long as it does not exceed more than one (1) time  
534 per year, absent cause.

535 305.8-3. Enforcement. Violations of this section shall be enforced pursuant to section 305.10 of  
536 this law.

537 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with  
538 this section, the Department, in its discretion, may conduct an inspection of a prepackaged  
539 restaurant or a cottage food operator’s domestic residence; provided, the inspection of the  
540 cottage food operator’s domestic residence is limited to the subject matter of the complaint  
541 or event giving rise to the Department’s reasonable suspicion.

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

544 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a  
545 cottage food operator for damages that arise out of their sale or service of food hereunder.  
546

547 **305.9. Inspections**

548 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
549 (2) times per license term, the Department may, for any reason, enter a food service business to  
550 conduct an inspection, so long as at a reasonable hour.

551 ~~305.9-2.(a) Private rummage sales.~~

552 The Department may, at any time during the term of a license, enter a food service business to  
553 conduct an unscheduled inspection based on the following:

554 (a) Receipt of a complaint;

555 ~~(b) Community sponsored non-profit fund raising~~Outbreak of a food borne illness; and/or  
556 ~~charity events.~~

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

558 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
559 this law, will result in an additional fee as set forth in the license fee schedule.

560  
561 ~~305.10.(e) Official Tribal meetings such as GTC Meetings.~~

562 ~~(d) Food sold on land other than tribally owned land.~~

563  
564 **305.12. ——— Violations, Enforcement**

565 ~~305.10-1.305.12-1. — Selling food or food products on tribal property without a license is strictly~~  
566 ~~prohibited and will result in a fine and/or the suspension of the vendor's right to continue to sell~~  
567 ~~food, i.e., the business will be closed down.~~

568 ~~305.12-2. A food service vendor's license will be suspended and the food service closed down if~~  
569 ~~the licensed vendor is in non-compliance with the requirements of this Code, the Federal Food~~  
570 ~~Code or for any other reasons related to the protection of the Oneida Nation's community public~~  
571 ~~health, safety or welfare.~~

572 ~~305.12-3. A food service vendor's loss of insurance coverage or inadequate coverage for their~~  
573 ~~entity will be cause for a suspension of license and the business will be closed down until the~~  
574 ~~vendor procures adequate coverage and provides the documents thereof to the Risk Management~~  
575 ~~Department.~~

576 305.12-4. ——— Non-compliance. Violations of this law may result in any one or more of the  
577 following as determined by the Department:

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

579 (b) The issuance of a corrective order, including, but not limited to, an order to close-  
580 down; and/or

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

584 (1) Failure to pass an inspection conducted by the EHS will pursuant to this law  
585 may be cause for a penalty, revocation or suspension of the license pursuant to EHS and Federal  
586 Code guidelines. the issuance of one or more of the enforcement  
587 mechanisms set forth herein.

588 (2) Citations shall be issued and processed in accordance with the procedures  
589 contained in the Nation's laws and policies governing citations.

590 ~~305.10-2. 305.12-5. — The vendor's food service business may be closed down by the License In~~  
591 ~~addition to satisfying any other mandate issued by the Department in conjunction with the Oneida~~  
592 ~~Police Department for an uncorrected, critical hereunder, a food service business, cottage food~~  
593 ~~operator or prepackaged restaurant that has been closed-down due to a violation of this Code or~~

594 ~~the Federal Food Code law must further pass a reinspection by the Department before being eligible~~  
595 ~~for operation.~~

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

598 ~~(1) After six (6) months of satisfactory compliance with this law, as determined by~~  
599 ~~EHS and as approved by the Business Committee the Department upon a~~  
600 ~~follow-up inspection, the license holder may apply for an annual~~  
601 ~~license.~~

602 ~~305.12-6. The EHS may close down a business~~ (b) ~~A food service business or prepackaged~~  
603 ~~restaurant that has had its license or license exemption status suspended or has become subject to~~  
604 ~~a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or~~  
605 ~~fees submitted in accordance with the licensing fee schedule.~~

606 ~~305.10-3. Emergency. The Department may order a close-down of a food service business, cottage~~  
607 ~~food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence~~  
608 ~~of a serious health and/or safety threat to the community due to the imminent nature of the food~~  
609 ~~service violation.~~

610 ~~305.12-7. Any food service vendor that has been closed-~~ (a) ~~Persons issued a close-down order~~  
611 ~~by EHS the Department as an emergency measure due to the evidence of a serious health or safety~~  
612 ~~threat hereunder must provide evidence of satisfactorily corrected compliance to the~~  
613 ~~EHS Department and pass an inspection by the Department prior to being allowed to reopen~~  
614 ~~the business.~~

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

618 ~~(b) Any food service vendor that has been closed down may only receive a probationary license~~  
619 ~~for six months upon evidence of satisfactory compliance with this Code re-open and the Federal~~  
620 ~~Food Code./or continue operations.~~

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

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

630 **305.13.—11. Appeal Rights**

631 ~~305.13-11-1. Parties who disagree with the decisions~~ Decisions Not Issued Pursuant to a  
632 Citation. Decisions of the ~~EHS, Licensing or Risk Management Departments, regarding issues of~~  
633 ~~licensing, inspections, or insurance~~ Department that are not issued pursuant to a citation may be  
634 appealed, in writing, to the Department's Area Manager.

635 (a) The written appeal shall be submitted to the Area Manager within ten (10) business  
636 days of receiving the decision upon which the appeal is based.

637 (b) The Area Manager shall render a decision within five (5) business days of receiving  
638 the appeal. The decision shall be sent by registered mail (return receipt requested) or  
639 delivered in person to the appellant.

640 (1) The Area Manager may suspend the time limits for rendering a decision if he  
641 or she determines that more investigation on the matter is necessary.

642 (c) The Area Manager’s decision shall be final unless a good faith argument exists to  
643 appeal to the Trial Court of the Judiciary; on one or more of the following grounds:

644 ~~305.13-~~ (1) That, the decision is contrary to law;

645 ~~(2. — Hearings by the )~~ That, the decision is without any reasonable factual basis;  
646 and/or

647 (3) That, the decision constitutes an abuse of power.

648 (A) Appeals initiated hereunder shall be conducted in accordance with the  
649 Judiciary ~~will be pursuant to the law and any applicable rules established~~  
650 for the Judiciary of procedure.

651 305.11-2. Decisions Issued Pursuant to a Citation. Decisions of the Department that are issued  
652 pursuant to a citation may be contested in accordance with the procedures contained in the Nation’s  
653 laws and policies governing citations.

654 (a) A mandatory appearance at the citation pre-hearing is required of all persons wishing  
655 to contest a citation issued by the Department hereunder.

656  
657 *End.*

658 

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660 Adopted ~~BC-10-03~~ 06-13-01-DB

661 Amended ~~BC-02-25-15-C~~

662

~~Attachment A.~~

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

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

~~**THIS LICENSE IS NOT TRANSFERABLE**~~

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



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

Any food service vendor who violates any provision of this chapter, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with costs of prosecution. In default of payment of such forfeiture and costs, the Food Service business will be closed and/or remain closed until such forfeitures and costs are paid and all areas of non-compliance with this Code or the Federal Food Code have been cured. *Oneida Food Code 305.12-7(d).*

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

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

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

~~ONEIDA NATION IN WISCONSIN~~

~~APPLICATION~~

~~FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY~~

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

~~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- - - -

1  
2  
3 **Title 3. Health and Public Safety – Chapter 305**  
4 **Kahkwa’ó·ku**  
5 *about the food*  
6 **ONEIDA FOOD SERVICE**

7 305.1. Purpose and Policy	305.7. Licensing
8 305.2. Adoption, Amendment, Repeal	305.8. Exemptions
9 305.3. Definitions	305.9. Inspections
10 305.4. Jurisdiction	305.10. Violations, Enforcement
11 305.5. Compliance	305.11. Appeal Rights
12 305.6. Authority	

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13  
14  
15 **305.1. Purpose and Policy**

16 305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to  
17 consumers at retail or through an Oneida Nation Food Service Program by establishing a system  
18 of overlapping safeguards designed to minimize foodborne illness; ensure employee health,  
19 industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable  
20 levels of sanitation on the premises of food service businesses; and promote fair dealings with  
21 members of the community through adoption of licensing requirements, exemptions, regulation,  
22 control, supervision and enforcement procedures that govern food service businesses within the  
23 jurisdiction of the Nation.

24 305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the  
25 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its  
26 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or  
27 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
28 and honestly presented.

29  
30 **305.2. Adoption, Amendment, Repeal**

31 305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B  
32 and amended by resolutions BC-02-25-15-C and BC-\_\_-\_\_-\_\_-\_\_.

33 305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
34 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

35 305.2-3. Should a provision of this law or the application thereof to any person or circumstances  
36 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
37 to have legal force without the invalid portions.

38 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
39 the provisions of this law shall control.

40 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

41  
42 **305.3. Definitions**

43 305.3-1. This section shall govern the definitions of words and phrases used within this law. All  
44 words not defined herein shall be used in their ordinary and everyday sense.

45 (a) “Citation” means a legal document that serves as a notice or summons to appear in a  
46 court of the Nation in response to a charge against a person of a violation of law.

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

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



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

97 (r) “Nation” means the Oneida Nation.

98 (s) “Penalty” means a punishment, other than a fine, imposed on a person for violation of  
99 this law.

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

103 (1) A restaurant or other eating/drinking establishment that does not qualify as a  
104 prepackaged restaurant;

105 (2) A market or grocery store;

106 (3) A catering business;

107 (4) A bakery or confectionary;

108 (5) A convenience store or gas station store;

109 (6) An Oneida Nation Food Service Program; and/or

110 (7) A mobile food truck that requires a Department approved service base to  
111 operate.

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

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

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

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

122 (y) “Temporary food service establishment” means a non-permanent food service  
123 establishment that operates at a fixed location for a limited number of consecutive days in  
124 conjunction with a single event.

#### 125 126 **305.4. Application**

127 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage  
128 food operators located or operating within the Reservation.

129 305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the  
130 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
131 objectives and purposes for which it was enacted.

#### 132 133 **305.5. Compliance**

134 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
135 the Department.

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

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

139 305.5-2. *Federal Food Code*. The Nation finds that the Federal Food Code establishes a high level  
140 of stringent food and beverage handling safety standards that should govern all food service  
141 businesses to which this law applies.

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

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

146 (2) Should a provision of this law conflict with a provision of the Federal Food  
147 Code, the provision of this law shall have priority over the Federal Food Code and  
148 govern.

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

152

### 153 **305.6. Authority**

154 305.6-1. *Authority of the Department*. Subject to all applicable provisions and/or restrictions  
155 contained in this or any other governing law of the Nation, the Department shall be responsible for  
156 the administration and enforcement of this law, including, but not limited to, that the Department  
157 shall have the power to:

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

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

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

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

165 (e) Issue citations and corrective orders for violations of this law and/or when necessary  
166 to protect the welfare of the community.

167

### 168 **305.7. Licensing**

169 305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to  
170 operate a food service business:

171 (a) *License Application*. Persons shall be required to apply to the Department to receive or  
172 renew a license to operate a food service business pursuant to the application process  
173 established by the Department through adoption of a standard operating procedure that  
174 conforms to this law and includes, at a minimum, the following:

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

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

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

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

188 (b) *License Period.*

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

192 (2) Licenses for temporary food service establishments shall be issued by the  
193 Department to cover one (1) single event for a period of not more than fourteen  
194 (14) consecutive days.

195 (c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject  
196 to approval by the Oneida Business Committee through adoption of a resolution, that is  
197 applicable to all food service businesses.

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

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

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

209 (C) Unless otherwise provided herein, if an application for licensure or  
210 license renewal is denied by the Department, the licensing fee submitted  
211 with the application shall be returned to the applicant in full.

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

214 (A) The licensing fee schedule shall include the fee established by the  
215 Department to operate a prepackaged restaurant pursuant to section 305.8  
216 of this law.

217 (B) The Department may amend the licensing fee schedule as it deems  
218 necessary, subject to approval by the Oneida Business Committee through  
219 adoption of a resolution.

220 (3) *Exemptions.*

221 (A) The Oneida Nation Food Service Programs and other non-profit service  
222 programs of the Nation shall not be required to pay a licensing fee to obtain  
223 a license under this law.

224 (B) The Department shall waive the licensing fee required hereunder upon  
225 proof from a food service business or prepackaged restaurant of payment to  
226 another governmental unit located within the boundaries of the Reservation  
227 for a similar license or permit to operate that covers the same term.

228 305.7-2. *License Eligibility.*

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

- 231 (1) Submit the appropriate licensing fee with their application;  
232 (2) Pass an inspection by the Department of the proposed premises for the  
233 permanent food service establishment; and  
234 (3) Satisfy any other provision within or arising out of this law that is a prerequisite  
235 for licensure to operate a permanent food service establishment.
- 236 (b) *Temporary Food Service Establishments*. To be eligible to receive a license to operate  
237 a temporary food service establishment, applicants must:
- 238 (1) Submit the appropriate licensing fee with their application;  
239 (2) Submit proof of having undergone either:  
240 (A) Certification under the applicable food safety training offered through  
241 the Department; or  
242 (B) Certification or training that the Department, in its discretion, deems  
243 equivalent to the corresponding food safety training offered through the  
244 Department.
- 245 (3) Pass an inspection by the Department of the proposed premises for the  
246 temporary food service establishment; and  
247 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
248 for licensure to operate a temporary food service establishment.
- 249 (c) *Independent Food Service Operators*. To be eligible to receive a license to function as  
250 an independent food service operator, applicants must:
- 251 (1) Submit the appropriate licensing fee with their application;  
252 (2) Submit proof of having undergone either:  
253 (A) Certification under the applicable food safety training offered through  
254 the Department; or  
255 (B) Certification or training that the Department, in its discretion, deems  
256 equivalent to the corresponding food safety training offered through the  
257 Department.
- 258 (3) Pass an inspection by the Department of the proposed premises designated in  
259 writing by the applicant as the food preparation site; and  
260 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
261 for licensure to function as an independent food service operator.
- 262 (d) *Training*. The Department shall provide reasonable opportunities for persons to  
263 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
264 of this law.

265 **305.7-3. License Placement.**

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

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

272 **305.8. Exemptions**

273 **305.8-1. Cottage Food Sales.** Cottage food operators are exempt from the requirements of this  
274 law, except as follows:  
275

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

278 (1) Full name;

279 (2) Address of domestic residence; and

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

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

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

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

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

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

291 (c) *Home-canned Foods*. Individuals who intend to sell home-canned foods under the  
292 cottage food sales exemption must first complete the food safety training approved by the  
293 Department.

294 305.8-2. *Prepackaged Restaurants*. Prepackaged restaurants are exempt from the requirements of  
295 this law, except as follows:

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

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

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

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

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

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

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

315 (c) The Department may reinspect the prepackaged restaurant premises during reasonable  
316 hours as often as it deems necessary so long as it does not exceed more than one (1) time  
317 per year, absent cause.

318 305.8-3. *Enforcement*. Violations of this section shall be enforced pursuant to section 305.10 of  
319 this law.

320 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with  
321 this section, the Department, in its discretion, may conduct an inspection of a prepackaged



322 restaurant or a cottage food operator’s domestic residence; provided, the inspection of the  
323 cottage food operator’s domestic residence is limited to the subject matter of the complaint  
324 or event giving rise to the Department’s reasonable suspicion.

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

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

329  
330 **305.9. Inspections**

331 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
332 (2) times per license term, the Department may, for any reason, enter a food service business to  
333 conduct an inspection, so long as at a reasonable hour.

334 305.9-2. The Department may, at any time during the term of a license, enter a food service  
335 business to conduct an unscheduled inspection based on the following:

336 (a) Receipt of a complaint;

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

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

339 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
340 this law, will result in an additional fee as set forth in the license fee schedule.

341  
342 **305.10. Violations, Enforcement**

343 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following  
344 as determined by the Department:

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

346 (b) The issuance of a corrective order, including, but not limited to, an order to close-  
347 down; and/or

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

351 (1) Failure to pass an inspection conducted pursuant to this law may be cause for  
352 the issuance of one or more of the enforcement mechanisms set forth herein.

353 (2) Citations shall be issued and processed in accordance with the procedures  
354 contained in the Nation’s laws and policies governing citations.

355 305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food  
356 service business, cottage food operator or prepackaged restaurant that has been closed-down due  
357 to a violation of this law must further pass a reinspection by the Department before being eligible  
358 for operation.

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

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

364 (b) A food service business or prepackaged restaurant that has had its license or license  
365 exemption status suspended or has become subject to a close-down order shall not be  
366 entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance  
367 with the licensing fee schedule.

368 305.10-3. *Emergency*. The Department may order a close-down of a food service business, cottage  
369 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
370 of a serious health and/or safety threat to the community.

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

### 375 **305.11. Appeal Rights**

376 305.11-1. *Decisions Not Issued Pursuant to a Citation*. Decisions of the Department that are not  
377 issued pursuant to a citation may be appealed, in writing, to the Department’s Area Manager.

378 (a) The written appeal shall be submitted to the Area Manager within ten (10) business  
379 days of receiving the decision upon which the appeal is based.

380 (b) The Area Manager shall render a decision within five (5) business days of receiving  
381 the appeal. The decision shall be sent by registered mail (return receipt requested) or  
382 delivered in person to the appellant.

383 (1) The Area Manager may suspend the time limits for rendering a decision if he  
384 or she determines that more investigation on the matter is necessary.

385 (c) The Area Manager’s decision shall be final unless a good faith argument exists to  
386 appeal to the Trial Court of the Judiciary on one or more of the following grounds:

387 (1) That, the decision is contrary to law;

388 (2) That, the decision is without any reasonable factual basis; and/or

389 (3) That, the decision constitutes an abuse of power.

390 (A) Appeals initiated hereunder shall be conducted in accordance with the  
391 Judiciary law and any applicable rules of procedure.

392 305.11-2. *Decisions Issued Pursuant to a Citation*. Decisions of the Department that are issued  
393 pursuant to a citation may be contested in accordance with the procedures contained in the Nation’s  
394 laws and policies governing citations.

395 (a) A mandatory appearance at the citation pre-hearing is required of all persons wishing  
396 to contest a citation issued by the Department hereunder.  
397

398 *End.*  
399

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400 Adopted – BC-06-13-01-B

401 Amended – BC-02-25-15-C

402 Amended – BC-\_\_-\_\_-\_\_-\_\_

403



## HANDOUT

Legislative Operating Committee  
January 15, 2020

# Sanctions and Penalties Law

<b>Submission Date:</b> 9/6/17	<b>Public Meeting:</b> 10/4/18, 1/7/20
<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.
- 12/4/19 LOC:** Motion by Jennifer Webster to approve the January 20, 2020 General Tribal Council Meeting materials with one change and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.
- 12/4/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to discuss the community comments that were made during today's LOC meeting, and discuss a strategy for moving this item forward. LOC directed that an e-poll be conducted to rescind the earlier Sanctions and Penalties law motion, so that the materials are not sent to the

December 4, 2019, special OBC meeting for inclusion in the January 20, 2020, General Tribal Council meeting. Instead, the LOC wants to bring the proposed changes to a public meeting, finalize a draft, and request an updated fiscal impact statement, and bring an updated packet to the tentative March 2020 special GTC meeting.

**12/4/19:** *E-Poll Conducted.* E-Poll was titled “Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law.” The requested action of this e-poll was to Rescind the December 4, 2019, Legislative Operating Committee motion to “Approve the January 20, 2020, General Tribal Council meeting materials and forward to the Oneida Business Committee.” The e-poll was approved by Ernest Stevens III, Kirby Metoxen, Jennifer Webster, David P. Jordan. Daniel Guzman King did not provide a response to the e-poll during the e-poll time frame.

**12/4/19 OBC:** Motion by David P. Jordan to adopt with two (2) changes [1) delete item IV.A.1. Accept the Sanctions and Penalties law materials and add to the tentatively scheduled 2020 annual General Tribal Council meeting agenda; and 2) under New Business header, item A. Cancel the December 26 and 27, 2019, Oneida Business Committee meetings), seconded by Jennifer Webster. Motion carried.

**12/9/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to confirm what the LOC wants to see in the proposed Sanctions and Penalties for Elected Officials law draft that will be sent to a public meeting. LRO will prepare an e-poll for the PM materials to be completed before December 12, 2019.

**12/10/19:** *E-Poll Conducted.* E-Poll was titled “Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law.” The requested action of this e-poll was to approve the public meeting packet and forward the Sanctions and Penalties for Elected Officials law to a public meeting to be held on January 7, 2020. The e-poll was approved by Kirby Metoxen, Jennifer Webster, David P. Jordan, and Daniel Guzman King. Ernest Stevens III did not provide a response.

**12/18/19 LOC:** Motion by Jennifer Webster to enter into the record the December 4, 2019, E-poll results for the Sanctions and Penalties law – rescission of the December 4, 2019, LOC action; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Ernest Stevens III to enter into the record the December 10, 2019, E-poll results for the Sanctions and Penalties law – approval of a public meeting; seconded by Jennifer Webster. Motion carried unanimously.

**1/7/20:** *Public Meeting Held.* Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins, Lee Cornelius, Bonnie Pigman, Ralinda Ninham-Lamberies, Kermit Valentino, Debra Valentino. One (1) person provided oral comments during the public meeting.

**1/8/20:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Xavier Horkman. The purpose of this work meeting was to discuss and plan for the development of the Sanctions and Penalties Law for Elected Officials law video presentation for the March 16, 2020, General Tribal Council meeting.

**1/14/20:** *OBC Work Session.* The purpose of attending this Oneida Business Committee work session was to provide the Oneida Business Committee an update on why the Sanctions and Penalties law materials would be a handout at the January 22, 2020, Oneida Business Committee meeting.

**1/14/20:** *Public Comment Period Closed.* Two (2) submissions of written comments were received during the public comment period.

**Next Steps:**

- Accept the public comments and public comment review memorandum and defer to a work meeting for further consideration.



TO: Legislative Operating Committee  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney **CNS**  
DATE: January 15, 2020  
RE: Sanctions and Penalties for Elected Officials Law: Public Meeting Comment Review

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On January 7, 2020, a public meeting was held regarding the proposed Sanctions and Penalties for Elected Officials law (“the Law”). The public comment period was then held open until January 14, 2020. This memorandum is submitted as a review of the written comments received during the public comment period.

The public meeting draft, and public meeting transcript, and written comments received are attached to this memorandum for review.

### **Comment 1 – Addressing Appointed Officials in the Law:**

**Bonnie Pigman (oral):** Yes, my name is Bonnie Pigman and I am an eligible voting General Tribal Council member, #5361. These are my public comments for the record. There are points which I have to, I wish to have considered before this draft law, Sanctions and Penalties for Elected Officials, is scheduled to be presented to General Tribal Council on January 20, 2020.

Point 1: In March 2019, the General Tribal Council was presented with this Sanctions and Penalties draft law, which was covered, which covered both appointed and elected officials. The General Tribal Council directed this draft law be deferred for at least sixty (60) days to allow for additional time for community members to consider it and have input. The LOC hosted several community meetings and it is their opinion that the Sanctions and Penalties draft law reflect revisions based on input received from those members. One particular change to the draft law was to exclude appointed BCCs and revise the draft law title to cover only elected officials. The community input asked that the Business Committee be removed as a hearing body for complaints against appointed officials. The community input did not include removing appointed individuals, appointed officials from the draft law. I feel it is important to have it noted for the record that there has been no additional draft law created for appointed officials. What sanctions and penalties will the appointed officials have to comply with if this draft law is approved by General Tribal Council? Would it not have been easier to just revise the draft law by referring all complaints to the Judiciary?

### ***Response***

The commenter expresses an opinion that she does not believe the proposed revisions to the Law reflect community input that was received and would have desired to see different revisions made to the Law in regard to appointed officials.



On March 17, 2019, the Legislative Operating Committee presented the proposed Law to the General Tribal Council (GTC). After discussion on the proposed Law, the GTC adopted a motion to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. Since March 17, 2019, the Legislative Operating Committee has fulfilled the GTC's directive. The Legislative Operating Committee received a wide range of questions and input regarding the proposed Law during the various outreach events and efforts that were made. The Legislative Operating Committee 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 Legislative Operating Committee determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The Law was then updated 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 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 Legislative Operating Committee 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 to 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.

The commenter makes the statement that, *“The community input asked that the Business Committee be removed as a hearing body for complaints against appointed officials. The community input did not include removing appointed individuals, appointed officials from the draft law.”* It is important to note that this statement is inaccurate, as the Legislative Operating Committee did receive input that guided the decision to remove appointed officials from the proposed Law. Additionally, the fact that this Law only applies to elected officials is modeled after and consistent with the Nation's Removal law which also only addresses elected officials.

The commenter also questioned what sanctions and penalties an appointed official would face for misconduct in office if the proposed Law does not address appointed officials. Appointed officials who engage in misconduct are subject to termination of appointment by the Oneida Business Committee in accordance with the Boards, Committees, and Commissions law. [1 O.C. 105.7-4, 105.18-1(c)]. Whether to create further legislation to address potential sanctions and/or penalties of an appointed official will be a policy consideration for the Legislative Operating Committee.

Since it was the intent of the Legislative Operating Committee to have the proposed Law only address elected officials of the Nation in response to input that was received during the various community outreach efforts made, there is no revision to this Law recommended based on this comment.

### ***LOC Consideration***

## Comment 2 – Combining this Law with the Removal Law:

### 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.

**Bonnie Pigman (oral):** Point 2: I attended one of the community meetings at the Elder Meal Site and I came prepared with several questions. I was only allowed to ask two. One of the two questions I asked about was why the removal law language was not being incorporated. I feel since behavior is related to removal it's subject to sanctions and penalties, it would be more logical for removal to be included in this draft law. I feel that if GTC is to approve this Sanctions and Penalties law, it would be inclusive of all sanctions and penalties related to BCCs appointed and election and elected, and I was not allowed to ask any of my other questions.

### *Response*

The commenter expresses her belief that the Removal law should have been incorporated into this Law instead of having two separate pieces of legislation.

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. [1 O.C. 120.1-1]. Simply stated, it is the goal of this Law to address the misconduct of an official so that official can correct his or her behavior and become a more effective official, thereby potentially avoiding removal from office. The purpose of the Removal law on the other hand is to govern the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1].

It was the intent of the Legislative Operating Committee that this Law be developed to address the misconduct of officials that does not rise to the level of removal from office, to provide officials an opportunity to correct and improve their behavior and become more effective officials as a result. For that reason, the Legislative Operating Committee made the decision to have this Law be separate from the Removal law. This was a policy consideration that the Legislative Operating Committee made as the body that has been delegated the authority and responsibility to develop legislation on behalf of the Nation. [1 O.C. 109.4-2].

It is also important to note that in addition to the seven (7) different community outreach events the Legislative Operating Committee held regarding the Law, the Legislative Operating Committee also allowed for written comments on the proposed Law to be submitted from July 3,

2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. The purpose of these periods for written submissions of comments or questions was to allow the opportunity for an individual to participate and provide input even if that individual was unavailable to attend the community outreach events in person or did not get to ask all the questions he or she had during a particular community outreach event.

Since it was the intent of the Legislative Operating Committee that this Law be developed separate from the Removal law, there is no revision to the Law recommended based on this comment.

### *LOC Consideration*

#### **Comment 3 – Definition for the Term Entity:**

#### **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.**

**(g) “Entity” means a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.**

**Bonnie Pigman (oral):** Point 3: In reviewing the Sanctions and Penalties law for Elected Officials draft, that draft law, I saw some areas which may conflict, or are confusing with the language in the Boards, Committees and Commissions law, a lot which is highly connected to this draft law. The first maybe with how entity is defined. The definition in the BCC law includes appointed and elected officials, but not the Business Committee. The definition in the Sanctions and Penalties Elected Officials draft law does not include appointed officials but includes the Business Committee. It seems like the BCC law would be corrected or revised to provide more clarity.

#### ***Response***

The commenter expresses concern that there may be inconsistencies between this Law and the Nation’s Boards, Committees, and Commissions law. Specifically, the commenter expresses concern that the definition of “entity” is different in both laws.

The Legislative Procedures Act (“the LPA”) provides the process for the development and adoption of laws of the Nation. [1 O.C. 109.1-1, 109.1-2]. In addition to providing the process for the adoption of new legislation or amendments to current legislation, the LPA also provides the consistent formation and organization each law is required to follow. [1 O.C. 109.11-1]. The LPA requires that each law has a section that is dedicated to definitions. [1 O.C. 109.11-1(c)]. The definitions included in a law are of words that are used in a technical sense throughout the law, so

if a word is not specifically defined in a law then it is to be used in its ordinary sense. [1 O.C. 109.11-1(c)].

The term “entity” is used in a different technical sense in this Law than the Boards, Committees, and Commissions law. This Law defines an entity as “a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.” [1 O.C. 109.3-1(g)]. This definition references only elected officials and not appointed officials of the Nation because the Law only applies to elected officials of the Nation. The Boards, Committees, and Commissions law defines an entity as “a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation’s membership.” [1 O.C. 105.3-1(h)]. The Boards, Committees, and Commissions law further clarifies that the Law does not apply to the Oneida Business Committee. [1 O.C. 105.1-1(a)]. The definition included in the Boards, Committees, and Commissions law applies to both elected and appointed officials of the Nation because the Boards, Committees, and Commissions law has a wider breadth of application than this Law.

It is not accurate to state that there is a conflict between this Law and the Boards, Committees, and Commissions law because the definition for the term “entity” varies between the two laws. Each law can provide its own definition for the technical use of a term specifically within the law. It is important for a reader to reference the definition section of a particular law instead of utilizing a definition from a different law because the term may not be used in the same technical sense in both pieces of legislation.

Since this Law and the Boards, Committees, and Commissions law purposefully define the term “entity” in different manners, there is no revision to the Law recommended based on this comment.

### *LOC Consideration*

## **Comment 4 – Application of Sanctions and Penalties for Appointed Officials in the Boards, Committees, and Commissions Law:**

### **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.

**Bonnie Pigman (oral):** The second matter refers to the BCC law, Section 105.18, Enforcement. This section refers to members of the entity being found to be in violation of this law to be subject

to sanctions and penalties. How are appointed officials to be held to sanctions and penalties, when appointed officials are not included in this draft law of the Sanctions and Penalties for Elected Officials? Thank you.

### ***Response***

The commenter expresses concern that this Law does not apply to appointed officials of the Nation, but the Boards, Committees, and Commissions law references sanctions and penalties of an appointed official.

The commenter is correct that this Law does not apply to appointed officials. 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. [1 O.C. 120.1-1]. The Law further clarifies that any reference to an “official” throughout the Law means a person who is elected to serve a position for the Nation, including a position on a board, committee, or commission, or office of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(j)].

The Boards, Committees, and Commissions law on the other hand, has a wider range of application and does apply to both elected and appointed officials of the Nation. [1 O.C. 105.1-1, 105.3-1(h)]. The Boards, Committees, and Commissions law contains a provision which addresses its enforcement. [1 O.C. 105.18-1]. Any member of an entity found to be in violation of the Boards, Committees, and Commissions law may be subject to:

- sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - removal pursuant to any laws or policies of the Nation’s governing removal, if the individual is a member of an elected entity; or
  - termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.
- [1 O.C. 105.18-1(a)-(c)].

The Boards, Committees, and Commissions law’s reference of “sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties” is not a direct reference to this Law, but instead a general reference to any law of the Nation that may govern sanctions and/or penalties. Although this Law focuses its application to elected officials of the Nation and does not apply to appointed officials, there may be future legislation that will specifically apply to appointed officials of the Nation, just as there is current legislation that applies to and provides specific sanctions and/or penalties for appointed officials who violation said law.

The Nation’s Social Media Policy and Computer Resources Ordinance are examples of current legislation that contains a sanction and/or penalty for an appointed official who violates the Law.

- The Social Media Policy allows an appointed official to be designated by its board, committee, or commission as the administrator of the entity’s social media account. [2 O.C. 218.6-1(a)]. An administrator who violates the Social Media Policy may face the consequence, or sanction and/or penalty, of being removed as administrator of that social media account or having the social media account taken offline. [2 O.C. 218.8-1, 218.8-2].

- The Computer Resources Ordinance provides that a user, which may be an appointed member of a board, committee, or commission of the Nation, may utilize computer resources for authorized activities, and even engage in personal use of computer resources when it does not interfere with the mission or operations of the entity. [2 O.C. 215.3-1(f), 215.4-1, 215.4-2]. The Computer Resources Ordinance then sets forth what constitutes inappropriate personal use, and limitations on use. [2 O.C. 215.5, 215.7]. If an appointed official of a board, committee, or commission violates the Computer Resource Ordinance then that appointed official may be subject to the sanction of limitation or loss of access to the computer resources. [2 O.C. 215.9-1].

The fact that this Law does not apply to appointed officials of the Nation does not create an inconsistency with section 105.18-1(a) of the Boards, Committees, and Commissions law. Therefore, there is no revision to the Law recommended based on this comment.

### *LOC Consideration*

## Comments 5 through 6 – Governmental Separation of Powers:

**Travis Wallenfang (written):** Good Afternoon, I have submitted my comments to the record as the relate to the Public Rule making process for the Sanctions and Penalties Laws and its process. As it is stated on the Oneida Website:

With the establishment of the 3 branches of government which are Executive, Legislative, and Judicial Branches all within the Oneida Nation, it is important to notice that the purpose of these three separate branches was to make sure no individual or group will have too much power.

- The Executive Branch –Consists of The Oneida Business Committee (OBC) is comprised of four Officers (Chair, Vice-Chair, Treasurer, and Secretary) and five (5) at-large Councilmembers. The OBC oversees the following executive managers of the Nation’s organization:
  - Gaming General Manager
  - Community & Economic Development Division Director
  - Comprehensive Health Division Director – Operations
  - Comprehensive Health Division Director – Medical
  - Comprehensive Housing Division Director
  - Environmental Health Safety & Land Division Director
  - Governmental Services Division Director
  - Internal Services Division Director
  - Public Works Division Director
  - Retail Enterprise Area Manager
  - Human Resource Area Manager



- The Legislative Branch- main responsibility is the creation of laws and refers to the preparation and enactment of laws by a legislative body through its lawmaking process. The legislative process includes evaluating, amending, and voting on proposed laws and is concerned with the words used in the bill to communicate the values, judgments, and purposes of the proposal.

The Oneida Legislative Operating Committee's (LOC) purpose and mission is to enhance the policy making capabilities of the OBC(OBC) and General Tribal Council (GTC) by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

#### Article II. Officers

2-1. *Officers.* The LOC shall have two (2) officers: Chairperson and Vice-Chairperson.

2-2. *Duties of the Chairperson.* The LOC Chairperson shall:

- Preside at all meetings of the LOC;
- Sign all correspondence of the LOC;
- Submit the approved minutes to the Tribal Secretary for action and approval by the Oneida Business Committee;
- Monitor the budget of the LOC;
- Submit a semi-annual report to the GTC;
- Supervise the supervising attorney of the Legislative Reference Office; and
- Other duties as assigned by the LOC.

2-3. *Duties of the Vice-Chairperson.* In the absence or incapacity of the LOC Chairperson, the LOC Vice-Chairperson shall perform the duties of the LOC Chairperson.

2-4. *How Chosen.* The LOC shall meet within twenty-four (24) hours of taking the Oath of Office for the OBC to elect officer positions. The officer positions shall be chosen by majority vote of all LOC members in attendance at the meeting. Said vote shall be made part of the LOC record.

(a) *Length of Term.* The term of office for a LOC officer shall coincide with his or her term on the LOC, unless an officer resigns in accordance with 2-4(b) or the LOC changes officers in accordance with 2-4(c).

(b) *Resignation.* A LOC officer may resign as a LOC officer by presenting his or her resignation in writing to the LOC. Resignations are effective upon approval of the LOC.

(c) *Changing Officers.* Upon request of a LOC member, the LOC shall consider electing Page 1 of 3 a new officer(s) at a duly called meeting. Any new officer(s) shall be elected by majority vote of all present LOC members.

(d) *Officer Vacancy.* In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

2-5. *Personnel*. In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

2-5. *Personnel*. The Legislative Reference Office is the support office under the direction and supervision of the LOC. The LOC may employ such personnel in the Legislative Reference Office as it deems necessary to carry out the duties and responsibilities of the LOC.

(a) The LOC shall approve the staff structure for the Legislative Reference Office.

(b) The LOC shall be responsible for negotiating the contract for the supervising attorney of the Legislative Reference Office and forwarding the contract to the OBC for approval.

(c) The supervising attorney of the Legislative Reference Office shall be directly supervised by the LOC Chairperson.

### Article III. Meetings

3-1. *Regular Meetings*. The LOC meetings shall be held on the first and third Wednesdays of each month at 9:00a.m.

(a) The meeting dates, time and location may change from time to time as determined by the LOC but shall be within the Reservation boundaries unless notified to the LOC membership prior to designating the meeting location.

(b) Notice of meeting location, agenda, and materials shall be forwarded by the Chairperson with the assistance of the Legislative Reference Office.

3-2. *Special Meetings*. Special meetings of the LOC may be called by the LOC Chairperson or by OBC directive.

(a) Special meetings shall address a specific purpose(s) and convene at a time outside of the regular scheduled meeting time.

(b) Special meetings shall require a written notice to each member of the LOC at least twenty-four (24) hours prior to the meeting start time.

3-3. *Quorum*. A quorum shall consist of three (3) persons and shall include the LOC Chairperson or LOC Vice-Chairperson. 3-4. *Order of Business*. The agendas for the regular meetings of the LOC shall contain the order of business as follows:

(a) Call to Order and Approval of the Agenda

(b) Minutes

(c) Current Business

(d) New Submissions

(e) Additions

(f) Administrative Updates

(g) Executive Session

(h) Recess/ Adjourn

3-5. *Voting*. Voting shall be in accordance with simple majority vote of the LOC members present at a duly called meeting. The LOC Chairperson shall have voting privileges in all matters which come before the LOC.

### Article IV. Reporting

4-1. *Format*. Agenda items shall be in an identified format.

4-2. *Minutes.* Minutes shall be typed and in a consistent format designed to generate the most Page 2 of 3 informative record of the LOC meetings.

(a) All minutes shall be submitted to the Tribal Secretary's Office within thirty (30) calendar days after approval by the LOC.

(b) Actions taken by the LOC are valid when minutes are approved, provided

that, minutes are submitted to the Tribal Secretary's Office in accordance with 4-

2(a).

(c) Copies of the minutes shall be available for review and copy in accordance

with the Open Records and Open Meetings Law.

4-3. *Backup.* Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

4-4. *Reporting.* The LOC is responsible for reporting to the OBC and General Tribal Council.

(a) The LOC Chairperson shall submit reports to the OBC and GTC on behalf of the LOC.

(b) Reports to the OBC and GTC shall be made regularly and as requested.

#### Article V. Amendments

5-1. *Amendments to Bylaws.* The LOC may amend the Bylaws upon approval of the LOC at a regularly scheduled meeting and with subsequent approval of the OBC.

#### Article VI. Outstanding Legislation

6-1. Any outstanding legislation at the end of a term shall be presented for consideration to the newly elected LOC within sixty (60) days after the new LOC takes office.

Approval Date of May 28, 2014.

The Concern is:

- LOC is comprised of the five (5) council members from OBC. - The questions I have are as follows:
  - How is there separation of the three branches of government in the Oneida Nation when Five of the OBC members from the Executive branch of government are also members of the LOC?
  - The 5 OBC members also the LOC:
    - Committee Chair- Councilman David P. Jordan
    - Committee Vice-Chair- Councilman Kirby Metoxen
    - Committee Member- Councilman Ernest Stevens III
    - Committee Member- Councilman Daniel Guzman King
    - Committee Member- Councilwoman Jennifer Webster

The separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent

is to prevent the concentration of power and provide for checks and balances. Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in:

Article 1. The Executive, composed of the President, Vice-President, and the Departments, is set up in

Article 2. The Judicial, composed of the federal courts and the Supreme Court, is set up in

Article 3. Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

- Legislative Operating Committee

Purpose and Mission: The purpose and mission of the LOC is to enhance the policy making capabilities of the OBC and GTC by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

- Is this not a direct Conflict of Interest? Because the Legislative and the Executive branches are to be separate, but the Oneida Nation has them intertwined and overlapping? Conflict of Interest- is a perception of a conflict of interest is a conflict of interest.
  - What qualifications do they OBC have to establish these laws?
  - What kind of requirements have been established for people holding OBC and LOC positions like this? Is there any relevant experience or minimum requirements of education for this branch of government like?
    - Tribal Governments?
    - Principles of Federal Indian Law?
    - Civil Jurisdiction in Indian Country?
    - Principles of Federal Indian Law?
    - Tribal Gaming Laws?
    - Federal Contract & Compacts?
- The Judicial Branches- On August 19, 1991, the Oneida GTC adopted a resolution creating the Oneida Appeals Commission, later known as the Oneida Tribal Judicial System. The judicial system was created to enhance and protect the self-government and sovereignty of the Oneida Nation while also providing for a governmental separation of powers. The creation of the Judiciary built on the foundation that was laid by the Oneida Tribal Judicial System by granting the Trial Court and Court of Appeals expanded subject matter jurisdiction and further developing a process for peacemaking and mediation. A branch of the Court was also created to address matters affecting the Oneida people as it pertains to the family and children. This is the Oneida Family Court. The Judicial Branches are generally in charge of deciding the meaning of laws, how to apply them to real situations, and whether a law breaks the rules of the Constitution. In May of 2015 Nation members voted to amend the Oneida Tribal Constitution by Secretarial Election. One of the amendments, Article V, Section 1, establishes a Judiciary to exercise the judicial authority of the Oneida Nation. After an appeal of the Secretarial Election in 2016 was upheld, the Oneida GTC adopted Resolution #03-19-17-A which states in part “NOW THEREFORE BE IT RESOLVED, that in accordance with Article V, Section 2 of the Oneida Nation’s Constitution, the GTC delegates the Oneida Nation’s judicial authority pursuant to the

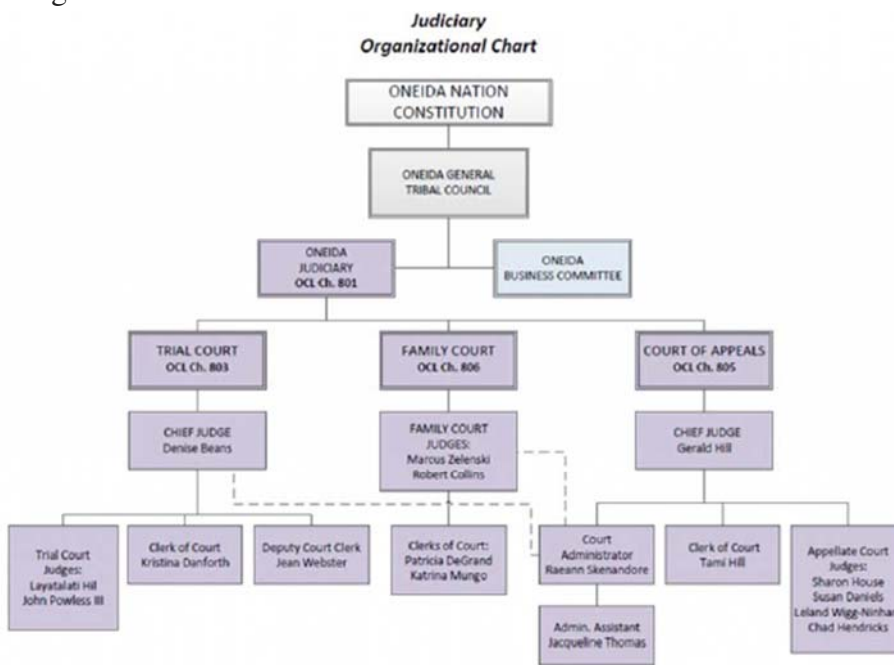
Article V of the Constitution to the Oneida Judiciary, created pursuant to the Judiciary Law adopted by resolution GTC-01-07-13-B.

**Vision**

The Vision of the Oneida Judiciary is to administer a fair, objective, independent, timely and lawful judicial branch of the Oneida government. The Oneida Judiciary is guided by the wisdom of our heritage and traditions as well as the requirements of modern circumstances, laws and statutes.

**Mission**

The Mission of the Oneida Judiciary is to provide a fair, orderly, and neutral forum for the resolution of issues that may arise out of governance of the Oneida Nation and civil actions amongst its members, other people residing on the Oneida Reservation, and those doing business with Oneida Tribal entities. It is our mission to operate as an independent branch of our government entrusted by the GTC to protect the Sovereignty of the Oneida Nation and the Rights of its citizens.



**Travis Wallenfang (written):** In order to resolve these potential conflicts of interests and other concerns, the OBC/LOC Members shall be recused from establishing their own laws against them of misconduct in office because this directly interferes with the established separate branches of government and the laws to make them held accountable. Without the proper education it is difficult to let the people in these positions write laws as they directly affect them as this should be brought to the GTC to make them aware of these issues.

**Response**

The commenter discusses the separation of powers within a government and the qualifications an individual should have to hold a position within that government. The commenter believes a



conflict of interest exists within the fact that the Legislative Operating Committee members that develop and draft legislation for the Nation are a part of the Oneida Business Committee which adopts legislation of the Nation. These comments are outside the scope of the public meeting on the proposed Sanctions and Penalties for Elected Officials law.

In an effort for this memorandum to provide clarifying information to members of the community, members of the Legislative Operating Committee participating in the drafting and development of law, and then participating in the approval and adoption of that law as members of the Oneida Business Committee is not a conflict of interest.

General Tribal Council prescribed the manner in which legislation of the Nation should be drafted, developed, and adopted through the adoption of the Legislative Procedures Act. The Legislative Procedures Act provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Legislative Procedures Act provides:

1. The Legislative Operating Committee is the legislative committee of the Nation that is responsible for the development of laws of the Nation. [1 O.C. 109.4-1, 109.4-2].
2. The Legislative Operating Committee handles requests for legislation and determines if the request for the development of legislation should be accepted or denied. [1 O.C. 109.5].
3. The Legislative Operating Committee will direct an agency of the Nation to complete a fiscal impact statement for all legislation. [1 O.C. 109.6].
4. A legislative analysis shall be completed by the Legislative Reference Office and provided to the Legislative Operating Committee. [1 O.C. 109.7].
5. The Legislative Operating Committee will hold open a public comment period with a public meeting, and then consider fully all comments received. [1 O.C. 109.8].
6. The Legislative Operating Committee shall forward the legislation, legislative analysis and fiscal impact statement to the Oneida Business Committee when legislation is ready for consideration. [1 O.C. 109.9-1].
7. The Oneida Business Committee shall consider the adoption of the legislation or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1].

Additionally, the General Tribal Council adopted the Nation's Ten Day Notice Policy, which clarifies that the Legislative Operating Committee shall consist of the Oneida Business Committee members who are not officers of the Oneida Business Committee. [1 O.C. 110.4-1(b)].

The adoption of both the Ten Day Notice Policy and the Legislative Procedures Act clearly demonstrates General Tribal Council's intention to have the members of the Legislative Operating Committee draft and develop legislation of the Nation, and then the members of the Oneida Business Committee adopt legislation, or forward legislation to the General Tribal Council for adoption. Therefore, no conflict exists between the role the members of the Legislative Operating Committee play with the role those same members play as part of the Oneida Business Committee.

Additionally, the Legislative Operating Committee has made the determination that the General Tribal Council, and not the Oneida Business Committee, should be the adopting authority for this Law, and therefore this Law will be presented to the General Tribal Council for the final consideration of adoption.



Since the comments are outside the scope of the public meeting for the Law, there is no revision to the Law recommended based on this comment.

### *LOC Consideration*

## **Comment 7 – Role of the Oneida Business Committee in the Complaint Process:**

### **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.

### **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.

(j) “Official” means any person who is elected to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.

### **120.5. Filing of a Complaint**

**120.5-4. Where to File.** Complaints against an official shall be filed with the Nation’s Trial Court pursuant to the Nation’s Rules of Civil Procedure.

### **120.6. Complaint Procedure**

**120.6-1. Jurisdiction of the Trial Court.** The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

**Travis Wallenfang (written):** Another concern is when the complaints affect multiple OCB Members and or relatives in positions and their ability to vote on these issues. To file the complaint should not be in the OBC Support Office as there is a conflict of interests if the OBC is the one who reviews the complaints. These complaints should be filed in the Judicial as a formal document which needs to be formally recorded and documented.

12.6-1 --- Due to the fact that an appointed official serves at the discretion of the OBC, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee. --- this is a conflict.

**120.6-2. Receipt of Complaint.** Upon receiving a complaint, the OBC Support Office shall:

(a) immediately forward copies of the complaint, including any supporting documentation, to:

(1) all members of the OBC 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 OBC for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.

120.6-5. *Conflict of Interest.* (a) Failure of an OBC member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties. Is this redundant or does it warrant immediate actions of removal for the Conflict of Interests as this is morally and ethically wrong?

120.6-6. *Initial Review.* (2) (A) If the OBC 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); not to exceed one (1) year; and/or
- (ii) prohibition from filing another complaint for a period of time
- (iii) A civil suit in the Nation's Trial Court brought by the official accused by the frivolous, false or malicious allegation.

- What happens is it is the OBC after making the complaint have accused the complainant of frivolous, false or malicious allegation and try's to remove them from their positions within the Oneida Nation?
- Is their grounds for immediate removal?

### ***Response***

The commenter questions and provides input on a prior draft of the Law which provided that the Oneida Business Committee would serve as a hearing body for complaints filed against appointed officials of the Nation.

Based on the various community input that was received throughout the Legislative Operating Committee's various outreach efforts as a result of the March 17, 2019, General Tribal Council directive, the Legislative Operating Committee determined that the proposed Law should be revised to better address the concerns of the community.

The LOC determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC updated the 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 Law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court. [1 O.C. 120.6-1].

Since this comment references a prior draft of the proposed Law, and the revised Law addresses these concerns, there is no revision recommended based on this comment.

### ***LOC Consideration***

## Comments 8 through 9– Specific Sanctions and Penalties:

### 120.7. Sanctions and Penalties

**120.7-1.** 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.

**120.7-2.** Sanctions and penalties may include:

(a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

(1) The 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.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

(A) The Trial Court’s findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official’s actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation’s officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. The 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 public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

(1) identify the specific misconduct committed by the official;

(2) recognize that the official’s actions or inactions were wrong;

(3) identify the effects of the official’s misconduct; and

(4) include a clear and unambiguous apology from the official.

(c) *Written Reprimand.* A written reprimand may be imposed on the official by publication on the Nation’s official media outlets, as determined by the Oneida Business Committee. The Trial Court may publish a written reprimand which includes the information required for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if the official serves in a full-time capacity.

(1) During a suspension, the official shall not:

(A) attend meetings, trainings or any other event as part of the entity;

- (B) attend conferences or other events on behalf of, or as a representative of, the entity;
  - (C) vote or participate in any activities of the entity;
  - (D) perform work on behalf of the entity; or
  - (E) be eligible for any compensation, including regular pay, stipends, or mileage reimbursement.
- (2) When an official is suspended, the Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific start and end date of the suspension.
- (3) If a suspension is imposed on multiple officials of the same entity at one time, the Trial Court shall impose the suspensions of the officials on a staggered basis to avoid an interruption of the official business and function of the entity.
- (e) *Restitution.* An official may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.
- (f) *Fines.* An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500).
- (1) Fines shall be paid to the Trial Court.
  - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
  - (3) Money received from fines shall be deposited into the General Fund.
  - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
- (g) *Loss of Stipend.* An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed two (2) meetings.
- (h) *Mandatory Participation in Training.* An official may be ordered to participate in and complete a training class or program that will assist the official in addressing and improving his or her behaviors and/or actions.
- (1) The mandated training class or program may address a variety of topics including, but not limited to, anger management, sexual harassment, or other sensitivity training.
- (i) *Removal.* The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

**Travis Wallenfang (written): 120.8-2.** Sanctions and penalties may include:

- o Remove the (a) Verbal Reprimand, As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.
- o Remove the (c) Written Reprimand As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

o In sections (d) Suspension and (e) Restitution, and (f) Fines, Should be combined. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

o (g) Loss of Stipend- Should happen regardless and immediately. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards. (h) Mandatory Participation in Training- should be included at any level to help the official to learn their ways to be accepted back to the community. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

**Brian A. Doxtator (written):** Delete Verbal, Written. This mirrors how operational employees are dealt with. Should only include: Apology, Restitution, Reprimand, Fine. Delete Training, makes no sense to require training of an elected official. Include Forgiveness policy; or requiring the elected official to request apology from ONCOA.

### *Response*

Both commenters provide that some sanctions and penalties should be removed from the Law as an option either because as a political or public figure there should be a zero tolerance for misconduct and the official should be held to a higher standard, or because it too closely resembles how operational employees are dealt with. The commenters also provide that other sanctions should be imposed on a mandatory basis no matter the misconduct, or that other policies, such as a policy governing forgiveness should be pursued.

The purpose of this Law is not only to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office, but to also provide an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. [1 O.C. 120.1-1]. The Legislative Operating Committee made the decision to include a variety of different types of sanctions and penalties of varying degrees of severity in an effort to ensure that the Law contained enough flexibility to address the specific instance of misconduct that occurred. If the goal is to provide an opportunity for the official to take corrective action to improve his or her performance, then the sanction or penalty imposed needs to be specifically chosen to best address the misconduct that occurred.

The Trial Court is responsible for determining the appropriate sanction to impose when there is a finding of clear and convincing evidence that the official engaged in misconduct. [1 O.C. 120.6-5(a)]. When determining the appropriate sanction or sanctions to impose, the Law provides the Trial Court with factors that should be considered if deemed relevant, including but not limited to:

- the seriousness or severity of the misconduct;
- whether the conduct was intentional or not;
- the likelihood of repetition;
- the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
- whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;

- the official's remorse, or
  - the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
  - any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.
- [1 O.C. 120.7-3(a)-(h)].*

The Trial Court may then determine which sanction most appropriately addresses the misconduct of the official. The Trial Court may choose one or multiple sanctions to impose against an official, including:

- verbal reprimand;
  - public apology;
  - written reprimand;
  - suspension;
  - restitution;
  - fines;
  - loss of stipend;
  - mandatory participation in training; and/or
  - recommendation for removal.
- [1 O.C. 120.7-2(a)-(i)].*

Additionally, it is important to note that this Law does not prevent or prohibit an individual from utilizing the process contained in the Removal law for removing an elected official from office if any of the following conditions exist:

- an elected official failed to attend four (4) regularly scheduled meetings without a written explanation;
  - an elected official, other than an Oneida Business Committee member, failed to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason;
  - an elected official intentionally mis-used Tribal funds;
  - an elected official engaged in alcohol use while performing official responsibilities or used illegal drugs at any time;
  - an elected official no longer meets the qualifications for office;
  - an elected official violated a law of the Nation which specifies removal as a penalty; or
  - an elected official receives a felony conviction while in office.
- [1 O.C. 104.4-1(a)-(g)].*

Based on the fact that it was the Legislative Operating Committee's goal to include a variety of different types of sanctions and penalties of varying degrees of severity in an effort to ensure that the Law contained enough flexibility to address the specific instance of misconduct that occurred, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***



## Comment 10 – When to File a Complaint:

### 120.5. Filing of a Complaint

**120.5-2. When to File.** A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

**Travis Wallenfang (written):** o 120.5-2. *When to File.* The Time Frame of when a Complaint can be brought forward. There should be no timeframe given the severity and should be deemed as long as any the Officials are in office.

### *Response*

The commenter states that there should be no timeframe for when an individual may file a complaint against an official, as long as the complaint is filed when that official is still in office.

The Law provides that a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days. [1 O.C. 120.5-2]. The purpose of including a timeframe for when complaints may be filed against an elected official is to ensure that a resolution for the alleged misconduct can be achieved within a reasonable length of time.

The purpose of this Law is not only to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office, but to also provide an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. [1 O.C. 120.1-1]. Requiring that the complaint be filed within ninety (90) days of the misconduct occurring or being discovered ensures that the misconduct of an official is addressed within a reasonable amount of time and the official is then given an opportunity to correct his or her behavior and become a better official. If the misconduct of an official is not addressed within a reasonable amount of time then that allows for an opportunity for the official to repeat the behavior that resulted in misconduct.

Additionally, the ninety (90) day timeframe for filing a complaint encourages an individual with a valid complaint to pursue action with reasonable diligence. If an individual waits too long to file a complaint against an official then there may be necessary evidence that is lost during that time that can no longer be used to support the complaint.

Whether to include a timeframe for filing a complaint within the Law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may make one (1) of the following determinations:

1. The Law should remain as currently drafted and a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.
2. The Law should be revised to eliminate any timeframe requirements for the filing of a complaint. If the Legislative Operating Committee makes this decision, then the following revision is recommended:

**120.5. Filing of a Complaint**

~~120.5-2. When to File. A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.~~

3. The Law should be revised to eliminate the ninety (90) day timeframe, and instead include a different timeframe requirement for the filing of a complaint – such as the suggestion that a complaint may be filed as long as the official still holds office. If the Legislative Operating Committee makes this decision, then the Legislative Operating Committee would have to determine the new timeframe and consider the following revision:

**120.5. Filing of a Complaint**

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ~~ninety (90)~~ days \_\_\_\_\_ (include timeframe).

*LOC Consideration*

**Comment 11 – Where to File a Complaint:**

**120.5. Filing of a Complaint**

**120.5-3. Contents of the Complaint.** The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official’s misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person’s name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant’s knowledge;

(i) Any supporting documentation; and

(j) Any other information required by the Nation's Rules of Civil Procedure.

**120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.**

**Travis Wallenfang (written):** o 120.5-3. *Contents of the Complaint* information should be sent to the Judiciary. o 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court-Oneida Judiciary.

### ***Response***

The commenter states that the information included on the complaint should be sent to the Judiciary and complaints against an official should be filed with the Nation's Trial Court.

The Law provides that all complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure. [1 O.C. 120.5-4]. The information that must be included on the complaint that is filed with the Nation's Trial Court a is also provided in great detail in the Law. [1 O.C. 120.5-3(a)-(j)].

Since the Law already requires that complaints alleged against an official be filed with the Nation's Trial Court, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

## **Comment 12 – Retaliation Prohibited:**

### **120.5. Filing of a Complaint**

**120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall 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.**

**Travis Wallenfang (written):**o 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives

authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

There is nothing which stipulates the retaliations from the filing of these complaints against any of the officials that has been received by the complainant's. Retributions to be paid for creating a hostile work place or environment.

### ***Response***

The commenter provides a concern about retaliation as a result of filing a complaint, and how that retaliation may affect a work environment.

The Law provides that retaliation against any individual who makes a complaint, a party or witness to a complaint, an individual offering testimony or evidence for a complaint, or an individual complying with a directive authorized under this Law is prohibited. [1 O.C. 120.5-5]. The Law clarifies that retaliation shall include any form of adverse or punitive action by, or caused by, any official. [1 O.C. 120.5-5]. If an individual alleges that retaliatory action has been threatened or taken based on his or her complaint, or cooperation with directives authorized under this law, then the individual may file a complaint for the retaliatory action in accordance with section 120.5 of the Law. [1 O.C. 120.5-5(a)].

Since the Law prohibits retaliation against an individual as a result of the filing of a complaint or participating in a complaint, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

## **Comment 13 – Misconduct:**

### **120.4. Misconduct**

**120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.**

**120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:**

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;**
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;**
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and**
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.**

**Travis Wallenfang (written):** As this is related to OBC’s Sanctions and Penalties law’s which establish a set of sanctions and penalties to be imposed upon all elected and appointed officials of the Nation, including the OBC, for misconduct in office. This should also include unethical conduct affecting the integrity of the Nation.

### ***Response***

The commenter provides that the Law should address unethical conduct affecting the integrity of the Nation, not just misconduct in office.

The Law provides that it is the obligation of every official to behave in a manner that promotes the highest ethical and moral standard, as it is the high moral and ethical standards amongst officials of the Nation that is essential to the conduct of government. [1 O.C. 120.4-1].

An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct, which includes:

- a violation of the Constitution or any of the Nation’s laws, policies, or rules;
- a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials.

[1 O.C. 120.4-2(a)-(d)].

Since the Law already provides that misconduct includes any activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

## **Comment 14 – Review of Navajo Nation Law:**

**Travis Wallenfang (written):** Included is a copy of the Navajo Government Law. In reviewing of the Navajo Chapter 6. Ethics in Government Law it is important to also review the following sections as they would be beneficial to the Oneida Nation as it relates to the Sanctions and Penalties and any other applicable sections within the Oneida Nations Government Law which can be found at the link below:

**Link:** [https://www.nneticsrules.navajonsn.gov/Portals/0/Files/Law/ethics\\_in\\_government\\_law.pdf?ver=2013-11-15-111228-707](https://www.nneticsrules.navajonsn.gov/Portals/0/Files/Law/ethics_in_government_law.pdf?ver=2013-11-15-111228-707)

- **Subchapter 2.** Standards of Conduct and Restricted Activities of Public Officials and Employees
- **Subchapter 4.** Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations
- **Subchapter 5.** Sanctions and Penalties
- **Subchapter 6.** Ethics and Rules Office

*[See attached Law]*

### ***Response***

The commenter suggests reviewing a law of the Navajo Nation.

Although the laws and/or policies of the Navajo Nation were not reviewed in the development of this Law, laws and policies from the following Nations were reviewed:

1. Ho Chunk Nation;
2. Oglala Sioux Tribe;
3. Pokagon Band of Potawatomi Indians;
4. Rosebud Sioux;
5. Siletz Tribe;
6. Skokomish Indian Tribe; and
7. Pit River Tribe.

The provisions of this law were developed after consulting other tribal laws and policies and the Nation's own laws and policies. Research demonstrated that there are many different models and processes being used by various tribes to address the misconduct of officials.

There is no recommended revision based on this comment.

### ***LOC Consideration***

## **Comment 15 – Specific Reference to the Nation's Ethics Law:**

### **120.4. Misconduct**

**120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.**

**120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:**

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;



- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;**
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and**
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.**

**Brian Doxtator (written):** Since the ethics law specifically eludes to removal, then I believe the ethics law should be specifically mentioned.

### ***Response***

The commenter states that since the Nation's Code of Ethics contains a specific reference to removal as an enforcement mechanism for violations, a specific reference to the Code of Ethics should be included in this Law. [1 O.C. 103.6-1(a)].

This Law provides that misconduct includes a violation of the Constitution or any of the Nation's laws, policies, or rules. [1 O.C. 120.4-2(a)]. A broad reference to any and all laws, policies, or rules of the Nation was included in the Law instead of specific references to each law that may reference removal. The Law was drafted this way because there are many laws of the Nation that reference removal, and the list of laws that reference removal can be ever changing, so it would be impossible to create an exhaustive list that does not become quickly outdated.

Examples of laws of the Nation that contain a reference to removal include, but are not limited to:

- Code of Ethics law [1 O.C. 103.6-1(a)];
- Conflict of Interest law [2 O.C. 217.6-2];
- Oneida Nation Gaming Ordinance [5 O.C. 501.6-12];
- Legal Resource Center law [8 O.C. 811.7-2];
- Election law [1 O.C. 102.4-4];
- Boards, Committees and Commissions law [1 O.C. 118-1(b)];
- Ten Day Notice Policy [1 O.C. 110.6-5(a)(2)];
- Oneida Nation Law Enforcement Ordinance [3 O.C. 301.6-4];
- Open Records Open Meetings Law [1 O.C. 107.11-5]; and
- Budget Management and Control law [1 O.C. 121.12-2].

Many laws of the Nation reference removal because the Removal law provides that an elected official may be removed from office for violating a law of the Nation which specifies removal as a penalty. [1 O.C. 104.4-1(f)].

The Legislative Operating Committee made the policy decision to include general references to the Nation's laws, policies, or rules instead of specifically naming laws, policies, and rules in an effort to ensure that any references do not become outdated if the name of a law, policy, or rule changes, or more laws, policies, or rules are developed that would need to be referenced. Therefore, there is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

## Comment 16 – Confidentiality of Hearings:

### 120.6. Complaint Procedure

**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 by the Trial Court.
- (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

**Brian Doxtator (written):** Since this is for elected officials, hearings and proceedings should NOT be closed.

### *Response*

The commenter provides that hearing and/or proceedings related to a complaint alleged against an elected official should not be closed and confidential.

The Law provides that all hearings and/or proceedings related to a complaint shall be closed to the general public. [1 O.C. 120.6-4(a)]. The Law further states that all records of hearings and/or proceedings shall not be subject to public review or inspection, and the official's record of conduct shall only be made available for review by the Trial Court. [1 O.C. 120.6-4(b)]. The only information that is made public regarding a complaint under this Law is the decision of the Trial Court regarding a complaint and any sanctions and/or penalties that are imposed against an official. [1 O.C. 120.6-4(c)].

The Nation's Judiciary law provides that the proceedings of the Trial Court shall be public, and members of the general public may freely attend the same, except if expressly prohibited by law, as is done by this Law. [8 O.C. 801.4-4]. Additionally, the Oneida Judiciary Rules of Civil Procedure states that the records of all hearings and matters shall be available except where they are prohibited from disclosure by the Oneida Judiciary Rules of Civil Procedure, or any other law, court order, or rule of the Nation, as is done by this Law. [8 O.C. 803.32-2].

The Legislative Operating Committee determined that the Law should treat the handling of complaints against elected officials as confidential to prevent any frivolous or unfounded

complaints from damaging the reputation of an official. For that reason, the Law only shares with the public the Trial Court's ultimate decision and any sanctions or penalties that were imposed against the official once the Trial Court has determined there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence. [*1 O.C. 120.6-3, 120.6-4(c), 120.6-5(a)*].

Whether or not to protect the confidentiality of a hearing or proceeding held in accordance with this Law is a policy determination for the Legislative Operating Committee. The Legislative Operating Committee may make one (1) of the following determinations:

1. The Law should remain as currently drafted and provide that all hearings and/or proceedings related to a complaint shall be closed to the general public, all records of hearings and/or proceedings shall not be subject to public review or inspection, and that the only information that is made public regarding a complaint under this Law is the decision of the Trial Court regarding a complaint and any sanctions and/or penalties that are imposed against an official.
2. The Law should be revised so that hearings and proceedings are not closed to the general public and all records of hearings and proceedings are subject to public review or inspection. If the Legislative Operating Committee makes this determination then the following revisions are recommended:

~~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 by the Trial Court.~~

~~(c) Exception. A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.~~

### ***LOC Consideration***

**Title 1. Government and Finances - Chapter 120**  
**Kalihwahnila-t&- Okhale> Atatihwa>thlew@tu Kayanl^sla**  
*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

**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 On<yote>a=ka, which includes:

- (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.
- (b) Kanolukhw@la. Compassion, caring, identity, and joy of being.
- (c) Ka>nikuhli=y% The openness of the good spirit and mind.
- (d) Ka>tshatst^sla. The strength of belief and vision as a People.
- (e) Kalihwi=y% The use of the good words about ourselves, our Nation, and our future.
- (f) Twahwahts\$ay<. All of us are family.
- (g) Yukwats\$stay<. Our fire, our spirit within each one of us.

**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.

**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.

- 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- \_\_-\_\_-\_\_-\_\_



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**  
**Sanctions and Penalties for Elected Officials Law**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
January 7, 2020 12:15 p.m.

**Present:** David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins, Lee Cornelius, Bonnie Pigman, Ralinda Ninham-Lamberies, Kermit Valentino, Debra Valentino.

**Jennifer Webster:** Good Afternoon. The time is 12:15 p.m. and today's date is Tuesday, January 7, 2020. I will now call to order the public meeting for the proposed Sanctions and Penalties for Elected Officials law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public meeting, public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Tuesday, January 14, 2020.

In attendance today from LOC is the LOC Chair, David Jordan, and myself, Jennifer Webster.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. And we will be imposing the five (5) limit, the five (5), imposing a time limit of five (5) minutes per person. This time limit shall be applied equally to all persons.

So we will begin today's public meeting for the proposed Sanctions and Penalties for Elected Officials law. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nations, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

So those who wish to speak please come to the microphone. Please state your name and you have five minutes.

**Bonnie Pigman:** Yes, my name is Bonnie Pigman and I am an eligible voting General Tribal Council member, #5361. These are my public comments for the record. There are points which I have to, I wish to have considered before this draft law, Sanctions and Penalties for Elected Officials, is scheduled to be presented to General Tribal Council on January 20, 2020.

Point 1: In March 2019, the General Tribal Council was presented with this Sanctions and Penalties draft law, which was covered, which covered both appointed and elected officials. The General Tribal Council directed this draft law be deferred for at least sixty (60) days to allow for additional time for community members to consider it and have input. The LOC hosted several community meetings and it is their opinion that the Sanctions and Penalties draft law reflect revisions based on input received from those members. One particular change to the draft law was to exclude appointed BCCs and revise the draft law title to cover only elected officials. The community input asked that the Business Committee be removed as a hearing body for complaints against appointed officials. The community input did not include removing appointed individuals, appointed officials from the draft law. I feel it is important to have it noted for the record that there has been no additional draft law created for appointed officials. What sanctions and penalties will the appointed officials have to comply with if this draft law is approved by General Tribal Council? Would it not have been easier to just revise the draft law by referring all complaints to the Judiciary?

Point 2: I attended one of the community meetings at the Elder Meal Site and I came prepared with several questions. I was only allowed to ask two. One of the two questions I asked about was why the removal law language was not being incorporated. I feel since behavior is related to removal it's subject to sanctions and penalties, it would be more logical for removal to be included in this draft law. I feel that if GTC is to approve this Sanctions and Penalties law, it would be inclusive of all sanctions and penalties related to BCCs appointed and election and elected, and I was not allowed to ask any of my other questions.

Point 3: In reviewing the Sanctions and Penalties law for Elected Officials draft, that draft law, I saw some areas which may conflict, or are confusing with the language in the Boards, Committees and Commissions law, a lot which is highly connected to this draft law. The first maybe with how entity is defined. The definition in the BCC law includes appointed and elected officials, but not the Business Committee. The definition in the Sanctions and Penalties Elected Officials draft law does not include appointed officials but includes the Business Committee. It seems like the BCC law would be corrected or revised to provide more clarity. The second matter refers to the BCC law, Section 105.18, Enforcement. This section refers to members of the entity being found to be in violation of this law to be subject to sanctions and penalties. How are appointed officials to be held to sanctions and penalties, when appointed officials are not included in this draft law of the Sanctions and Penalties for Elected Officials? Thank you.

**Jennifer Webster:** Any other speakers wishing to come forward?

**(Inaudible)**



**Jennifer Webster:** Okay, we'll just keep this time open for a few more minutes in case somebody wants to come forward or in case somebody shows up. We'll wait till 12:30 p.m.

**(Inaudible)**

**Jennifer Webster:** Okay, it's 12:30 p.m. With there being no other speakers registered, the public meeting for the proposed Sanctions and Penalties is now closed at 12:30 p.m.

Just a reminder, written comments may be submitted until close of business day on Tuesday, January 14, 2020. Thank you so much.

**-End of Meeting-**

**Written Input****Title 1. Government and Finances - Chapter 120**

Kalihwahnila+&= Okhale> Atatlihwa>thlew@tu Kayanl^sla

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

**SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS****120.4. Misconduct**

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

**Input: Since the ethics law specifically eludes to removal, then I believe the ethics law should be specifically mentioned.**

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.

**Input: Since this is for elected officials, hearings and proceedings should NOT be closed.**

**120.7. Sanctions and Penalties**

**Input: Delete Verbal, Written. This mirrors how operational employees are dealt with.**

**Should only include: Apology, Restitution, Reprimand, Fine.**

**Delete Training, makes no sense to require training of an elected official.**

**Include Forgiveness policy; or requiring the elected official to request apology from ONCOA.**

Submitted by Brian A. Doxtator



**From:** [Travis J. Wallenfang](#)  
**To:** [LOC](#)  
**Subject:** Sanctions and Penalties for Elected Officials Law Written comments Tuesday, January 7, 2020 public meeting  
**Date:** Tuesday, January 07, 2020 11:29:14 AM  
**Attachments:** [2020 01 07 Sanctions and Penalties PM Packet \(002\).pdf](#)  
[image001.jpg](#)  
[Sanctions & Penalties Public meeting 01072020.pdf](#)  
[Navajo Saction & Penalties ethics in government law.pdf](#)  
**Sensitivity:** Confidential

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I have submitted my comments as there is comments for the Public Meeting on Tuesday January 7, 2020 for the Sanctions and Penalties for Elected Officials Law. Here is a copy of the written comments in the following attachments :

- PDF Attachment: **2020 01 07 Sanctions and Penalties PM packet (002)**
- PDF Attachment: **Sanctions & Penalties Public Meeting 01072020**
- PDF Attachment: **Navajo Sanctions & Penalties ethics\_in\_government\_Law**

**Yawa'kó• and Sahwehniſiyóhak,**  
**(Thank you and have a good day),**

**Travis J. Wallenfang,**  
**Indian Preference Coordinator**  
**Purchasing Department**  
**Office 920.496-5316**  
**Email: [Twallenf@oneidanation.org](mailto:Twallenf@oneidanation.org)**



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**Oneida-nsn.gov**

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Comments to be entered into the record for the Sections and Penalties Public rule making process for 01/07/2020

Good Afternoon, I have submitted my comments to the record as the relate to the Public Rule making process for the Sanctions and Penalties Laws and its process.  
As it is stated on the Oneida Website:

With the establishment of the 3 branches of government which are **Executive, Legislative, and Judicial Branches** all within the Oneida Nation, it is important to notice that the purpose of these three separate branches was to make sure no individual or group will have too much power.

- **The Executive Branch** –Consists of The Oneida Business Committee (OBC) is comprised of four Officers (**Chair, Vice-Chair, Treasurer, and Secretary**) and **five (5) at-large Councilmembers**. The OBC oversees the following executive managers of the Nation’s organization:
  - Gaming General Manager
  - Community & Economic Development Division Director
  - Comprehensive Health Division Director – Operations
  - Comprehensive Health Division Director – Medical
  - Comprehensive Housing Division Director
  - Environmental Health Safety & Land Division Director
  - Governmental Services Division Director
  - Internal Services Division Director
  - Public Works Division Director
  - Retail Enterprise Area Manager
  - Human Resource Area Manager

- **The Legislative Branch-** main responsibility is the creation of laws and refers to the preparation and enactment of laws by a legislative body through its lawmaking process. The legislative process includes evaluating, amending, and voting on proposed laws and is concerned with the words used in the bill to communicate the values, judgments, and purposes of the proposal.

The Oneida Legislative Operating Committee’s (LOC) purpose and mission is to enhance the policy making capabilities of the OBC(OBC) and General Tribal Council (GTC) by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

#### **Article II. Officers**

**2-1. Officers.** The LOC shall have two (2) officers: Chairperson and Vice-Chairperson.

**2-2. Duties of the Chairperson.** The LOC Chairperson shall:

- (a) Preside at all meetings of the LOC;
- (b) Sign all correspondence of the LOC;
- (c) Submit the approved minutes to the Tribal Secretary for action and approval by the Oneida Business Committee;
- (d) Monitor the budget of the LOC;
- (e) Submit a semi-annual report to the GTC;
- (f) Supervise the supervising attorney of the Legislative Reference Office; and
- (g) Other duties as assigned by the LOC.

**2-3. Duties of the Vice-Chairperson.** In the absence or incapacity of the LOC Chairperson, the LOC Vice-Chairperson shall perform the duties of the LOC Chairperson.

**2-4. How Chosen.** The LOC shall meet within twenty-four (24) hours of taking the Oath of Office for the OBC to elect officer positions. The officer positions shall be chosen by

majority vote of all LOC members in attendance at the meeting. Said vote shall be made part of the LOC record.

(a) *Length of Term.* The term of office for a LOC officer shall coincide with his or her term on the LOC, unless an officer resigns in accordance with 2-4(b) or the LOC changes officers in accordance with 2-4(c).

(b) *Resignation.* A LOC officer may resign as a LOC officer by presenting his or her resignation in writing to the LOC. Resignations are effective upon approval of the LOC.

(c) *Changing Officers.* Upon request of a LOC member, the LOC shall consider electing Page 1 of 3 a new officer(s) at a duly called meeting. Any new officer(s) shall be elected by majority vote of all present LOC members.

(d) *Officer Vacancy.* In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

**2-5. Personnel.** In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

**2-5. Personnel.** The Legislative Reference Office is the support office under the direction and supervision of the LOC. The LOC may employ such personnel in the Legislative Reference Office as it deems necessary to carry out the duties and responsibilities of the LOC.

(a) The LOC shall approve the staff structure for the Legislative Reference Office.

(b) The LOC shall be responsible for negotiating the contract for the supervising attorney of the Legislative Reference Office and forwarding the contract to the OBC for approval.

(c) The supervising attorney of the Legislative Reference Office shall be directly supervised by the LOC Chairperson.

### **Article III. Meetings**

**3-1. Regular Meetings.** The LOC meetings shall be held on the first and third Wednesdays of each month at 9:00a.m.

(a) The meeting dates, time and location may change from time to time as determined by the LOC but shall be within the Reservation boundaries unless notified to the LOC membership prior to designating the meeting location.

(b) Notice of meeting location, agenda, and materials shall be forwarded by the Chairperson with the assistance of the Legislative Reference Office.

**3-2. Special Meetings.** Special meetings of the LOC may be called by the LOC Chairperson or by OBC directive.

(a) Special meetings shall address a specific purpose(s) and convene at a time outside of the regular scheduled meeting time.

(b) Special meetings shall require a written notice to each member of the LOC at least twenty-four (24) hours prior to the meeting start time.

**3-3. Quorum.** A quorum shall consist of three (3) persons and shall include the LOC Chairperson or LOC Vice-Chairperson. **3-4. Order of Business.** The agendas for the regular meetings of the LOC shall contain the order of business as follows:

(a) Call to Order and Approval of the Agenda

(b) Minutes

(c) Current Business

(d) New Submissions

(e) Additions

(f) Administrative Updates

(g) Executive Session



**(h) Recess/ Adjourn**

**3-5. Voting.** Voting shall be in accordance with simple majority vote of the LOC members present at a duly called meeting. The LOC Chairperson shall have voting privileges in all matters which come before the LOC.

**Article IV. Reporting**

**4-1. Format.** Agenda items shall be in an identified format.

**4-2. Minutes.** Minutes shall be typed and in a consistent format designed to generate the most Page 2 of 3 informative record of the LOC meetings.

(a) All minutes shall be submitted to the Tribal Secretary's Office within thirty (30) calendar days after approval by the LOC.

(b) Actions taken by the LOC are valid when minutes are approved, provided that, minutes are submitted to the Tribal Secretary's Office in accordance with 4-2(a).

(c) Copies of the minutes shall be available for review and copy in accordance with the Open Records and Open Meetings Law.

**4-3. Backup.** Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

**4-4. Reporting.** The LOC is responsible for reporting to the OBC and General Tribal Council.

(a) The LOC Chairperson shall submit reports to the OBC and GTC on behalf of the LOC.

(b) Reports to the OBC and GTC shall be made regularly and as requested.

**Article V. Amendments**

**5-1. Amendments to Bylaws.** The LOC may amend the Bylaws upon approval of the LOC at a regularly scheduled meeting and with subsequent approval of the OBC.

**Article VI. Outstanding Legislation**

**6-1.** Any outstanding legislation at the end of a term shall be presented for consideration to the newly elected LOC within sixty (60) days after the new LOC takes office.

**Approval Date of May 28, 2014.**

The Concern is:

- LOC is comprised of the five (5) council members from OBC. - The questions I have are as follows:
  - How is there separation of the three branches of government in the Oneida Nation when Five of the OBC members from the Executive branch of government are also members of the LOC?
  - **The 5 OBC members also the LOC:**
    - **Committee Chair-** Councilman David P. Jordan
    - **Committee Vice-Chair-** Councilman Kirby Metoxen
    - **Committee Member-** Councilman Ernest Stevens III
    - **Committee Member-** Councilman Daniel Guzman King
    - **Committee Member-** Councilwoman Jennifer Webster

The separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in:

**Article 1.** The Executive, composed of the President, Vice-President, and the Departments, is set up in

**Article 2.** The Judicial, composed of the federal courts and the Supreme Court, is set up in

**Article 3.** Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

- **Legislative Operating Committee**

**Purpose and Mission:** The purpose and mission of the LOC is to enhance the policy making capabilities of the OBC and GTC by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

- Is this not a direct Conflict of Interest? Because the Legislative and the Executive branches are to be separate, but the Oneida Nation has them intertwined and overlapping? Conflict of Interest- is a perception of a conflict of interest is a conflict of interest.
- What qualifications do they OBC have to establish these laws?
- What kind of requirements have been established for people holding OBC and LOC positions like this? Is there any relevant experience or minimum requirements of education for this branch of government like?
  - Tribal Governments?
  - Principles of Federal Indian Law?
  - Civil Jurisdiction in Indian Country?
  - Principles of Federal Indian Law?
  - Tribal Gaming Laws?
  - Federal Contract & Compacts?

- **The Judicial Branches-** On August 19, 1991, the Oneida GTC adopted a resolution creating the Oneida Appeals Commission, later known as the Oneida Tribal Judicial System. The judicial system was created to enhance and protect the self-government and sovereignty of the Oneida Nation while also providing for a governmental separation of powers. The creation of the Judiciary built on the foundation that was laid by the Oneida Tribal Judicial System by granting the Trial Court and Court of Appeals expanded subject matter jurisdiction and further developing a process for peacemaking and mediation. A branch of the Court was also created to address matters affecting the Oneida people as it pertains to the family and children. This is the Oneida Family Court. The Judicial Branches are generally in charge of deciding the meaning of **laws**, how to apply them to real situations, and whether a law breaks the **rules** of the Constitution.

In May of 2015 Nation members voted to amend the Oneida Tribal Constitution by Secretarial Election. One of the amendments, Article V, Section 1, establishes a Judiciary to exercise the judicial authority of the Oneida Nation. After an appeal of the Secretarial Election in 2016 was upheld, the Oneida GTC adopted Resolution #03-19-17-A which states in part “NOW THEREFORE BE IT RESOLVED, that in accordance with Article V, Section 2 of the Oneida Nation’s Constitution, the GTC delegates the Oneida Nation’s judicial authority pursuant to the Article V of the Constitution to the Oneida Judiciary, created pursuant to the Judiciary Law adopted by resolution GTC-01-07-13-B.

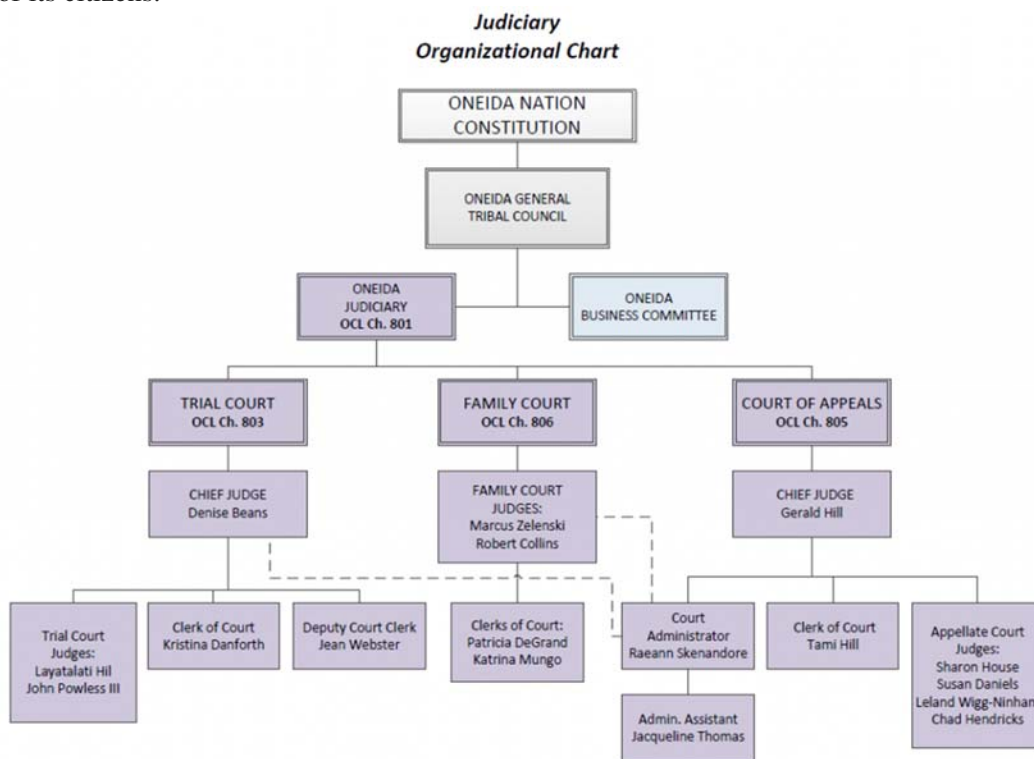
### **Vision**

The Vision of the Oneida Judiciary is to administer a fair, objective, independent, timely and lawful judicial branch of the Oneida government. The Oneida Judiciary is guided by the wisdom of our heritage and traditions as well as the requirements of modern circumstances, laws and statutes.

### **Mission**

The Mission of the Oneida Judiciary is to provide a fair, orderly, and neutral forum for the resolution of issues that may arise out of governance of the Oneida Nation and civil actions amongst its members, other people residing on the Oneida Reservation, and those doing business

with Oneida Tribal entities. It is our mission to operate as an independent branch of our government entrusted by the GTC to protect the Sovereignty of the Oneida Nation and the Rights of its citizens.



Another concern is when the complaints affect multiple OCB Members and or relatives in positions and their ability to vote on these issues. To file the complaint should not be in the OBC Support Office as there is a conflict of interests if the OBC is the one who reviews the complaints. These complaints should be filed in the Judicial as a formal document which needs to be formally recorded and documented.

**12.6-1** --- Due to the fact that an appointed official serves at the discretion of the OBC, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee. --- this is a conflict.

**120.6-2. Receipt of Complaint.** Upon receiving a complaint, the OBC Support Office shall:

(a) immediately forward copies of the complaint, including any supporting documentation, to:

- (1) all members of the OBC 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 OBC for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.

**120.6-5. Conflict of Interest.** (a) Failure of an OBC member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties. Is this redundant or does it warrant immediate actions of removal for the Conflict of Interests as this is morally and ethically wrong?

**120.6-6. Initial Review.** (2) (A) If the OBC 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); not to exceed one (1) year; and/or
- (ii) prohibition from filing another complaint for a period of time
- (iii) A civil suit in the Nation's Trial Court brought by the official accused by the frivolous, false or malicious allegation.

- What happens is it is the OBC after making the complaint have accused the complainant of frivolous, false or malicious allegation and try's to remove them from their positions within the Oneida Nation?
- Is their grounds for immediate removal?

120.8-2. Sanctions and penalties may include:

- Remove the (a) *Verbal Reprimand*, **As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.**
- Remove the (c) *Written Reprimand* **As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.**
- In sections (d) Suspension and (e) Restitution, and (f) Fines, ***Should be combined. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.***
- (g) *Loss of Stipend- Should happen regardless and immediately. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.* (h) *Mandatory Participation in Training-* **should be included at any level to help the official to learn their ways to be accepted back to the community. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.**
- 120.5-2. *When to File.* The Time Frame of when a Complaint can be brought forward. **There should be no timeframe given the severity and should be deemed as long as any the Officials are in office.**
- 120.5-3. *Contents of the Complaint* information should be sent to the Judiciary.
- 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court-Oneida Judiciary
- 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official. **There is nothing which stipulates the retaliations from the filing of these complaints against any of the officials that has been received by the complainant's. Retributions to be paid for creating a hostile work place or environment.**

As this is related to OBC's Sanctions and Penalties law's which establish a set of sanctions and penalties to be imposed upon all elected and appointed officials of the Nation, including the OBC, for misconduct in office. This should also include unethical conduct affecting the integrity of the Nation

In order to resolve these potential conflicts of interests and other concerns, the OBC/LOC Members shall be recused from establishing their own laws against them of misconduct in office because this directly interferes with the established separate branches of government and the laws to make them held accountable. Without the proper education it is difficult to let the people in these positions write laws as they directly affect them as this should be brought to the GTC to make them aware of these issues.

Included is a copy of the Navajo Government Law. In reviewing of the Navajo Chapter 6. Ethics in Government Law it is important to also review the following sections as they would be beneficial to the Oneida Nation as it relates to the Sanctions and Penalties and any other applicable sections within the Oneida Nations Government Law which can be found at the link below:

**Link:** [https://www.nnethicsrules.navajo-nsn.gov/Portals/0/Files/Law/ethics\\_in\\_government\\_law.pdf?ver=2013-11-15-111228-707](https://www.nnethicsrules.navajo-nsn.gov/Portals/0/Files/Law/ethics_in_government_law.pdf?ver=2013-11-15-111228-707)

- **Subchapter 2.** Standards of Conduct and Restricted Activities of Public Officials and Employees
- **Subchapter 4.** Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations
- **Subchapter 5.** Sanctions and Penalties
- **Subchapter 6.** Ethics and Rules Office

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**Chapter 6. Ethics in Government Law**

### Subchapter 1. Title and Purpose; Definitions

#### Section

- 374.1. Title
- 374.2. Legislative purpose and intent
- 374.3. Definitions

### Subchapter 2. Standards of Conduct and Restricted Activities of Public Officials and Employees

- 3744. Conduct in conformity with applicable rules and laws
- 3745. General prohibitions; conflicts of interests
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- 3758. Adoption of supplemental codes of conduct for officials and employees of governmental entities of the Navajo Nation

### Subchapter 3. [Repealed]

### Subchapter 4. Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations

- 3766. Ethics and Rules Committee of the Navajo Nation Council Powers and duties
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- 377 1. Appeals to Supreme Court
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- 3774. Committee's power as quasi-judicial body
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- 3 778. [Repealed.]
- 3779. Other relief not barred

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- 3780. Administrative sanctions; collection of judgments
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**Subchapter 1.  
Title and Purpose; Definitions**

**§ 3741. Title**

This Chapter may be cited as the Navajo Nation *Ethics in Government* Law.

**§ 3742. Legislative purpose and intent**

**A. Purpose.** Where government is founded upon the consent of the governed, the people are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of the Navajo Nation *Ethics in Government* Law, therefore, is to require accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, by:

1. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions:
2. Requiring public officials and employees to abstain from using any function of their office or duties in a manner which could place or appear to place their personal economic or special interests before the interests of the general public.

**B. Intent.** It is the intention of the Navajo Nation Council that the provisions of this Navajo Nation *Ethics in Government* Law be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

**§ 3743. Definitions**

**As used in this Chapter:**

- A. "Business"** includes any enterprise, organization, trade, occupation or profession whether or not operated as a legal entity for profit, including any business, trust, holding company,



- corporation, partnership, joint venture, or sole proprietorship, consultant or other self-employed enterprise.
- B.** "Business with which the person is associated" includes any business in which the person or a member of the person's immediate family is a director, officer, partner, trustee or employee, holds any position of management or receives income in any form such as wages, commission, direct or indirect investment worth more than one thousand dollars (\$1,000) or holds any ownership, security or other beneficial interest, individually or combined, amounting to more than ten percent (10%) of said business.
  - C.** "Candidate for public office" means any person who has publicly announced such intent, authorized promotion for, or filed a declaration of candidacy or a petition to appear on the ballot for election as a public official; and any person who has been nominated by a public official or governmental body for appointment to serve in any public capacity or office.
  - D.** "Committee" means the Ethics and Rules Committee of the Navajo Nation Council.
  - E.** "Compensation" or "income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof.
  - F.** "Confidential information" means information which by law or practice is not available to the public at large.
  - G.** "Conflict of interest" means the reasonable foreseeability that any personal or economic interest of a public official, or employee, will be affected in any materially different manner from the interest of the general public, by any decision, enactment, agreement, award or other official action or function of any governmental body or political subdivision of the Navajo Nation.
  - H.** "Dependent business" means any business, as defined herein, in which the person or members of the person's immediate family, individually or combined, have any direct or indirect ownership, investment, security or other beneficial interest amounting to more than twenty percent (20%) of such business.
  - I.** "Employee" means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of another person, organization or entity in return for any form of pay or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.
  - J.** "Employment" means the status or relationship existing or created by and between a person designated or acting as an "employee" as defined herein and the person, organization, group or other entity for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for pay or any other form of compensation.
  - K.** "Economic interest" means an interest held by a person, members of the person's immediate family or a dependent business, which is:
    - 1.** Any ownership, income, investment, security or other beneficial interest in a business, or
    - 2.** Any employment or prospective employment for which negotiations have already begun.
  - L.** "Gift" includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.
  - M.** "Governmental body" means any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency, and any establishment of the Executive, Administrative, Legislative or Judicial Branch of the Navajo Nation, and certified Chapters of the Navajo Nation.
  - N.** "Immediate family" includes spouse, children and members of the household of public officials, public employees and candidates for public office, as defined in this Chapter.

- O. "Ministerial action" means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person's own judgment upon the propriety of the action being taken.
- P. "Official discretionary action" means any official function of public office or employment, including any vote, decision, opinion, allocation, recommendation, approval, disapproval, finding, delegation, authorization, contract, commitment, settlement, disbursement, release or other action which involves the exercise of discretionary authority, for, on behalf of or in any manner affecting any interest or property of the Navajo Nation, including any governmental body, political subdivision or member thereof.
- Q. "Public employee" means any employee, as defined herein, temporarily, periodically, permanently or indefinitely in the employment of the Navajo Nation, and or any governmental body thereof as defined herein, including intergovernmental personnel.
- R. "Public office" means any elected or appointed office or position of permanent or temporary employment in any governmental body of the Navajo Nation as defined herein.
- S. "Public official" means any person holding an elective or appointed office in any governmental body of the Navajo Nation as defined herein, including grazing committee members.

## **Subchapter 2.**

### **Standards of Conduct and Restricted Activities of Public Officials and Employees**

#### **§3744. Conduct in conformity with applicable rules and laws**

Public officials and employees shall at all times conduct themselves so as to reflect credit upon the Navajo People and government; and comply with all applicable laws of the Navajo Nation with respect to their conduct in the performance of the duties of their respective office or employment

#### **§3745. General prohibitions; conflicts of interest**

- A. No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.
- B. It is the intent of this Subsection (B) that public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct set out herein, which could result in, or create the appearance of
  - 1. Using public office for private gain;
  - 2. Giving preferential treatment to any special interest organization or person;
  - 3. Impeding governmental efficiency or economy;
  - 4. Losing or compromising complete independence or impartiality of action;
  - 5. Making a government decision outside official channels; or
  - 6. Adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.

#### **§3746. Use of confidential information for private gain**

No public official or employee shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

#### **§3747. Restrictions against incompatible interests or employment**

- A. Public officials and employees shall not:
  - 1. Have direct or indirect financial or other economic interests nor engage in such other employment or economic activity which, as determined in accordance with the provisions of this Chapter and other applicable laws of the Navajo Nation,

necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials or employees of the Navajo Nation; nor

2. Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment; nor
  3. Acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.
- B.** Subject to the restrictions and conditions set forth in this Chapter, public officials and employees are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Navajo Nation may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Navajo Nation, in light of special circumstances or their particular duties.
- C.** No business or other entity shall employ a public official or employee if such employment is prohibited by or otherwise violates any provision of this Chapter.
- D.** The term "employment", within the meaning of this Section, includes professional services and other services rendered by a public official or employee, whether rendered as an employee, consultant or other independent contractor.

**§ 3748. Abstention from official action**

- A.** When a public official or employee is required to take official action on a matter in which such public official or employee has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under §3747 above, such public official or employee shall:
1. Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official or employee is aware of such conflict and they shall deliver copies of such statement to the responsible party for inclusion in the official record of any vote or other decision or determination and also to the Ethics and Rules Committee;
  2. Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and
  3. Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the governmental body making such decision or determination, or otherwise legally required by law, (such as the vote of an elected representative delegate which is cast on behalf of his or her electorate constituents), or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.
- B.** Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.
- C.** Public employees shall also deliver a copy of such statement to the Committee and to their immediate superior, if any, who shall assign the matter to another. If such employee has no immediate superior, he or she shall take such steps as the Committee shall prescribe or advise, to abstain from influencing actions and decisions in the matter.
- D.** In the event that a public official's or employee's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Committee.

**§ 3749. Navajo Nation government contracts; restrictions and bid requirements**

- A. No public official or employee or any member of such person's immediate family shall be a party to, nor have an interest in the profits or benefits of, any governmental contract of the Navajo Nation or of any investment of funds of the Navajo Nation, unless the contract or the investment meets the following requirements:
1. The contract is let by notice and competitive bid or procurement procedures as required under all applicable laws, rules, regulations and policies of the Navajo Nation, for necessary materials or services for the governmental agency or entity involved;
  2. If the continuous course of a business commenced before the public official or employee assumed his or her current term of office or employment;
  3. The entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the public official or employee or a member of his or her immediate family;
  4. The public official or employee has taken no part in the determination of the specifications, deliberations or decision of a governmental agency with respect to the public contract; and
  5. The public official or employee is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.
- B. The requirements of §3749(A) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this Section and to all other applicable laws, rules and regulations of the Navajo Nation and its governmental bodies; and provided further that §3749 (A) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this Chapter. Provisions in accordance with the purposes and intent of this Chapter shall be incorporated as part of the rules, regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like transactions.
- C. In the absence of bribery or a purpose to defraud, a public official or employee or a member of his or her immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten percent (10%) of the ownership of net assets, or an interest as creditor of less than ten percent (10%) of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security therefor.

**§3750. Restrictions on assisting or representing other interests before governmental bodies for compensation**

No public official or employee except an employee of a governmental body duly established and authorized for such purposes by the Navajo Nation shall represent or otherwise assist any person or entity other than the Navajo Nation or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a non-ministerial nature. This Section shall not be construed to prohibit the duties of elected or appointed public officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

**§3751. Restrictions on assisting or representing other interests subsequent to termination of public office or employment**

- A. No former public official or employee nor partner, employee or other associate thereof shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Navajo Nation, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Navajo Nation or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former public official or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.
- B. With respect to any such matter which was actually pending among such former public official's or employee's responsibilities, but in which such person did not participate as set forth in Subsection (A), the prohibitions set forth hereunder shall apply for the period of two years following the termination of such public office or employment.
- C. Nothing in this Chapter shall prevent a former public official or employee from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former public official or employee or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.
- D. The Navajo Nation, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefitting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former public official or employee whose official act, while a public official or employee, directly contributed to the making of such contract or taking of such action by the Navajo Nation or any governmental body or political subdivision thereof.
- E. Nothing contained in this Subsection shall prohibit a former public official or employee from being retained or employed by the governmental entity which he or she formerly served.

**§3752. Unauthorized compensation or benefit for official acts**

- A. No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in his or her official capacity for performing such duties.
- B. This Section shall not be construed to prohibit the receipt of authorized compensation for the performance of other distinct and lawful public duties by public officials or employees.
- C. No public official or employee, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.

**§3753. Unauthorized personal use of property or funds of the Navajo Nation**

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

**§3754. Staff misuse prohibited**

No public official or employee shall employ, with funds of the Navajo Nation, any unauthorized person(s) nor persons who do not perform duties commensurate with such compensation and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

**§3755. Anti-Nepotism**

No public official or employee shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Navajo Nation or any governmental or political subdivision thereof, any person or persons related by consanguinity or affinity within the third degree, nor any member of the same household as said public official or public employee. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Navajo Nation, as amended from time to time.

**§3756. Restrictions against gifts or loans to influence official acts**

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself herself or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

- A. Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or
- B. Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed; or
- C. Has any interest which, within two years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such public official or employee or of the government office or entity with which the public official or employee is associated or employed or which the public official or employee knows or has reason to believe is likely to be so involved or affected.

**§3757. Permitted gifts, awards, loans, reimbursements and campaign contributions**

- A. An occasional non-pecuniary gift, insignificant in value;
- B. Gifts from and obviously motivated by family or social relationships, as among
- C. immediate family members or family inheritances;
- D. Food and refreshments customarily made available in the ordinary course of meetings where a public official or employee may properly be in attendance;
- E. An award or honor customarily-and publicly presented in recognition of public service; and/or
- F. E. A political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the recipient's political campaign for elective office of a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

**§3758. Adoption of supplemental codes of conduct for official and employees of governmental entities of the Navajo Nation**

- A. The chief executive or administrator of every governmental entity of the Navajo Nation which is subject to the provisions of this Chapter is authorized to submit for approval and adoption by the Committee such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this Chapter. Upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with the provisions of this Chapter.
- B. The Ethics and Rules Committee is also authorized to adopt supplemental rules, regulations, and standards of conduct for all elected officials as defined by the Navajo Nation Code.
- C. Other Navajo Nation Political Governing Bodies.



1. Other political governing bodies of the Navajo Nation are authorized and directed to draft, adopt, implement and administer standards of conduct, disclosure requirements and other procedures, rules and regulations in conformity with the purposes and provisions of this Chapter.
  2. Any lawful authorization for any sponsorship or conduct of participation or involvement in any business activity by any political subdivision of the Navajo Nation shall be conditioned upon its prior adoption of such provisions, and enforcement thereof, as approved by the Committee.
- D. The Committee and the Navajo Nation Department of Justice shall provide such assistance as needed and requested by such governmental entities and political governing bodies of the Navajo Nation, in the preparation and drafting of such supplemental and implementing provisions as authorized and which are not in conflict with the purposes and provisions of this Chapter.

### **Subchapter 3. [Repealed]**

#### **Subchapter 4.**

### **Implementation and Compliance with *Ethics in Government Law*; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations**

#### **§3766. Ethics and Rules Committee of the Navajo Nation Council - Powers and duties**

In accordance with all powers and authority as provided in 2 N.N.C. §§ 831-835 and in addition, the Committee shall have the specific duties, responsibilities and authority to:

- A. Adopt, amend and publish rules and regulations to implement all provisions of this Chapter. Before such rules and regulations are enacted a 45-day public notice and comment period shall be allowed.
- B. Ensure that all appropriate measures are taken for protecting the confidentiality of all statements, records, documents, other materials and information designated as such by this Chapter or by any other applicable rules or regulations of the Navajo Nation or other competent jurisdiction.
- C. Provide written advisory opinions to guide the conduct and address specific questions when requested by officials and employees who are subject to this Chapter.
  1. All opinions shall be confidential and maintained on record within the Ethics and maintained on record within the Ethics and Rules Office;
  2. All opinions shall be binding upon the Committee, with regard to matters related to the specific request, until amended or revoked by the Committee.
- D. The Committee may initiate and or receive, review and or investigate complaints filed with the Ethics and Rules Office.
- E. The Committee shall conduct Administrative Hearings to determine violations or noncompliance with this Chapter. All Committee hearings shall follow Rules of Procedures established and adopted by the Committee. The director shall be charged with the responsibility of representing the Navajo Nation in bringing forth all complaints filed under this Chapter.

#### **§3767. Retaliation prohibited**

- A. Retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee.
- B. Any violations shall be subject to penalties under this Chapter, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

#### **§3768. Dismissals**

Upon recommendation of the Ethics and Rules Office, the Committee may dismiss any complaint which the Committee determines has insufficient facts to constitute a violation or noncompliance to this Chapter; or if there is insufficient evidence to support the allegations; or if the Committee lacks personal and subject matter jurisdiction.

**§3769. Statute of Limitations**

No action shall be brought under this Chapter more than four years after cause of action has accrued.

**§3770. Administrative hearings**

- A. The Committee, in the capacity of a quasi-judicial body, shall conduct administrative hearings on any alleged violation or noncompliance.
- B. The Ethics and Rules Office shall act in the capacity of complainant on matters to be heard by the Committee.
- C. The Hearing body may impose or recommend any sanctions, civil damages, restitution or other penalties provided in this Chapter, or refer their findings to other appropriate entities for action.

**§3771. Appeals to Supreme Court**

- A. The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from final decisions. Appeals shall be limited to questions of law.
- B. A notice of appeal shall be filed within 10 working days of the issuance of a written decision.

**§3772. Deliberations by the committee**

In any complaint where the accused is the President, Vice-President, Chief Justice, or other judges of the Navajo Nation, Chapter official or a Council Delegate, the Ethics and Rules Committee, upon completion of the administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction.

**§3773. [Repealed]****§3774. Committee's power as a quasi-judicial body**

- A. The Committee shall hold in contempt any person found disobeying any lawful order, process writ, finding or direction of the Committee.
- B. The Committee is authorized to administer oaths and issue subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Committee.
- C. The Committee shall maintain a complete record of all hearings, including all testimony and documents presented as evidence.
- D. The Committee shall not be bound by formal rules of evidence.
- E. The Committee shall conduct all hearings in open session. All records, transcripts, and other documents in the possession of the office shall remain confidential unless such information are submitted by the office as evidence.
- F. The Committee shall cause a copy of any order or decision to be delivered to the appropriate branch of the government.

**§3775. Committee conflict of interest**

No Committee member shall hear matters before the Committee which involve a member of his/her immediate family and/or personal economic interest.

**§3776. Independent legal counsel**

Subject to all applicable laws, the Committee may obtain independent legal counsel to assist and advise the Committee.

**§3777. Special prosecutors**

- A. Notwithstanding any provision in this Chapter, any Special Prosecutor appointed pursuant to 2 N.N.C. §§ 2021 - 2024 shall have the following powers and authority in connection with any administrative proceeding under this Chapter, exercisable in the name of the Navajo Nation, with respect to any matter within such Special Prosecutor's jurisdiction:
  - 1. To file a complaint with the Committee alleging a violation of this Chapter by any person subject thereto;
  - 2. To prosecute the complaint and represent the Navajo Nation's interest in any and all proceedings thereon;

3. To exercise an unconditional right to intervene and be substituted as the complainant in any proceeding pending under this Chapter, without regard to the stage of such proceedings; and
- B. In the event of any administrative proceeding under this Chapter in which the Navajo Nation, through a Special Prosecutor, is a complainant against a person, any other complaint filed against such person hereunder (whether filed before or after the date on which the Navajo Nation became complainant) shall abate and shall be dismissed without prejudice, as to any common allegation of prohibited conduct.

**§3778. [Repealed]**

**§3779. Other relief not barred**

Nothing herein shall be construed as foreclosing the right of the Navajo Nation, through a Special Prosecutor or otherwise, to initiate proceedings to secure the relief and sanctions referred to in §§ 3781 or 3782 of this Chapter.

### **Subchapter 5. Sanctions and Penalties**

**§3780. Administrative sanctions; collection of judgments**

- A. Upon finding that there has been violation of any provision of this Chapter, the committee may impose any or all of the following penalties or sanctions:
  - A. Removal, discharge or termination from public office or employment in accordance with applicable Navajo Nation law and procedure.
  - B. Disqualification for all elective public offices of the Navajo Nation and/or appointment to or employment in any public office of the Navajo Nation, for five years from the effective date of removal, discharge or any other termination of public office or employment of the Navajo Nation.
  - C. Suspension from public office or employment and forfeiture of all compensation and benefits accruing therefrom, for not less than 30 days nor for more than one year.
  - D. Accordingly, any public employee of the Navajo Nation shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies or procedures applicable thereto
  - E. Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provision of applicable Navajo Nation law and procedures.
  - F. Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.
  - G. Imposition of restitution or such other civil penalties as hereinafter provided under §378 1.
- B. Any person who is found to have violated any provisions of this Chapter shall forfeit any elective public office. This forfeiture provision shall not apply to any person against whom the only sanction imposed under §3780(A) is for a suspension from public office, or a written public reprimand, or private reprimand, or restitution of less than one thousand dollars (\$1,000).
- C. No sanctions or penalty provided herein shall limit any other powers of the Navajo Nation Council, Navajo Nation Courts, Judicial, Executive or Legislative Branches of the Navajo Nation, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.
- D. Judgments issued pursuant to the *Ethics in Government Law* which include the payment of money may be collected in any manner authorized for recovery of debts owed the Navajo Nation, including but not limited to garnishment proceedings as authorized by Navajo Nation law and offset provisions of the Navajo Nation Business and Procurement Act, 12 N.N.C. §1 50 1 *et seq.*

**§3781. Other civil damages**

- A. A person found in violation of this mandate shall be further subject to, and personally liable for the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:
  - 1. Any public official or employee who violates any economic disclosure or reporting requirement of this Chapter may be held liable to the Navajo Nation for civil damages in an amount not to exceed the value of any interest not properly reported.
  - 2. Any public official or employee who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in Subchapter 2 and 3 of this Chapter shall be liable to the Navajo Nation for civil damages in an amount not exceeding three times the amount or value of the benefit or benefits so obtained
- B. If two or more persons are responsible for any violation, each of them shall be liable to the Navajo Nation for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually.
- C. Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Navajo Nation and shall be paid into the General Fund of the Navajo Nation.
- D. No imposition of any or all civil damages provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

**§3782. Misdemeanor violations; punishments**

The Navajo Nation, through the Office of the Prosecutor or Special Prosecutor shall be responsible for the enforcement of the following Subsection.

- A. Any person who is convicted or found guilty of knowingly and willfully violating any provision of Subchapter 2 of this Chapter is guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.
- B. Any person knowingly and willfully filing any complaint authorized under this Chapter or by any other applicable law, without just cause and with malice or other improper purpose, including personal, political or other harassment or embarrassment, shall be guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.
- C. Upon conviction of any subsequent offense prescribed in Subsection (A) or (B) of this section, such person shall be fined not less than five hundred dollars (\$500.00) and shall be sentenced to imprisonment of not less than 30 days nor more than 180 days.
- D. A person convicted of a misdemeanor under this Chapter shall not be a candidate for elective public office, nor be eligible for any appointive office of the Navajo Nation, nor any of its governmental entities or political governing bodies; for five years following the date of conviction.
- E. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Chapter.
- F. No criminal or misdemeanor action, judgment, conviction or punishment hereunder shall operate to bar any action for civil damage or penalty, or imposition of any administrative sanction provided hereunder, nor be barred thereby.

**§3783. Severability**

If any provision of this Chapter or the application of such provision to any person, firm, association, corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations, corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

**§3784. Effective date**

The effective date of all provisions of this Navajo Nation *Ethics in Government Law* shall be October 8, 1984.

**§3785. Prior inconsistent law superseded**

Upon the effective date of this Navajo Nation *Ethics in Government* Law, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

## **Subchapter 6. Ethics and Rules Office**

### **§3786. Establishment**

There is hereby established the Ethics and Rules Office within the Navajo Nation government.

### **§3787. Purpose**

The purpose of the Ethics and Rules Office shall be to:

- A. Provide administrative assistance to the Ethics and Rules Committee of the Navajo Nation Council in ensuring adherence to legislative mandates under the Navajo Nation *Ethics in Government Law*, Ethics and Rules Committee Plan of Operation, and other applicable laws of the Navajo Nation;
- B. To represent the interests of the Navajo Nation in maintaining the highest standards of ethical conduct by the elected and appointed public officials, officers and representatives of the Navajo Nation, in the performance of their public and official duties and functions, (includes candidates and public employees);
- C. To maintain and make available for official information, complete and current written records of all laws, resolutions, rules, regulations and other official enactments, rulings, decisions or opinions relating to requirements, prohibitions or standards of ethical conduct or disclosure by elected and appointed public officials, officers, employees and representatives of the government of the Navajo Nation; together with current and complete records of such written disclosures as may be required by the laws of the Navajo Nation; and
- D. To protect the interest of the Navajo People in fair, honest and efficient conduct of the government of the Navajo Nation, in accordance with the laws of the Navajo Nation and the will of the Navajo People, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

### **§3788. Personnel and organization**

- A. There is established the position of Director for the Ethics and Rules Office and administrative/secretarial staff as may be budgeted by the Navajo Nation Council.
- B. The Ethics and Rules Committee and the Executive Director of the Office of Legislative Affairs shall have the authority to employ the Director of the Ethics and Rules Office.
- C. The Director shall have the authority to hire the administrative/secretarial staff, pursuant to Navajo Nation Personnel Policies and Procedures.
- D. All Ethics and Rules Office personnel shall be subject to the Navajo Nation personnel compensation, benefits, and policies and procedures
- E. The Director of the Ethics and Rules Office shall be administratively responsible to the Executive Director, Office of Legislative Services, in carrying out policies authorized and directed by the Ethics and Rules Committee of the Navajo Nation Council, as provided under Section 3787 of this Subchapter.

### **§3789. Duties, responsibilities and authority**

- A. The Director shall have the authority necessary and proper to carry out the purpose set forth in §3787 of this Chapter.
- B. Under general direction, the Director of the Ethics and Rules Office shall have the duties, responsibility, and authority to assist the Ethics and Rules Committee of the Navajo Nation Council to:

1. Provide recommendations to the Ethics and Rules Committee concerning rules and regulations necessary to implement provisions of the Navajo Nation *Ethics in Government Law* and to publish same after proper approval;
2. Prescribe and make available appropriate forms for economic disclosure statements and distribute such forms to all persons required to complete and file with the Ethics Rules Committee of the Navajo Nation Council;
3. Establish policies and procedures for completing and filing economic disclosure statements and provide training as deemed necessary,
4. Maintain current list of all persons required to file economic disclosure statements;
5. Provide for the preservation of economic disclosure statements filed with the Ethics and Rules Committee and ensure their confidentiality in accordance with the Navajo Nation *Ethics in Government Law* and all applicable rules and regulations;
6. Audit, review and evaluate all economic disclosure statements and make available for public access those deemed public records during regular office hours;
7. Provide and maintain written advisory opinions on the requirements of the Navajo Nation *Ethics in Government Law*, upon request from persons whose conduct is subject thereto and who have specific need to use such opinions;
8. Receive, examine and investigate complaints and conduct such hearings, in accordance with rules and regulations lawfully adopted and authorized to determine facts of allegations or noncompliance with provisions of the Navajo Nation *Ethics in Government Law*;
9. Implement, facilitate and require compliance with all provisions of the Navajo Nation *Ethics in Government Law* in accordance with stated purposes and intent, together with lawfully adopted rules and regulations, and the provisions of the Ethics and Rules Committee, Plan of Operation; and
10. Assist in instituting and conducting hearings on any matter which cannot be resolved by voluntary compliance and/or remedial action.

**§3790. Political practices prohibited**

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, the President and Vice-President of the Navajo Nation, or any other employee, or officer of the Navajo Nation.

**§3791. Office location and hours**

- A. The administrative office of the Ethics and Rules Office shall be located in Window Rock, Arizona. Mailing address is as follows: P.O. Box 3390, Window Rock, Arizona 86515.
- B. The office shall be open Monday through Friday, between 8:00 a.m. and 5:00 p.m., in the absence of any directive to the contrary from the Director, Ethics and Rules office.

**§3792. Construction**

Nothing contained in this Plan of Operation shall be construed to limit the authority of the Ethics and Rules Committee of the Navajo Nation Council and/or their representatives in ensuring adherence to and carrying out the legislative intent of the Navajo Nation *Ethics in Government Law* and the Ethics and Rules Committee's Plan of Operation, and all applicable laws of the Navajo Nation.

**§3793. Amendments**

This Plan of Operation may be amended by the Ethics and Rules Committee of the Navajo Nation Council subject to the approval of Intergovernmental Relations Committee of the Navajo Nation Council.

**Chapter 7.**  
**Navajo Nation *Ethics in Government Law Garnishment Act***  
**of 2005**

**Section**  
3800. Title



- 3801. Purpose
- 3802. Findings
- 3 803. General
- 3 804. Definitions
- 3805. Issuance of writ of garnishment; answer; objection; order
- 3806. Limitations upon transfers by garnishee
- 3807. Possession by judgment debtor
- 3808. Restrictions on discharge from employment by reason of garnishment
- 3809. Exemptions and restrictions
- 381 0. Maximum allowable earnings subject to garnishment

**§3800. Title**

This Act shall be entitled and referred to as the Navajo Nation *Ethics in Government Law Garnishment Act of 2005*.

**§3801. Purpose**

The purpose of this Act is to allow the remedy of garnishment in the collection of judgments issued by the Ethics and Rules Committee pursuant to the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*

**§3802. Findings**

The Navajo Nation Council finds that:

- A. The Ethics and Rules Committee of the Navajo Nation Council conducts hearings for alleged violations of the Navajo Nation *Ethics in Government Law*, 2 N.1V.C. §3741 *et seq.* These hearings involve public elected officials and Navajo Nation employees.
- B. Sanctions for violations of the Navajo Nation *Ethics in Government Law* include removal from or disqualification for elected office, termination of employment, payment of fines and restitution, reprimand and other penalties.
- C. Nonpayment of fines and restitution ordered pursuant to the *Ethics in Government Law* is a growing concern.

# Navajo Nation Ethics in Government Law

## Ethics and Rules Office Plan of Operation

### Garnishment Act



**November 2007**

**Important Notice and Disclaimer:** Provisions of the *Ethics in Government Law*, the Ethics and Rules Office *Plan of Operation* and the 2005 *Garnishment Act* contained herein were compiled by the Ethics and Rules Office. Resolutions regarding these laws, including any amendments subsequent to this compilation, are available upon request at the Central Records Office of the Navajo Nation. There are also rules and regulations adopted by the Ethics and Rules Committee; these are not contained herein. The Navajo Nation Code, an official publication of all Navajo Nation law, can be purchased from the Navajo Nation Office of Legislation Counsel. The compilation made available herein by the Ethics and Rules Office is not intended to replace any portion of the official version of the law. As with all laws, references or citations should be based on official publications.

# Navajo Nation Ethics in Government Law

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## **Chapter 6. Ethics in Government Law**

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## Subchapter 1. Title and Purpose; Definitions

### § 3741. Title

This Chapter may be cited as the Navajo Nation *Ethics in Government Law*.

### § 3742. Legislative purpose and intent

- A. **Purpose.** Where government is founded upon the consent of the governed, the people are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of the Navajo Nation *Ethics in Government Law*, therefore, is to require accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, by:
1. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions;
  2. Requiring public officials and employees to abstain from using any function of their office or duties in a manner which could place or appear to place their personal economic or special interests before the interests of the general public.
- B. **Intent.** It is the intention of the Navajo Nation Council that the provisions of this Navajo Nation *Ethics in Government Law* be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

### § 3743. Definitions

As used in this Chapter:

- A. "Business" includes any enterprise, organization, trade, occupation or profession whether or not operated as a legal entity for profit, including any business, trust, holding company, corporation, partnership, joint venture, or sole proprietorship, consultant or other self-employed enterprise.
- B. "Business with which the person is associated" includes any business in which the person or a member of the person's immediate family is a director, officer, partner, trustee or employee, holds any position of management or receives income in any form such as wages, commission, direct or indirect investment worth more than one thousand dollars (\$1,000) or holds any ownership, security or other beneficial interest, individually or



combined, amounting to more than ten percent (10%) of said business.

- C. "Candidate for public office" means any person who has publicly announced such intent, authorized promotion for, or filed a declaration of candidacy or a petition to appear on the ballot for election as a public official; and any person who has been nominated by a public official or governmental body for appointment to serve in any public capacity or office.
- D. "Committee" means the Ethics and Rules Committee of the Navajo Nation Council.
- E. "Compensation" or "income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof.
- F. "Confidential information" means information which by law or practice is not available to the public at large.
- G. "Conflict of interest" means the reasonable foreseeability that any personal or economic interest of a public official, or employee, will be affected in any materially different manner from the interest of the general public, by any decision, enactment, agreement, award or other official action or function of any governmental body or political subdivision of the Navajo Nation.
- H. "Dependent business" means any business, as defined herein, in which the person or members of the person's immediate family, individually or combined, have any direct or indirect ownership, investment, security or other beneficial interest amounting to more than twenty percent (20%) of such business.
- I. "Employee" means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of another person, organization or entity in return for any form of pay or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.
- J. "Employment" means the status or relationship existing or created by and between a person designated or acting as an "employee" as defined herein and the person, organization, group or other entity for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for pay or any other form of compensation.
- K. "Economic interest" means an interest held by a person, members of the person's immediate family or a dependent business, which is:
  - 1. Any ownership, income, investment, security or other beneficial interest in a business, or

2. Any employment or prospective employment for which negotiations have already begun.
- L. "Gift" includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.
- M. "Governmental body" means any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency, and any establishment of the Executive, Administrative, Legislative or Judicial Branch of the Navajo Nation, and certified Chapters of the Navajo Nation.
- N. "Immediate family" includes spouse, children and members of the household of public officials, public employees and candidates for public office, as defined in this Chapter.
- O. "Ministerial action" means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person's own judgment upon the propriety of the action being taken.
- P. "Official discretionary action" means any official function of public office or employment, including any vote, decision, opinion, allocation, recommendation, approval, disapproval, finding, delegation, authorization, contract, commitment, settlement, disbursement, release or other action which involves the exercise of discretionary authority, for, on behalf of or in any manner affecting any interest or property of the Navajo Nation, including any governmental body, political subdivision or member thereof.
- Q. "Public employee" means any employee, as defined herein, temporarily, periodically, permanently or indefinitely in the employment of the Navajo Nation, and/or any governmental body thereof as defined herein, including intergovernmental personnel.
- R. "Public office" means any elected or appointed office or position of permanent or temporary employment in any governmental body of the Navajo Nation as defined herein.
- S. "Public official" means any person holding an elective or appointed office in any governmental body of the Navajo Nation as defined herein, including grazing committee members.

## Subchapter 2. Standards of Conduct and Restricted Activities of Public Officials and Employees

### § 3744. Conduct in conformity with applicable rules and laws

Public officials and employees shall at all times conduct themselves so as to reflect credit upon the Navajo People and government; and comply with all applicable laws of the Navajo Nation with respect to their conduct in the performance of the duties of their respective office or employment.

### § 3745. General prohibitions; conflicts of interest

- A. No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.
- B. It is the intent of this Subsection (B) that public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct set out herein, which could result in, or create the appearance of
1. Using public office for private gain;
  2. Giving preferential treatment to any special interest organization or person;
  3. Impeding governmental efficiency or economy;
  4. Losing or compromising complete independence or impartiality of action;
  5. Making a government decision outside official channels; or
  6. Adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.

### § 3746. Use of confidential information for private gain

No public official or employee shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

### § 3747. Restrictions against incompatible interests or employment

- A. Public officials and employees shall not:

1. Have direct or indirect financial or other economic interests nor engage in such other employment or economic activity which, as determined in accordance with the provisions of this Chapter and other applicable laws of the Navajo Nation, necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials or employees of the Navajo Nation; nor
  2. Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment; nor
  3. Acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.
- B. Subject to the restrictions and conditions set forth in this Chapter, public officials and employees are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Navajo Nation may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Navajo Nation, in light of special circumstances or their particular duties.
- C. No business or other entity shall employ a public official or employee if such employment is prohibited by or otherwise violates any provision of this Chapter.
- D. The term "employment", within the meaning of this Section, includes professional services and other services rendered by a public official or employee, whether rendered as an employee, consultant or other independent contractor.

#### § 3748. Abstention from official action

- A. When a public official or employee is required to take official action on a matter in which such public official or employee has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under § 3747 above, such public official or employee shall:
1. Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official or employee is aware of such conflict and they shall deliver copies of such statement to the responsible party for inclusion in the official record of any vote or other decision or determination and also to the Ethics and Rules Committee;
  2. Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and

3. Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the governmental body making such decision or determination, or otherwise legally required by law, (such as the vote of an elected representative delegate which is cast on behalf of his or her electorate constituents), or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.
- B. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.
- C. Public employees shall also deliver a copy of such statement to the Committee and to their immediate superior, if any, who shall assign the matter to another. If such employee has no immediate superior, he or she shall take such steps as the Committee shall prescribe or advise, to abstain from influencing actions and decisions in the matter.
- D. In the event that a public official's or employee's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Committee.

#### **§ 3749. Navajo Nation government contracts; restrictions and bid requirements**

- A. No public official or employee or any member of such person's immediate family shall be a party to, nor have an interest in the profits or benefits of, any governmental contract of the Navajo Nation or of any investment of funds of the Navajo Nation, unless the contract or the investment meets the following requirements:
  1. The contract is let by notice and competitive bid or procurement procedures as required under all applicable laws, rules, regulations and policies of the Navajo Nation, for necessary materials or services for the governmental agency or entity involved;
  2. If the continuous course of a business commenced before the public official or employee assumed his or her current term of office or employment;
  3. The entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the public official or employee or a member of his or her immediate family;
  4. The public official or employee has taken no part in the determination of the specifications, deliberations or decision of a governmental agency with respect to

the public contract; and

5. The public official or employee is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.
- B. The requirements of §3749(A) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this Section and to all other applicable laws, rules and regulations of the Navajo Nation and its governmental bodies; and provided further that §3749 (A) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this Chapter. Provisions in accordance with the purposes and intent of this Chapter shall be incorporated as part of the rules, regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like transactions.
- C. In the absence of bribery or a purpose to defraud, a public official or employee or a member of his or her immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten percent (10%) of the ownership of net assets, or an interest as creditor of less than ten percent (10%) of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security therefor.

**§ 3750. Restrictions on assisting or representing other interests before governmental bodies for compensation**

No public official or employee except an employee of a governmental body duly established and authorized for such purposes by the Navajo Nation shall represent or otherwise assist any person or entity other than the Navajo Nation or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a non-ministerial nature. This Section shall not be construed to prohibit the duties of elected or appointed public officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

**§ 3751. Restrictions on assisting or representing other interests subsequent to termination of public office or employment**

- A. No former public official or employee nor partner, employee or other associate thereof

shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Navajo Nation, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Navajo Nation or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former public official or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.

- B. With respect to any such matter which was actually pending among such former public official's or employee's responsibilities, but in which such person did not participate as set forth in Subsection (A), the prohibitions set forth hereunder shall apply for the period of two years following the termination of such public office or employment.
- C. Nothing in this Chapter shall prevent a former public official or employee from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former public official or employee or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.
- D. The Navajo Nation, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefitting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former public official or employee whose official act, while a public official or employee, directly contributed to the making of such contract or taking of such action by the Navajo Nation or any governmental body or political subdivision thereof.
- E. Nothing contained in this Subsection shall prohibit a former public official or employee from being retained or employed by the governmental entity which he or she formerly served.

#### **§ 3752. Unauthorized compensation or benefit for official acts**

- A. No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in his or her official capacity for performing such duties.
- B. This Section shall not be construed to prohibit the receipt of authorized compensation for



the performance of other distinct and lawful public duties by public officials or employees.

- C. No public official or employee, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.

#### **§ 3753. Unauthorized personal use of property or funds of the Navajo Nation**

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

#### **§ 3754. Staff misuse prohibited**

No public official or employee shall employ, with funds of the Navajo Nation, any unauthorized person(s) nor persons who do not perform duties commensurate with such compensation, and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

#### **§ 3755. Anti-nepotism**

No public official or employee shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Navajo Nation or any governmental or political subdivision thereof, any person or persons related by consanguinity or affinity within the third degree, nor any member of the same household as said public official or public employee. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Navajo Nation, as amended from time to time.

#### **§ 3756. Restrictions against gifts or loans to influence official acts**

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself/herself or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

- A. Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or

- B. Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed; or
- C. Has any interest which, within two years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such public official or employee or of the government office or entity with which the public official or employee is associated or employed or which the public official or employee knows or has reason to believe is likely to be so involved or affected.

**§ 3757. Permitted gifts, awards, loans, reimbursements and campaign contributions**

Section 3756 shall not be construed to prohibit:

- A. An occasional non-pecuniary gift, insignificant in value;
- B. Gifts from and obviously motivated by family or social relationships, as among immediate family members or family inheritances;
- C. Food and refreshments customarily made available in the ordinary course of meetings where a public official or employee may properly be in attendance;
- D. An award or honor customarily and publicly presented in recognition of public service; and/or
- E. A political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the recipient's political campaign for elective office of a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

**§ 3758. Adoption of supplemental codes of conduct for official and employees of governmental entities of the Navajo Nation**

- A. The chief executive or administrator of every governmental entity of the Navajo Nation which is subject to the provisions of this Chapter is authorized to submit for approval and adoption by the Committee such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this Chapter. Upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with the provisions of this Chapter.

- B. The Ethics and Rules Committee is also authorized to adopt supplemental rules, regulations, and standards of conduct for all elected officials as defined by the Navajo Nation Code.
- C. Other Navajo Nation Political Governing Bodies.
1. Other political governing bodies of the Navajo Nation are authorized and directed to draft, adopt, implement and administer standards of conduct, disclosure requirements and other procedures, rules and regulations in conformity with the purposes and provisions of this Chapter.
  2. Any lawful authorization for any sponsorship or conduct of participation or involvement in any business activity by any political subdivision of the Navajo Nation shall be conditioned upon its prior adoption of such provisions, and enforcement thereof, as approved by the Committee.
- D. The Committee and the Navajo Nation Department of Justice shall provide such assistance as needed and requested by such governmental entities and political governing bodies of the Navajo Nation, in the preparation and drafting of such supplemental and implementing provisions as authorized and which are not in conflict with the purposes and provisions of this Chapter.

### Subchapter 3. [Repealed]

### Subchapter 4. Implementation and Compliance with *Ethics in Government Law*; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations

#### § 3766. Ethics and Rules Committee of the Navajo Nation Council - Powers and duties

In accordance with all powers and authority as provided in 2 N.N.C. §§ 831–835 and in addition, the Committee shall have the specific duties, responsibilities and authority to:

- A. Adopt, amend and publish rules and regulations to implement all provisions of this Chapter. Before such rules and regulations are enacted a 45-day public notice and comment period shall be allowed.
- B. Ensure that all appropriate measures are taken for protecting the confidentiality of all statements, records, documents, other materials and information designated as such by this Chapter or by any other applicable rules or regulations of the Navajo Nation or other competent jurisdiction.
- C. Provide written advisory opinions to guide the conduct and address specific questions when requested by officials and employees who are subject to this Chapter.
  1. All opinions shall be confidential and maintained on record within the Ethics and

**Rules Office;**

2. All opinions shall be binding upon the Committee, with regard to matters related to the specific request, until amended or revoked by the Committee.
- D. The Committee may initiate and/or receive, review and/or investigate complaints filed with the Ethics and Rules Office.
- E. The Committee shall conduct Administrative Hearings to determine violations or noncompliance with this Chapter. All Committee hearings shall follow Rules of Procedures established and adopted by the Committee. The director shall be charged with the responsibility of representing the Navajo Nation in bringing forth all complaints filed under this Chapter.

**§ 3767. Retaliation prohibited**

- A. Retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee.
- B. Any violations shall be subject to penalties under this Chapter, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

**§ 3768. Dismissals**

Upon recommendation of the Ethics and Rules Office, the Committee may dismiss any complaint which the Committee determines has insufficient facts to constitute a violation or noncompliance to this Chapter; or if there is insufficient evidence to support the allegations; or if the Committee lacks personal and subject matter jurisdiction.

**§ 3769. Statute of Limitations**

No action shall be brought under this Chapter more than four years after cause of action has accrued.

**§ 3770. Administrative hearings**

- A. The Committee, in the capacity of a quasi-judicial body, shall conduct administrative hearings on any alleged violation or noncompliance.
- B. The Ethics and Rules Office shall act in the capacity of complainant on matters to be heard by the Committee.
- C. The Hearing body may impose or recommend any sanctions, civil damages, restitution,

or other penalties provided in this Chapter, or refer their findings to other appropriate entities for action.

#### **§ 3771. Appeals to Supreme Court**

- A. The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from final decisions. Appeals shall be limited to questions of law.
- B. A notice of appeal shall be filed within 10 working days of the issuance of a written decision.

#### **§ 3772. Deliberations by the committee**

In any complaint where the accused is the President, Vice-President, Chief Justice, or other judges of the Navajo Nation, Chapter official or a Council Delegate, the Ethics and Rules Committee, upon completion of the administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction.

#### **§ 3773. [Repealed]**

#### **§ 3774. Committee's power as a quasi-judicial body**

- A. The Committee shall hold in contempt any person found disobeying any lawful order, process writ, finding or direction of the Committee.
- B. The Committee is authorized to administer oaths and issue subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Committee.
- C. The Committee shall maintain a complete record of all hearings, including all testimony and documents presented as evidence.
- D. The Committee shall not be bound by formal rules of evidence.
- E. The Committee shall conduct all hearings in open session. All records, transcripts, and other documents in the possession of the office shall remain confidential unless such information are submitted by the office as evidence.
- F. The Committee shall cause a copy of any order or decision to be delivered to the appropriate branch of the government.

#### **§ 3775. Committee conflict of interest**

No Committee member shall hear matters before the Committee which involve a member

of his/her immediate family and/or personal economic interest.

#### § 3776. Independent legal counsel

Subject to all applicable laws, the Committee may obtain independent legal counsel to assist and advise the Committee.

#### § 3777. Special prosecutors

A. Notwithstanding any provision in this Chapter, any Special Prosecutor appointed pursuant to 2 N.N.C. §§ 2021 - 2024 shall have the following powers and authority in connection with any administrative proceeding under this Chapter, exercisable in the name of the Navajo Nation, with respect to any matter within such Special Prosecutor's jurisdiction:

1. To file a complaint with the Committee alleging a violation of this Chapter by any person subject thereto;
2. To prosecute the complaint and represent the Navajo Nation's interest in any and all proceedings thereon;
3. To exercise an unconditional right to intervene and be substituted as the complainant in any proceeding pending under this Chapter, without regard to the stage of such proceedings; and

B. In the event of any administrative proceeding under this Chapter in which the Navajo Nation, through a Special Prosecutor, is a complainant against a person, any other complaint filed against such person hereunder (whether filed before or after the date on which the Navajo Nation became complainant) shall abate and shall be dismissed without prejudice, as to any common allegation of prohibited conduct.

#### § 3778. [Repealed]

#### § 3779. Other relief not barred

Nothing herein shall be construed as foreclosing the right of the Navajo Nation, through a Special Prosecutor or otherwise, to initiate proceedings to secure the relief and sanctions referred to in §§ 3781 or 3782 of this Chapter.

### Subchapter 5. Sanctions and Penalties

#### § 3780. Administrative sanctions; collection of judgments

A. Upon finding that there has been violation of any provision of this Chapter, the Committee may impose any or all of the following penalties or sanctions:

1. Removal, discharge or termination from public office or employment in accordance with applicable Navajo Nation law and procedure.
  2. Disqualification for all elective public offices of the Navajo Nation and/or appointment to or employment in any public office of the Navajo Nation, for five years from the effective date of removal, discharge or any other termination of public office or employment of the Navajo Nation.
  3. Suspension from public office or employment and forfeiture of all compensation and benefits accruing therefrom, for not less than 30 days nor for more than one year.
  4. Accordingly, any public employee of the Navajo Nation shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies or procedures applicable thereto.
  5. Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provision of applicable Navajo Nation law and procedures.
  6. Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.
  7. Imposition of restitution or such other civil penalties as hereinafter provided under §3781.
- B. Any person who is found to have violated any provisions of this Chapter shall forfeit any elective public office. This forfeiture provision shall not apply to any person against whom the only sanction imposed under §3780(A) is for a suspension from public office, or a written public reprimand, or private reprimand, or restitution of less than one thousand dollars (\$1,000).
- C. No sanctions or penalty provided herein shall limit any other powers of the Navajo Nation Council, Navajo Nation Courts, Judicial, Executive or Legislative Branches of the Navajo Nation, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.
- D. Judgments issued pursuant to the *Ethics in Government Law* which include the payment of money may be collected in any manner authorized for recovery of debts owed the Navajo Nation, including but not limited to garnishment proceedings as authorized by Navajo Nation law and offset provisions of the Navajo Nation Business and Procurement Act, 12 N.N.C. §1501 *et seq.*



**§ 3781. Other civil damages**

- A. A person found in violation of this mandate shall be further subject to, and personally liable for the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:
1. Any public official or employee who violates any economic disclosure or reporting requirement of this Chapter may be held liable to the Navajo Nation for civil damages in an amount not to exceed the value of any interest not properly reported.
  2. Any public official or employee who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in Subchapter 2 and 3 of this Chapter shall be liable to the Navajo Nation for civil damages in an amount not exceeding three times the amount or value of the benefit or benefits so obtained.
- B. If two or more persons are responsible for any violation, each of them shall be liable to the Navajo Nation for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually.
- C. Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Navajo Nation and shall be paid into the General Fund of the Navajo Nation.
- D. No imposition of any or all civil damages provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

**§ 3782. Misdemeanor violations; punishments**

The Navajo Nation, through the Office of the Prosecutor or Special Prosecutor shall be responsible for the enforcement of the following Subsection.

- A. Any person who is convicted or found guilty of knowingly and willfully violating any provision of Subchapter 2 of this Chapter is guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.
- B. Any person knowingly and willfully filing any complaint authorized under this Chapter or by any other applicable law, without just cause and with malice or other improper purpose, including personal, political or other harassment or embarrassment, shall be guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.

- C. Upon conviction of any subsequent offense prescribed in Subsection (A) or (B) of this Section, such person shall be fined not less than five hundred dollars (\$500.00) and shall be sentenced to imprisonment of not less than 30 days nor more than 180 days.
- D. A person convicted of a misdemeanor under this Chapter shall not be a candidate for elective public office, nor be eligible for any appointive office of the Navajo Nation, nor any of its governmental entities or political governing bodies; for five years following the date of conviction.
- E. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Chapter.
- F. No criminal or misdemeanor action, judgment, conviction or punishment hereunder shall operate to bar any action for civil damage or penalty or imposition of any administrative sanction provided hereunder, nor be barred thereby.

### § 3783. Severability

If any provision of this Chapter or the application of such provision to any person, firm, association, corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations, corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

### § 3784. Effective date

The effective date of all provisions of this Navajo Nation *Ethics in Government Law* shall be October 8, 1984.

### § 3785. Prior inconsistent law superseded

Upon the effective date of this Navajo Nation *Ethics in Government Law*, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

## Subchapter 6. Ethics and Rules Office

### § 3786. Establishment

There is hereby established the Ethics and Rules Office within the Navajo Nation government.

### § 3787. Purpose

The purpose of the Ethics and Rules Office shall be to:

- A. Provide administrative assistance to the Ethics and Rules Committee of the Navajo Nation Council in ensuring adherence to legislative mandates under the Navajo Nation *Ethics in Government Law*, Ethics and Rules Committee Plan of Operation, and other applicable laws of the Navajo Nation;
- B. To represent the interests of the Navajo Nation in maintaining the highest standards of ethical conduct by the elected and appointed public officials, officers and representatives of the Navajo Nation, in the performance of their public and official duties and functions, (includes candidates and public employees);
- C. To maintain and make available for official information, complete and current written records of all laws, resolutions, rules, regulations and other official enactments, rulings, decisions or opinions relating to requirements, prohibitions or standards of ethical conduct or disclosure by elected and appointed public officials, officers, employees and representatives of the government of the Navajo Nation; together with current and complete records of such written disclosures as may be required by the laws of the Navajo Nation; and
- D. To protect the interest of the Navajo People in fair, honest and efficient conduct of the government of the Navajo Nation, in accordance with the laws of the Navajo Nation and the will of the Navajo People, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

### § 3788. Personnel and organization

- A. There is established the position of Director for the Ethics and Rules Office and administrative/secretarial staff as may be budgeted by the Navajo Nation Council.
- B. The Ethics and Rules Committee and the Executive Director of the Office of Legislative Affairs shall have the authority to employ the Director of the Ethics and Rules Office.
- C. The Director shall have the authority to hire the administrative/secretarial staff, pursuant to Navajo Nation Personnel Policies and Procedures.

- D. All Ethics and Rules Office personnel shall be subject to the Navajo Nation personnel compensation, benefits, and policies and procedures
- E. The Director of the Ethics and Rules Office shall be administratively responsible to the Executive Director, Office of Legislative Services, in carrying out policies authorized and directed by the Ethics and Rules Committee of the Navajo Nation Council, as provided under Section 3787 of this Subchapter.

**§ 3789. Duties, responsibilities and authority**

- A. The Director shall have the authority necessary and proper to carry out the purpose set forth in §3787 of this Chapter.
- B. Under general direction, the Director of the Ethics and Rules Office shall have the duties, responsibility, and authority to assist the Ethics and Rules Committee of the Navajo Nation Council to:
  - 1. Provide recommendations to the Ethics and Rules Committee concerning rules and regulations necessary to implement provisions of the Navajo Nation *Ethics in Government Law* and to publish same after proper approval;
  - 2. Prescribe and make available appropriate forms for economic disclosure statements and distribute such forms to all persons required to complete and file with the Ethics Rules Committee of the Navajo Nation Council;
  - 3. Establish policies and procedures for completing and filing economic disclosure statements and provide training as deemed necessary,
  - 4. Maintain current list of all persons required to file economic disclosure statements;
  - 5. Provide for the preservation of economic disclosure statements filed with the Ethics and Rules Committee and ensure their confidentiality in accordance with the Navajo Nation *Ethics in Government Law* and all applicable rules and regulations;
  - 6. Audit, review and evaluate all economic disclosure statements and make available for public access those deemed public records during regular office hours;
  - 7. Provide and maintain written advisory opinions on the requirements of the Navajo Nation *Ethics in Government Law*, upon request from persons whose conduct is subject thereto and who have specific need to use such opinions;
  - 8. Receive, examine and investigate complaints and conduct such hearings, in accordance with rules and regulations lawfully adopted and authorized to determine facts of allegations or noncompliance with provisions of the Navajo

Nation *Ethics in Government Law*;

9. Implement, facilitate and require compliance with all provisions of the Navajo Nation *Ethics in Government Law* in accordance with stated purposes and intent, together with lawfully adopted rules and regulations, and the provisions of the Ethics and Rules Committee, Plan of Operation; and
10. Assist in instituting and conducting hearings on any matter which cannot be resolved by voluntary compliance and/or remedial action.

#### **§ 3790. Political practices prohibited**

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, the President and Vice-President of the Navajo Nation, or any other employee, or officer of the Navajo Nation.

#### **§ 3791. Office location and hours**

- A. The administrative office of the Ethics and Rules Office shall be located in Window Rock, Arizona. Mailing address is as follows: P.O. Box 3390, Window Rock, Arizona 86515.
- B. The office shall be open Monday through Friday, between 8:00 a.m. and 5:00 p.m., in the absence of any directive to the contrary from the Director, Ethics and Rules Office.

#### **§ 3792. Construction**

Nothing contained in this Plan of Operation shall be construed to limit the authority of the Ethics and Rules Committee of the Navajo Nation Council and/or their representatives in ensuring adherence to and carrying out the legislative intent of the Navajo Nation *Ethics in Government Law* and the Ethics and Rules Committee's Plan of Operation, and all applicable laws of the Navajo Nation.

#### **§ 3793. Amendments**

This Plan of Operation may be amended by the Ethics and Rules Committee of the Navajo Nation Council subject to the approval of Intergovernmental Relations Committee of the Navajo Nation Council.

## Chapter 7. Navajo Nation *Ethics in Government Law Garnishment Act of 2005*

### Section

- 3800. Title
- 3801. Purpose
- 3802. Findings
- 3803. General
- 3804. Definitions
- 3805. Issuance of writ of garnishment; answer; objection; order
- 3806. Limitations upon transfers by garnishee
- 3807. Possession by judgment debtor
- 3808. Restrictions on discharge from employment by reason of garnishment
- 3809. Exemptions and restrictions
- 3810. Maximum allowable earnings subject to garnishment

#### § 3800. Title

This Act shall be entitled and referred to as the Navajo Nation *Ethics in Government Law Garnishment Act of 2005*.

#### § 3801. Purpose

The purpose of this Act is to allow the remedy of garnishment in the collection of judgments issued by the Ethics and Rules Committee pursuant to the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*

#### § 3802. Findings

The Navajo Nation Council finds that:

- A. The Ethics and Rules Committee of the Navajo Nation Council conducts hearings for alleged violations of the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.* These hearings involve public elected officials and Navajo Nation employees.
- B. Sanctions for violations of the Navajo Nation *Ethics in Government Law* include removal from or disqualification for elected office, termination of employment, payment of fines and restitution, reprimand and other penalties.
- C. Nonpayment of fines and restitution ordered pursuant to the *Ethics in Government Law* is a growing concern.

#### § 3803. General

- A. The remedy of garnishment shall be available for only collection of civil damages,

restitution, fines, and/or penalties pursuant to a judgment, *i.e.*, order or decision, duly issued under the Navajo Nation *Ethics in Government Law*.

- B. The remedy of garnishment is applicable to any of the following:
1. Nonrestricted earnings owing to a judgment debtor by a garnishee.
  2. Nonrestricted assets, including nonrestricted monies, held by a garnishee on behalf of a judgment debtor.
  3. Personal property of a judgment debtor that is in the possession of a garnishee.
  4. Shares and securities of a corporation or a proprietary interest in a corporation belonging to a judgment debtor, if the garnishee is a corporation.
- C. A judgment creditor, or the Navajo Nation Office of Ethics and Rules on behalf of a judgment creditor, in whose favor a money judgment is awarded by the Ethics and Rules Committee of the Navajo Nation Council for violations of the Navajo Nation *Ethics in Government Law* may apply for writ of garnishment for its enforcement at any time within 10 years after entry of the judgment.
- D. A judgment creditor may apply for as many writs of garnishment as are necessary to collect the entire amount of the judgment.
- E. Jurisdiction over garnishment actions initiated pursuant to a judgment issued under the Navajo Nation *Ethics in Government Law* shall lie solely with the courts of the Navajo Nation.

#### **§ 3804. Definitions**

For the purpose of garnishment under this Act, the following words shall have the following meanings, unless the context otherwise requires:

- A. **Assets.** Interests in personal property and monies including, among other items, chattels, cash, bank accounts, securities, notes, and accounts receivable, but not including earnings or interests in real property.
- B. **Disposable Earnings.** That part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be exempted or withheld, *e.g.*, FICA, Medicare, federal income tax.
- C. **Earnings.** Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise.
- D. **Federal Minimum Hourly Wage Rate.** The highest federal minimum hourly wage rate for



an eight-hour day and a 40-hour week. It is immaterial whether the garnishee is exempt from paying the federal minimum hourly wage rate.

- E. Garnishee. The third person or entity, including Navajo Nation enterprises, entities, authorities, and corporations, in control or possession of the earnings or assets which are the subject of the garnishment proceeding.
- F. Garnishment. Legal procedure through which the earnings or any other asset of a judgment debtor are required to be withheld by a third party and, upon subsequent court order, released to a judgment creditor for payment of a debt which has been reduced to judgment under the Navajo Nation *Ethics in Government Law*.
- G. Judgment Creditor. A person or entity, including the Navajo Nation and its branches, divisions, departments, programs, enterprises, boards, commissions, and chapters, that has a money judgment in its favor pursuant to an order or decision duly issued under the Navajo Nation *Ethics in Government Law* that is due and unpaid.
- H. Judgment Debtor. A person against whom a money judgment has been awarded pursuant to an order or decision duly issued under the Navajo Nation *Ethics in Government Law*.
- I. Order of Garnishment. Court order directing the garnishee to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment plus costs and fees to the judgment creditor in a specified manner and at a specified time.
- J. Restricted Earnings and Assets. That portion of earnings and/or assets that are exempt from attachment in a garnishment proceeding, including those earnings and assets deemed exempt and restricted by this Act.
- K. Writ of Garnishment. Preliminary court order issued through the Clerk of Court directing the garnishee not to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment and directing the garnishee to file an answer to the writ of garnishment and directing the garnishee to serve the writ of garnishment on the judgment debtor.

**§ 3805. Issuance of writ of garnishment; answer; objection; order**

In accordance with the rules for garnishment proceedings, as enacted pursuant to 7 N.N.C. §601:

- A. Upon the filing of a proper petition, a writ of garnishment in the amount of the judgment or portion thereof as stated in the petition shall be issued by the Clerk of Court and directed to the garnishee.
- B. The garnishee shall file an answer to the writ of garnishment and serve the writ of garnishment, as well as the answer, on the judgment debtor.

- C. The judgment debtor or other interested person or entity may file an objection to the writ of garnishment or the answer of the garnishee.
- D. If the answer shows that the garnishee was holding nonexempt monies or personal property of the judgment debtor or that the judgment debtor is an employee of the garnishee entitled to future earnings and if no objection to the writ of garnishment is filed, the court will, without hearing issue an order of garnishment.
- E. If an objection to the writ of garnishment is filed and/or the conditions precedent of Subsection (D) are not met, the court will hear the matter without a jury prior to issuing an order of garnishment or ordering the garnishment stopped.

**§ 3806. Limitations upon transfers by garnishee**

- A. From and after service of the writ of garnishment and until the court issues the garnishment stopped, the garnishee shall not pay, transfer or release any unrestricted asset in the garnishee's possession or under the garnishee's control to which the judgment debtor has an interest or pay and/or release unrestricted earnings owing to the judgment debtor.
- B. The garnishee shall be liable to the judgment creditor for any such payment, transfer, or release prohibited above.

**§ 3807. Possession by judgment debtor**

- A. At any time before an order of garnishment is issued, the judgment debtor may take possession of any earnings or assets withheld by the garnishee by filing with the court (1) a bond payable to the garnishee in the amount, including costs and fees, set forth in the application for the writ of garnishment, or (2) a bond payable to the garnishee for the value of the earnings and assets to be garnished. The bond shall be conditioned upon the payment of any judgment that may be given against the garnishee or for payment of the value of the property garnished.
- B. When the judgment debtor provides a bond, he may make any objection which the garnishee could make in such action. With or without bond, the judgment debtor may assert any legal objections he may have to the writ of garnishment.
- C. If judgment debtor takes possession of property under this Section and judgment on garnishment is given in favor of the judgment creditor, it shall be against the judgment debtor and the sureties on the judgment debtor's bond for the amount of such judgment.

**§ 3808. Restrictions on discharge from employment by reason of garnishment**

- A. No employer may discharge any employee by reason of the fact that his or her earnings

have been subject to garnishment.

- B. An employer who willfully violates Subsection (A) of this Section shall be assessed a civil liability of not more than one thousand dollars (\$1,000) payable to the employee.

**§ 3809. Exemptions and restrictions**

The following earnings and assets shall be restricted and exempt from garnishment:

- A. Benefits paid by the Social Security Administration;
- B. Railroad retirement benefits under the Railroad Retirement Act of 1974, 45 U.S.C. §231;
- C. Retirement benefits, including Civil Servant's Retirement benefits under 5 U.S.C. §8331 *et seq.* and benefits payable by the Navajo Nation pursuant to Navajo Nation defined contribution and/or defined benefit retirement plans;
- D. Military annuities under 10 U.S.C. §1440;
- E. Social welfare benefits including, but not limited to:
1. Aid to Families with Dependent Children, or its successor; and
  2. General Assistance;
- F. All monies received by or payable to the judgment debtor pursuant to a child support order;
- G. Earnings payable by the judgment debtor pursuant to a child support order;
- H. Earnings and assets restricted or excepted under 15 U.S.C. §1671 *et seq.*; and,
- I. Interests in real property.

**§ 3810. Maximum allowable earnings subject to garnishment**

The maximum amount of earnings subject to garnishment shall not exceed the lesser of:

- A. Fifteen percent (15%) of the judgment debtor's disposable income for any pay period; or
- B. The amount by which the judgment debtor's disposable income exceeds 30 times the federal minimum wage (based on a 40 hour work week) in effect at the time the earnings are payable.



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)

## AGENDA REQUEST FORM

- 1) Request Date: December 16, 2019
- 2) Contact Person(s): Krystal L. John  
 Dept: Oneida Law Office  
 Phone Number: 4375 Email: kjohn4@oneidanation.org
- 3) Agenda Title: Real Property Law Emergency Amendment - Rulemaking
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
Please see attached memo.  


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List any supporting materials included and submitted with the Agenda Request Form

- |                |          |
|----------------|----------|
| 1) <u>memo</u> | 3) _____ |
| 2) _____       | 4) _____ |

- 5) Please list any laws, policies or resolutions that might be affected:  
proposed rule - acquisition for residential leasing
- 6) Please list all other departments or person(s) you have brought your concern to:  
Land Management, Land Commission, Comprehensive Housing Division
- 7) Do you consider this request urgent?     Yes     No  
 If yes, please indicate why:  
Please see the attached Memo

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

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*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376



## MEMORANDUM

**TO:** Legislative Operating Committee

**FROM:** Krystal L. John, Staff Attorney

**DATE:** December 16, 2019

**SUBJECT:** Real Property Law Emergency Amendments – Administrative Rulemaking

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The Oneida Land Commission, the Comprehensive Housing Division and Land Management have been working to update several housing related programs through adoption of new rules and amendment to existing rules. For example – our successful Homeownership through Independent Purchase (HIP) Program and a new Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Programs and the Home Building Opportunities (HBO) Program.

The HIP program allows people to find a home within the reservation boundaries and apply to have the Nation purchase the land while you purchase the home and then enter a residential lease with the new homeowner. The program gives homebuyers more purchasing power by enabling them to allocate all of their available financing to just the home and not the land. Meanwhile, the THRIFTT program allows homeowners located on individual fee or trust land within the reservation boundaries to apply for the Nation to buy their land and enter a residential lease with the Nation. It is a great way for homeowners to make money to finance expansion, improvements, upkeep, home construction or other financial needs of the homeowner while allowing them to remain in their existing housing. Both the HIP and THRIFTT program rely upon the acquisition power and processing of the Oneida Land Commission and Land Management respectively.

The issue is that while the Leasing law provides clear administrative rulemaking authority for the residential leasing portions of such processes, the Legislative Reference Office (LRO) has determined that there is not sufficient rulemaking authority within the Real Property law to allow the Oneida Land Commission and Land Management to adopt a rule to govern the acquisition portion of the HIP and THRIFTT processes. An initial suggestion was offered by the LRO to utilize a standard operating procedure (SOP) for the acquisition component. That suggestion was rejected by the Oneida Land Commission, the Comprehensive Housing Division and Land Management. All three parties identified that the acquisition component was really at the heart of the process and the most important piece of the entire process to have codified as a rule – both for in the input of the community and the consistency of expectations and standards that it

Page 2

provides to tribal programs and program participants. They also identified that because the acquisition process affected the “private rights or interests of individuals outside of the agency” that is was not eligible to be treated as an SOP in accordance with the Administrative Rulemaking law section 106.3-1(j).

After the initial recommendation was rejected, the Law Office met with the Legislative Reference Office to develop a workable solution. During the meeting it was agreed that the best possible path to move all of the rules forward without untoward delay was to work towards adopting emergency amendments to the Real Property law to delegate the Oneida Land Commission and Land Management with the needed administrative rulemaking authority.

The emergency justification as required by the Legislative Procedures Act section 109.9-5 for the “immediate preservation of the public health, safety or general welfare of the reservation population” is that homeownership and land acquisition strategies related to the HIP and THRIFTT programs may be jeopardized without immediate required updates to program processing and the required component that authorizes purchasing on behalf of the Nation.

### **REQUESTED ACTION**

Add the following amendment to the Real Property law to the Legislative Operating Committee’s Active Files List as an emergency amendment:

Add section 601.12-4. *Administrative Rulemaking Authority*. The Comprehensive Housing Division, the Oneida Land Commission and Land Management are hereby authorized to create rules as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law.





TO: Oneida Business Committee  
FROM: David P. Jordan, LOC Chairperson  
DATE: January 22, 2020  
RE: Real Property Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Real Property Law Emergency Amendments:

1. Resolution: Real Property Law Emergency Amendments
2. Statement of Effect: Real Property Law Emergency Amendments
3. Real Property Law Emergency Amendments Legislative Analysis
4. Real Property Law (Redline)
5. Real Property Law (Clean)

#### *Overview*

Emergency amendments to the Real Property law (the “Law”) are requested in order to address the delegation of rulemaking authority to the Oneida Land Commission, Land Management, and Comprehensive Housing Division. The Law provides that the Oneida Land Commission shall approve or deny all acquisitions of Tribal land, and that Land Management shall process land acquisition transactions as approved by the Oneida Land Commission. [6 O.C. 601.12-2(d), 601.12-3(e)]. These entities wish to develop a rule under the Law to address the acquisition of land. Although the Law delegates authority to the Oneida Land Commission and Land Management to approve or deny, and subsequently process land acquisitions, the Law does not contain a delegation of rulemaking authority to these entities for this issue.

The Administrative Rulemaking law provides that any board, committee, commission, department, or program of the Nation that has been granted rulemaking authority by a law of the Nation may promulgate rules interpreting the provisions of a law enforced or administered by it, provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.3-1(a), 106.4-1]. Although the Law provides various delegations of rulemaking authority to Land Management, the Oneida Land Commission, and the Comprehensive Housing Division [6 O.C. 601.7-3(e), 601.8-1, 601.12-1, 601.12-3(a)], the lack of delegation of authority to develop rules regarding land acquisitions means the process of administrative rulemaking as provided by the Administrative Rulemaking law cannot be used by the entities for this issue.

The delegation of rulemaking authority is being sought to address land acquisitions due to the transparency and oversight the administrative rulemaking process provides. The Administrative Rulemaking law requires that a public meeting and public comment period be held for every rule, and that authorized agency developing the rule fully consider all comments that are received during



the public comment period, as well as respond to each comment received in a public comment memorandum. [1 O.C. 106.6-1, 106.6-4, 106.6-5]. This requirement ensures that the community has the opportunity to provide input on a proposed rule. The administrative rulemaking process also provides oversight by requiring that the Legislative Operating Committee certify that all requirements of the Administrative Rulemaking law have been met, and requiring that all rules be adopted by the Oneida Business Committee. [1 O.C. 106.7-2, 106.8-2].

Additionally, rulemaking authority is being sought to address land acquisitions in an effort to mirror the clear delegation of rulemaking authority that is provided by the Leasing law. The Leasing law delegates rulemaking authority to the Oneida Land Commission and Land Management for the development of rules regarding residential, agricultural, and business leases. [6 O.C. 602.5-1]. The Oneida Land Commission and Land Management are currently developing rules under the Leasing law to address various housing related programs such as the Homeownership through Independent Purchase (HIP) Program and the Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Program. Both the HIP and THRIFTT programs rely upon the acquisition power and processing of the Oneida Land Commission and Land Management. Since the acquisition component is an essential part of the process for HIP and THRIFTT, it is desired that the land acquisition process also be codified as a rule.

The emergency amendment to the Law would add a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments to the Law will ensure that the homeownership and land acquisition strategies related to the HIP and THRIFTT programs are not jeopardized by allowing immediate updates to the program processing and required component that authorizes land acquisitions. On September 24, 2018, during a special General Tribal Council meeting the General Tribal Council identified housing as its top priority. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### **Requested Action**

Approve the Resolution: Real Property Law Emergency Amendments.

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Real Property Law Emergency Amendments

- 1  
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4  
5  
6  
7  
8  
9 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe  
10 recognized by the laws of the United States of America; and  
11  
12 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and  
13  
14 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,  
15 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and  
16  
17 **WHEREAS,** the Real Property law ("the Law") was adopted by the Oneida Business through resolution  
18 BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-  
19 C, BC-05-13-15-B and BC-02-08-17-A, BC-05-09-18-A; and  
20  
21 **WHEREAS,** the Law provides regulations and procedures for the transfer, control and management of  
22 the territory within the Reservation and all Tribal land; to integrate these regulations and  
23 procedures with the real property laws and practices of other federal and state sovereigns  
24 which may hold jurisdiction within the Reservation; and to establish licensing and  
25 certification requirements for the Nation's employees dealing with real property  
26 transactions; and  
27  
28 **WHEREAS,** the Law provides that the Oneida Land Commission shall approve or deny all acquisitions  
29 of Tribal land, and that Land Management shall process land acquisition transactions as  
30 approved by the Oneida Land Commission; and  
31  
32 **WHEREAS,** the Law does not delegate rulemaking authority to the Oneida Land Commission or Land  
33 Management to develop rules addressing land acquisitions; and  
34  
35 **WHEREAS,** the Administrative Rulemaking law provides that any entity of the Nation that has been  
36 granted rulemaking authority by a law of the Nation may promulgate rules interpreting the  
37 provisions of a law enforced or administered by it, provided that the rule does not exceed  
38 the rulemaking authority granted under the law for which the rule is being promulgated;  
39 and  
40  
41 **WHEREAS,** the Oneida Land Commission and Land Management desire to develop a rule under the  
42 Law to address the acquisition of land, but the lack of a delegation of authority to develop  
43 rules regarding land acquisitions means the process of administrative rulemaking as  
44 provided by the Administrative Rulemaking law cannot be used by the Oneida Land  
45 Commission or Land Management for this issue; and  
46  
47 **WHEREAS,** an emergency amendment to the Law to provide a delegation of rulemaking authority to  
48 address land acquisitions is being sought in an effort to ensure transparency, opportunity  
49 for community input, and oversight that the administrative rulemaking process provides;  
50 and  
51

52 **WHEREAS,** the delegation of rulemaking authority is also being sought to mirror and be consistent with  
53 rules for the Homeownership through Independent Purchase (HIP) Program and the Tribal  
54 Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Program currently being  
55 developed by the Oneida Land Commission and Land Management under the Leasing law;  
56 and  
57

58 **WHEREAS,** the HIP and THRIFTT programs rely upon the acquisition power and processing of the  
59 Oneida Land Commission and Land Management, so since the acquisition component is  
60 an essential part of the process for HIP and THRIFTT, it is desired that the land acquisition  
61 process also be codified as a rule; and  
62

63 **WHEREAS,** the emergency amendment to the Law adds a provision which provides that the  
64 Comprehensive Housing Division, Oneida Land Commission, and Land Management are  
65 delegated rulemaking authority as needed to exercise the authority granted and manage  
66 the responsibilities bestowed upon each area as identified in this law; and  
67

68 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact  
69 legislation on an emergency basis, to be in effect for a period of six (6) months, renewable  
70 for an additional six (6) months; and  
71

72 **WHEREAS,** emergency adoption of legislation is allowed when legislation is necessary for the  
73 immediate preservation of the public health, safety, or general welfare of the Reservation  
74 population, and the amendment of the legislation is required sooner than would be possible  
75 under the Legislative Procedures Act; and  
76

77 **WHEREAS,** the emergency adoption of these amendments to the Law are necessary for the  
78 preservation of the general welfare of the Reservation population in order to ensure that  
79 homeownership and land acquisition strategies related to the HIP and THRIFTT programs  
80 are not jeopardized by allowing immediate updates to the program processing and required  
81 component that authorizes land acquisitions; and  
82

83 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of this  
84 amendment would be contrary to public interest; and  
85

86 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement  
87 when considering emergency legislation; and  
88

89 **NOW THEREFORE BE IT RESOLVED,** that the emergency amendments to the Real Property law are  
90 hereby adopted on an emergency basis and shall become effective immediately.  
91  
92



## Statement of Effect

### *Real Property Law Emergency Amendments*

#### *Summary*

This resolution adopts an emergency amendment to the Real Property law which would add a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: January 10, 2020*

#### *Analysis by the Legislative Reference Office*

This resolution adopts emergency amendments to the Real Property law (“the Law”). The purpose of the Law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions.

The emergency amendment to the Law would add a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law. This is an effort to delegate rulemaking authority to the Oneida Land Commission and Land Management for the development of rules addressing the acquisition of land.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” [1 O.C. 109.9-5].

The Oneida Business Committee will be responsible for determining if the emergency standard provided by the LPA is met. The resolution provides that an emergency amendment to the Law is necessary for the preservation of the general welfare of the Reservation population in order to ensure that the homeownership and land acquisition strategies related to the Homeownership through Independent Purchase (HIP) Program and the Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Program are not jeopardized by allowing for immediate updates to the program processing and required component that authorizes land acquisitions.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### ***Conclusion***

Determination of an emergency is a decision of the Oneida Business Committee based on the authority granted in the Legislative Procedures Act. Upon a determination that an emergency exists, adoption of this resolution would not conflict with any of the Nation's laws.





# Tok<sup>^</sup>ske Kayanl<sup>^</sup>hsla Tsi> Ni>yohuntsya<sup>^</sup>#

*(The real/certain laws of the territory of the nation)*

## EMERGENCY AMENDMENTS TO REAL PROPERTY LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Law Office	SPONSOR: TBD	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Amendments	To expand administrative rulemaking authority delegated to the Comprehensive Housing Division, Oneida Land Commission and Land Management to exercise their authority and manage responsibilities identified in the Real Property law.		
Purpose	To provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions [6 O.C. 601.1-1].		
Affected Entities	Comprehensive Housing Division, Oneida Land Commission and Oneida Land Management.		
Related Legislation	Administrative Rulemaking law, Leasing law, Mortgage and Foreclosure law, Landlord-Tenant law, Eviction and Termination law.		
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 9-5(a)].		
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].		
Expiration of Emergency Amendments	Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Real Property law was first adopted on May 29, 1996 and most recently amended on May 9, 2018.
- 3 The law provides the regulations and procedures for the transfer, control and management of the
- 4 territory within the Reservation and all Tribal land. The current Real Property law delegates authority
- 5 to the Comprehensive Housing Division, Oneida Land Commission and Oneida Land Management to
- 6 develop rules regarding certain topics, such as probate, easements and selling property.
- 7 **B.** Real Property Law Rule #1 – HIP Program became effective on February 22, 2016. The
- 8 Homeownership by Independent Purchase (HIP) Program allows tribal members to initiate a purchase
- 9 in which the buyer purchases the improvements (i.e., the house) while the Nation purchases the land.
- 10 The purpose of the HIP Program is to increase homeownership among members of the Nation while
- 11 increasing the Nation's land base.

- 12 C. The Nation wishes to update the HIP Program and establish a Tribal Housing Reacquisition of  
13 Individual Fee and Trust Title (THRIFTT) Program to further increase homebuying and land  
14 acquisition opportunities. The relevant agencies wish to pursue this by amending current rules and/or  
15 establishing additional rules under the Real Property law and the Leasing law.
- 16 D. Upon a review of the Real Property law’s delegation of rulemaking authority, the Legislative Reference  
17 Office determined that the agencies lack sufficient authority to develop rules regarding land acquisition  
18 under this law. In order to proceed with the proposed rules, the agencies’ administrative rulemaking  
19 authority must be expanded.
- 20 E. The Legislative Operating Committee, in consultation with the Law Office, proposes to expand the  
21 agencies’ administrative rulemaking authority on an emergency basis in order to proceed with the  
22 update of these programs. The Oneida Business Committee is responsible for determining if the  
23 standard for an emergency in accordance with the Legislative Procedures Act (LPA) has been met.  
24

### 25 **SECTION 3. CONSULTATION AND OUTREACH**

- 26 A. Representatives from the following departments or entities participated in the development of this law  
27 and legislative analysis: Oneida Law Office.
- 28 B. The following laws were reviewed in the drafting of this analysis: Administrative Rulemaking law,  
29 Leasing law, Mortgage and Foreclosure law, Landlord-Tenant law, and Eviction and Termination law.  
30

### 31 **SECTION 4. PROCESS**

- 32 A. These amendments are being considered on an emergency basis. Emergency amendments expire six  
33 (6) months after adoption and may be renewed for one additional six (6) month period. The Oneida  
34 Business Committee may temporarily enact an emergency law “where legislation is necessary for the  
35 immediate preservation of public health, safety, or general welfare of the reservation population and  
36 enactment or amendment of legislation is required sooner than would be possible under this law” [1  
37 *O.C. 109.9-5*].
- 38 B. The LPA does not require a public meeting or fiscal impact statement when considering emergency  
39 legislation. However, a public meeting and fiscal impact statement will eventually be required when  
40 considering permanent adoption of these amendments.
- 41 C. At the time this analysis was drafted, the LOC will consider adding these emergency amendments to the  
42 Active Files List on January 15, 2020.
- 43 D. The following work meetings were held regarding the development of these emergency amendments  
44 and legislative analysis:  
45     ▪ December 12, 2019: Work meeting with Oneida Law Office.  
46

### 47 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 48 A. *Expansion of Administrative Rulemaking Authority.* The emergency amendments delegate expanded  
49 administrative rulemaking authority to the Comprehensive Housing Division, Oneida Land  
50 Commission and Land Management “as needed to exercise the authority granted and manage the  
51 responsibilities bestowed upon each area as identified in [the Real Property law]” [6 *O.C. 601.12-4*].  
52 This can be interpreted as granting broad authority to these agencies to develop rules for any provision  
53 of the Real Property law. For example, the Real Property law includes provisions on the following  
54 subjects:  
55     ▪ Holding of Ownership;



- 56     ▪ Legal Descriptions of Real Property transferred under this law;
- 57     ▪ Title Transfer, including Trust Acquisition, Deeds and Involuntary Transfer of Title;
- 58     ▪ Probate;
- 59     ▪ Leasing of Real Property;
- 60     ▪ Records, including the administration of the Oneida Register of Deeds;
- 61     ▪ Real Estate Education Requirements and Certifications;
- 62     ▪ Organization, including the duties and responsibilities of Comprehensive Housing Division,
- 63         Oneida Land Commission, and Land Management.

64     Although these amendments expand the agencies’ authority, any rules proposed by these entities must  
 65     go through the Administrative Rulemaking process, which requires public hearings, certification by the  
 66     Legislative Operating Committee and adoption by the Oneida Business Committee.

67  
 68     ***Table 1. Comparison: Rulemaking Authority in the Real Property law***

<b><i>Agency</i></b>	<b><i>Current Rulemaking Authority under Real Property Law</i></b>	<b><i>Proposed Rulemaking Authority under Real Property Law</i></b>
<i>Comprehensive Housing Division</i>	Rules regarding: <ul style="list-style-type: none"> <li>• Selling a Residential Property [601.12-1]</li> </ul>	“as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in [the Real Property law]”
<i>Oneida Land Management</i>	Rules regarding: <ul style="list-style-type: none"> <li>• Probate [601.8-1]</li> <li>• Easements for Landlocked Properties [601.7-3(e)]</li> <li>• Easement and Land Use Licenses [601.12-3]</li> </ul>	“as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in [the Real Property law]”
<i>Oneida Land Commission</i>	Rules regarding: <ul style="list-style-type: none"> <li>• Probate [601.8-1]</li> <li>• Selling a Residential Property [601.12-1]</li> <li>• Easements for Landlocked Properties [601.7-3(e)]</li> <li>• Easement and Land Use Licenses [601.12-3]</li> </ul>	“as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in [the Real Property law]”

69     \*This table does not include any additional rulemaking authority delegated to these agencies by other  
 70     laws of the Nation, such as the Leasing law, Landlord-Tenant law, or Mortgage and Foreclosure law.

## What Is Rulemaking?

The purpose of the Administrative Rulemaking law is to provide a process for the adoption and amendment of administrative rules. Rules interpret provisions of a law. In order to write a rule, an agency must be delegated rulemaking authority by a law of the Nation. The rule may not exceed the rulemaking authority granted under the law for which the rule is being created.

All proposed rules must receive a public meeting and public comment period. Then, the proposed rule must be certified by the LOC and adopted by the Oneida Business Committee before becoming effective. Rules adopted in accordance with the Administrative Rulemaking law have the same force and effect as the law which delegated the agency rulemaking authority.

71

## 72 SECTION 6. EXISTING LEGISLATION

73 A. *References to Other Laws.* The following laws of the Nation are referenced in the Real Property law.

74 The proposed amendments do not conflict with any of the referenced laws.

- 75 ▪ Mortgage and Foreclosure law [6 O.C. 601.7-3(b) and 12-1].
- 76 ▪ Leasing law [6 O.C. 601.9-1, 10-2(i), 12-1, 12-2(c) and 12-3(c)].
- 77 ▪ Landlord-Tenant law [6 O.C. 601.10-2(j) and 12-1].
- 78 ▪ Eviction and Termination law [6 O.C. 601.12-1 and 12-3(c)].
- 79 ▪ Tribal Use of Public Land law [6 O.C. 601.12-2(e)].

80

## 81 SECTION 7. OTHER CONSIDERATIONS

82 A. *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six  
83 months after adoption and may be renewed for one additional six (6) month period. Since the  
84 amendments will lead to the development of new rules, it is particularly important that the amendments  
85 are permanently adopted to avoid any future conflict between the law and future rules.

- 86 ▪ *Conclusion:* The LOC will need to develop and adopt permanent amendments to this law within  
87 the next six (6) to twelve (12) months.

88 B. *Consideration of Additional Amendments.* The emergency amendments are limited solely to the  
89 delegation of rulemaking authority to the Comprehensive Housing Division, Oneida Land Commission  
90 and Land Management. However, there may be other areas of the law that could benefit from further  
91 amendments.

- 92 ▪ *Conclusion:* During development of permanent amendments to this law, the LOC should consult  
93 with relevant agencies to identify any additional amendments.

94 C. *Fiscal Impact.* A fiscal impact statement is not required for emergency legislation.

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

97

98

**Title 6. Property and Land – Chapter 601**

**REAL PROPERTY**

**Tokáske Kayanláhsla Tsi? Ni'yohuntsya'té**

*The real/certain laws of the territory of the nation*

**REAL PROPERTY**

601.1. Purpose and Policy	601.7. Title Transfer
601.2. Adoption, Amendment, Repeal	601.8. Probate
601.3. Definitions	601.9. Leasing of Real Property
601.4. General Provisions	601.10. Records
601.5. Holding of Ownership	601.11. Real Estate Education Requirements and Certifications
601.6. Legal Descriptions	601.12. Organization

---

**601.1. Purpose and Policy**

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.

**601.2. Adoption, Amendment, Repeal**

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A ~~and~~, BC-05-09-18-A, and emergency amended by BC- - - - .

601.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. 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.

601.2-4. 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, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**601.3. Definitions**

601.3-1. 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, subject to 601.4-5.

(a) "Broker" means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.

(b) "Certified survey map" means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal governments.

(c) "Comprehensive Housing Division" means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential

- 38 services offered by the Nation, including but not limited to, all rental programs, the rent-  
39 to-own program, and the residential sales and mortgages programs.
- 40 (d) “Easement” means a real property right to cross or otherwise utilize the land of another  
41 for a specified purpose.
- 42 (e) “Estate” means a person’s interest in real property or other property.
- 43 (f) “Fiduciary” means a person required to act for the benefit of another person on all  
44 matters within the scope of their relationship and by such a relationship owes another duties  
45 of good faith, trust, confidence and candor. For the purposes of this law, both brokers and  
46 salespersons are “fiduciaries.”
- 47 (g) “Guardian ad litem” means a guardian appointed by the Judiciary on behalf of an  
48 incompetent or minor party.
- 49 (h) “Individual fee land” means real property held in fee status by an individual or group  
50 of individuals.
- 51 (i) “Individual trust land” means individual Tribal land held in trust by the United States  
52 of America for the benefit of a Tribal member.
- 53 (j) “Judiciary” means the judicial system that was established by Oneida General Tribal  
54 Council resolution GTC-01-07-13-B to administer the judicial authorities and  
55 responsibilities of the Nation.
- 56 (k) “Land Management” means the entity within the Nation responsible for maintaining  
57 the Oneida Nation Register of Deeds, entering into and administering agricultural and  
58 commercial leases on behalf of the Nation, processing trust transactions and land  
59 acquisition transactions, and for fulfilling other responsibilities as identified within this  
60 law.
- 61 (l) “Land use license” means an agreement entered into by the Nation providing a party  
62 the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and  
63 a specific duration, which may require the Nation to be compensated for such use.
- 64 (m) “Leasehold mortgage” means a mortgage, deed of trust, or other instrument that  
65 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the  
66 lessee to a lender or other mortgagee.
- 67 (n) “Nation” means the Oneida Nation.
- 68 (o) “Personal representative” means a person to whom authority to administer a decedent’s  
69 estate have been granted by Land Management or the Judiciary.
- 70 (p) “Probate” or “Administration” means any proceeding relating to a decedent’s estate,  
71 whether there is or is not a will.
- 72 (q) “Real property” means land and anything growing on, attached to, or erected on the  
73 land, excluding anything that may be severed without injury to the land.
- 74 (r) “Reservation” means all the property within the exterior boundaries of the Reservation  
75 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
76 and any lands added thereto pursuant to federal law.
- 77 (s) “Restricted fee status” means an interest in real property which includes a provision in  
78 the deed or will that, upon the happening or failure to happen of a certain event, the title of  
79 the purchaser or devisee shall be limited, enlarged, changed or terminated.
- 80 (t) “Rule” means a set of requirements, including fee schedules, enacted by the  
81 Comprehensive Housing Division, Land Management, Oneida Planning Department  
82 and/or the Oneida Land Commission in accordance with the Administrative Rulemaking  
83 law, based on authority delegated in this law in order to implement, interpret and/or enforce  
84 this law.

85 (u) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of  
 86 Indian Affairs system for maintaining and tracking land title documents and all legal  
 87 documents relating to land transactions.

88 (v) “Title status report” means a report issued by the Bureau of Indian Affairs after a title  
 89 examination which shows the proper legal description of a tract of Tribal land; current  
 90 ownership, including any applicable conditions, exceptions, restrictions or encumbrances  
 91 on records; and whether the land is in unrestricted, restricted, trust, or other status as  
 92 indicated by the records in a Land Titles and Records Office.

93 (w) “Tribal fee land” means land held in fee status by the Nation.

94 (x) “Tribal land” means Tribal fee land and Tribal trust land.

95 (y) “Tribal member” means an individual who is an enrolled member of the Nation.

96 (z) “Tribal trust land” means the surface estate of land or any interest therein held by the  
 97 United States in trust for the Nation; land held by the Nation subject to federal restrictions  
 98 against alienation or encumbrance; land reserved for federal purposes; and/or land held by  
 99 the United States in trust for the Nation under Section 17 of the Indian Reorganization Act,  
 100 25 U.S.C §477, et. seq.

#### 101 102 **601.4. General Provisions**

103 601.4-1. *Applicable Real Property.* The provisions of this law extend to all Tribal member’s  
 104 individual fee land and Tribal member’s individual trust land within the Reservation boundaries  
 105 and all Tribal land.

106 601.4-2. *Tribal Land Base.* Land Management shall administer all transactions which add real  
 107 property to the Tribal land base under the provisions of this law.

108 601.4-3. *Sale of Tribal Land Prohibited.* The sale of Tribal land is specifically prohibited by this  
 109 law, unless the intent of the transaction is the consolidation or partition of Tribal trust land and/or  
 110 individual trust land.

111 601.4-4. *New Land Assignments Prohibited.* The Nation may not acknowledge any new land  
 112 assignments. Further, in order to be eligible for a Tribal loan issued against a real property interest  
 113 held as a land assignment, the land assignment shall first be converted to a residential lease.

114 601.4-5. *Wisconsin Probate Code and its Related Chapters.* In instances where the Nation lacks  
 115 definition, procedure, or legal precedent in a probate matter, the Nation shall use Wisconsin’s  
 116 Probate Code and its related chapters for guidance.

117 601.4-6. *Wisconsin Real Property Law.* The Nation shall follow all applicable portions of the  
 118 Wisconsin Real Property law when acquiring individual fee land.

119 601.4-7. *No Waiver of Sovereign Immunity.* Nothing in this law may be construed as a waiver of  
 120 the Nation’s sovereign immunity.

#### 121 122 **601.5. Holding of Ownership**

123 601.5-1. Interests in real property by more than one (1) person may be held in the following ways:

124 (a) *Joint Tenancy with the Right of Survivorship.* Pursuant to this ownership mechanism  
 125 each owner has an equal, undivided interest in the real property. When an owner dies,  
 126 his/her share is divided among the remaining owners; the last living owner owns the entire  
 127 property.

128 (1) Real property owned by married persons is held under this mechanism unless  
 129 they have executed a valid marital property agreement specifically stating that the  
 130 real property in question is held as tenants in common.

131 (b) *Tenancy in Common*. Pursuant to this ownership mechanism each owner has a  
132 percentage of divided interest in the real property. When an owner dies, his/her interest is  
133 divided among his/her devisees or heirs.

134 (1) Real property owned by more than one (1) person, other than married persons,  
135 is owned under this mechanism unless a deed or transfer document specifically  
136 states the real property is held as joint tenants with rights of survivorship.  
137

#### 138 **601.6. Legal Descriptions**

139 601.6-1. The legal description for any real property transferred under this law shall be derived  
140 from a certified survey map or survey completed by a registered land surveyor according to  
141 currently accepted minimum industry standards for property surveys. If the plat of survey changes  
142 the legal description of the certified survey map for the same piece of property, the certified survey  
143 map's legal description shall be used on transfer documents along with the survey description,  
144 which shall be designated as "Also Known As ..." Section, township, range and fourth principal  
145 meridian shall be included in all legal descriptions.

146 601.6-2. Every land survey shall be made in accordance with the county register of deeds' records  
147 for fee land, and in accordance with the Oneida Nation Register of Deeds' records for Tribal trust  
148 lands and individual trust lands. The surveyor shall acquire data necessary to retrace record title  
149 boundaries such as deeds, maps, certificates of title, title status reports, Tribal leases, Tribal home  
150 purchase agreements, center line and other boundary line locations.

151 601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal  
152 identification of line or boundaries.

153 601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in  
154 the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and  
155 encroachments, as applicable.

156 601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real  
157 estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

158 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease to  
159 Tribal members, the address is an adequate legal description of the real property.  
160

#### 161 **601.7. Title Transfer**

162 601.7-1. *Trust Acquisition*. Land Management shall use title companies duly registered with the  
163 Department of Interior and approved by the Land Management to update abstracts or provide title  
164 insurance on real property scheduled for trust acquisition.

165 (a) Title companies shall follow general guidelines provided by the federal government in  
166 terms of form, content, period of search, destroyed or lost records and abstracter's  
167 certificate.

168 (b) When researching land title for real property within the Reservation which is being  
169 considered for trust acquisition, Land Management shall request the title company to search  
170 the title back to the original allottee, in order to ensure that patents or Indian deeds were  
171 legally issued.

172 (c) Any valid liens or encumbrances shown by the commitment for title insurance shall be  
173 eliminated before the title is transferred into trust.

174 (d) After land is in trust both a title search of county records and a title status report  
175 requested by Land Management from the Bureau of Indian Affairs shall verify all valid  
176 encumbrances, if any, on the title. For the purposes of this section, a valid encumbrance is  
177 one that has been preapproved, in writing, by Land Management based on a standard  
178 operating procedure that is effective upon approval by the Oneida Land Commission.

179 (e) Land Management applications to convert Tribal fee land into Tribal trust land require  
180 an Oneida Land Commission resolution approving the conversion.

181 601.7-2. *Deeds.* A deed is the formal document used by the Land Management to transfer title  
182 from one (1) party to another.

183 (a) A valid deed shall:

184 (1) Be in writing;

185 (2) Identify the grantor (seller) and grantee (buyer);

186 (3) Provide the legal description of the real property;

187 (4) Identify the interest conveyed, as well as any conditions, reservations,  
188 exceptions, or rights of way attached to the interest;

189 (5) Be signed by or on behalf of each of the grantors (sellers);

190 (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if  
191 applicable; and

192 (7) Be delivered to the grantee (buyer).

193 (b) In addition to the requirements listed in section 601.7-2(a), a deed prepared for trust  
194 acquisition shall include:

195 (1) The federal authority for trust acquisition;

196 (2) Any exceptions or exclusions from the State of Wisconsin's fees or other  
197 transfer requirements;

198 (3) The approximate acreage of the real property being transferred to trust; and

199 (4) The authority and signature of the appropriate Department of Interior official  
200 who accepts the real property into trust.

201 (c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds  
202 office, provided that, once the real property is in trust, the title shall be recorded with the  
203 Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records  
204 Office.

205 601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and  
206 order from the Judiciary, and may occur in the following ways:

207 (a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire  
208 Tribal member individual fee land within the Reservation for public uses without the  
209 consent of private owners.

210 (1) For the purposes of this section, public uses include, but are not limited to,  
211 environmental protection, streets, highways, sanitary sewers, public utility/sites,  
212 waste treatment facilities and public housing.

213 (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate  
214 an agreeable taking by making an offer to purchase based on an appraisal of the  
215 real property. The appraisal amount may be based on an appraisal provided by the  
216 Nation. In the event the property owner objects to the Nation's appraisal, they may  
217 obtain an independent appraisal at their own cost. For the purposes of this section,  
218 an appraisal means process for estimating a piece of real property's value.

219 (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

220 (b) *Foreclosure.* Foreclosures may occur subject to the Mortgage and Foreclosure law  
221 when a Tribal member ceases payment on a leasehold mortgage.

222 (c) *Tribal Land Consolidation.* Section 207 of the Indian Land Consolidation Act (Pub.L.  
223 No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98  
224 Stat. 3171) is incorporated into this law, which provides a mechanism for real property  
225 within the Reservation to escheat, or pass, to the Nation.



226 (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership  
 227 interest in real property escheats, or passes, to the Nation under the following  
 228 circumstances, provided that the Nation shall provide just compensation for the  
 229 interest:

230 (A) The real property is within the Reservation boundaries;

231 (B) The decedent's ownership in the given parcel of land is two percent  
 232 (2%) or less of the total acreage; and

233 (C) The interest is incapable of earning one hundred dollars (\$100) in any  
 234 one (1) of the five (5) years immediately following the decedent's death.

235 (2) A decedent's heirs may appeal a land consolidation under this section to the  
 236 Judiciary.

237 (3) Land consolidation is subject to the probate requirements, as included in this  
 238 law and accompanying rules.

239 (d) *Transferring Interests Inherited by Non-Tribal Members.* If the owner of an interest of  
 240 real property which is held in trust or restricted fee status located within the Reservation  
 241 devises such interest to a non-Tribal member, the Nation may acquire the interest by paying  
 242 the fair market value of the interest determined as of the date of the decedent's death. Such  
 243 transfer is effective upon receipt of an order transferring inherited interests from the  
 244 Judiciary pursuant to section 205 of the Indian Land Consolidation Act.

245 (1) An order transferring inherited interests may not be granted if:

246 (A) While the decedent's estate is pending, the non-Indian devisee  
 247 denounces his or her interest in favor of a Tribal member person;

248 (B) The interest is part of a family farm that is devised to a member of the  
 249 immediate family of the decedent, provided that such a restriction shall be  
 250 recorded as part of the deed relating to the interest involved; or

251 (C) The devisee agrees in writing that the Nation may acquire the interest  
 252 for fair market value only if the interest is offered for sale to a person or  
 253 entity that is not a member of the immediate family of the owner of the  
 254 interest.

255 (e) *Easements for Landlocked Properties.* Land Management and the Oneida Land  
 256 Commission shall jointly develop rules regarding requests for easements for landlocked  
 257 properties.

258 601.7-4. Land Management shall work with the Oneida Law Office in order to pursue an  
 259 involuntary transfer of title.

260

## 261 **601.8. Probate**

262 601.8-1. Land Management shall process and administer probate estates and, where necessary,  
 263 shall refer probate estates to the Oneida Judiciary for formal administration. Land Management  
 264 and the Oneida Land Commission shall jointly create any rules necessary to administer probate  
 265 estates. Land Management shall:

266 (a) Process applications for probate administration;

267 (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate  
 268 decedent's property pursuant to applicable laws and rules;

269 (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;

270 (d) Require and receive affidavits of service;

271 (e) Receive waiver and consent to probate administration forms and any related affidavits;

272 (f) Issue notice to creditors of the probate's administration, receive creditor claims for  
 273 consideration and settlement, and issue discharge of creditors when appropriate;

- 274 (g) Receive and process all estate inventories;  
275 (h) Receive and process, when possible, land transactions in accordance with this law and  
276 receive proof of recording documents;  
277 (i) Receive estate receipts;  
278 (j) In undisputed matters, receive and process statement of personal representative to close  
279 estate and issue discharge of personal representative; and  
280 (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and  
281 participate in the Judiciary's proceedings as necessary.

282 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring  
283 appointment of a guardian ad litem and shall have all the above powers conferred upon Land  
284 Management in such cases. In addition, the Judiciary shall hear and administer probate estates in  
285 which Land Management seeks appointment as a personal representative.  
286

### 287 **601.9. Leasing of Real Property**

288 601.9-1. In accordance with the Leasing law, Land Management shall administer and process all  
289 leasing of Tribal land for agricultural and commercial purposes and the Comprehensive Housing  
290 Division shall administer and process all leasing of Tribal land for residential purposes. The  
291 Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this  
292 law, the responsible parties designated herein shall administer and process leases of both Tribal  
293 fee land and Tribal trust land in accordance with the Leasing law.  
294

### 295 **601.10. Records**

296 601.10-1. *Purpose.* Land Management shall oversee the administration of the Oneida Nation  
297 Register of Deeds which shall accept and record documents related to real property located within  
298 the Reservation, as well as documents related to all Tribal fee land, regardless of where it is located.

299 601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents  
300 that provide evidence of activities affecting real property title, preserve the record of a title  
301 document and give constructive notice of changes to a title document. Further, such documents  
302 shall be originals, signed duplicates or certified copies. The following documents may be accepted  
303 by the Oneida Nation Register of Deeds.

- 304 (a) Deeds;  
305 (b) Probate orders;  
306 (c) Mortgages and other valid liens;  
307 (d) Easements, covenants, and restrictions;  
308 (e) Certified survey maps and plats of survey;  
309 (f) Patents;  
310 (g) Declarations of involuntary transfer or taking;  
311 (h) Satisfactions;  
312 (i) Leases made pursuant to the Leasing law;  
313 (j) Home ownership agreements made pursuant to the Landlord-Tenant law;  
314 (k) Marriage agreements; and  
315 (l) Correction of title defects.

316 601.10-3. *Accessibility.* The Oneida Nation Register of Deeds shall provide open access to land  
317 records and title documents.

318 601.10-4. *Trust Land.* All documents pertaining to Tribal trust land and individual trust land shall  
319 be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles  
320 and Records Office.

321 601.10-5. *Tribal Seal*. The Nation's Secretary shall provide Land Management with the Nation's  
322 seal to be used to authenticate documents which are certified by the Oneida Nation Register of  
323 Deeds.

324

325 **601.11. Real Estate Education Requirements and Certifications**

326 601.11-1. *Wisconsin Real Estate Education and Exam Required*. All persons engaging in the  
327 acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate  
328 closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to  
329 obtain a Wisconsin Real Estate License, but shall fulfill the pre-license education requirement,  
330 pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of  
331 continuing education requirements as required of Wisconsin real estate licensees. The Land  
332 Management director shall select which continuing education courses are required and the Oneida  
333 Law Office shall provide the director with a recommendation. In addition to Wisconsin's minimum  
334 education requirements as applied to the Nation's real estate employees in this law, Land  
335 Management shall require such employees to attend real estate training specific to the Nation's  
336 goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.

337 (a) While Wisconsin real estate law allows persons engaged in the sale of real estate to  
338 earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular  
339 employees of the Nation and, therefore, shall waive any commission for which they might  
340 otherwise be eligible.

341 (b) It is critical to the Oneida Nation's goal to reacquire property within the original  
342 Reservation boundaries to have employees educated and experienced in executing real  
343 estate transactions. Accordingly, Land Management shall employ a minimum of one (1)  
344 employee whose primary focus is real estate acquisitions and shall ensure that a minimum  
345 of two (2) employees are educated and trained as backups to the primary.

346 601.11-2. *TAAMS Certification Required*. All persons responsible for encoding leasing  
347 information shall obtain a TAAMS certification, which includes, but is not limited to, the following  
348 positions:

349 (a) Residential and Commercial Leasing Specialists;

350 (b) Land Title and Trust Manager; and

351 (c) Title Examiner.

352 601.11-3. *Fiduciary Responsibility*. All persons engaged in the buying or selling of Tribal land  
353 shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all  
354 applicable Tribal and federal laws.

355

356 **601.12. Organization**

357 601.12-1. *Comprehensive Housing Division*. The Comprehensive Housing Division shall oversee  
358 all residential transactions within the Reservation and shall process and administer such  
359 transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law,  
360 the Leasing law and/or the Eviction and Termination law; including any corresponding rules. In  
361 addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise  
362 joint rulemaking authority to provide process requirements, including but not limited to  
363 advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation  
364 is selling a residential property.

365 601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7)  
366 elected Tribal members and shall:

367 (a) Interpret the provisions of this law and create policy to guide Land Management in  
368 implementing the same;

- 369 (b) Approve or deny all easements and land use licenses;
- 370 (c) Review and adopt Land Management’s standard operating procedures for entering into
- 371 agriculture and commercial leases pursuant to the Leasing law;
- 372 (d) Approve or deny all acquisition of Tribal land;
- 373 (e) Allocate and assign land uses to all Tribal land, except those uses governed by the
- 374 Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the
- 375 Oneida Planning Department shall develop in collaboration with affected Oneida divisions
- 376 and departments and the Oneida Land Commission; and
- 377 (f) Name all buildings, roads, parks and the like on Tribal land.

378 601.12-3. *Land Management.* Land Management shall implement this law in accordance with the  
379 policy directives provided by the Oneida Land Commission. Land Management shall:

- 380 (a) Forward requests for easements and land use licenses to the Oneida Land Commission
- 381 based on the easement and land use license rules jointly developed by Land Management
- 382 and the Oneida Land Commission;
- 383 (b) Administer and oversee the Oneida Nation Register of Deeds;
- 384 (c) Enter into and administer agricultural and commercial leases pursuant to the Leasing
- 385 law and the Eviction and Termination law and any corresponding rules;
- 386 (d) Prepare title reports and process trust transactions; and
- 387 (e) Process land acquisition transactions as approved by the Oneida Land Commission.

388 601.12-4. *Administrative Rulemaking Authority.* The Comprehensive Housing Division, Oneida  
389 Land Commission, and Land Management are delegated rulemaking authority as needed to  
390 exercise the authority granted and manage the responsibilities bestowed upon each area as  
391 identified in this law.

392  
393 *End.*

- 
- 397 Adopted-BC-05-29-96-A
  - 398 Amended-BC-03-01-06-D
  - 399 Amended-BC-04-28-10-E
  - 400 Amended-BC-02-25-15-C
  - 401 Amended-BC-05-13-15-B
  - 402 Amended-BC-02-08-17-A
  - 403 Emergency ~~Amendment~~ Amended - BC-06-14-17-A
  - 404 Amended-BC-05-09-18-A
  - 405 Emergency Amended – BC- - - -

**Title 6. Property and Land – Chapter 601**  
**Tok<sup>^</sup>ske Kayani<sup>^</sup>hsla Tsi<sup>></sup> Ni<sup>></sup>yohuntsya<sup>≠</sup>#**  
*The real/certain laws of the territory of the nation*  
**REAL PROPERTY**

601.1. Purpose and Policy	601.7. Title Transfer
601.2. Adoption, Amendment, Repeal	601.8. Probate
601.3. Definitions	601.9. Leasing of Real Property
601.4. General Provisions	601.10. Records
601.5. Holding of Ownership	601.11. Real Estate Education Requirements and Certifications
601.6. Legal Descriptions	601.12. Organization

**601.1. Purpose and Policy**

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder’s rights and responsibilities. In addition, it is the Nation’s policy that probated estates shall be settled expeditiously and without undue delay.

**601.2. Adoption, Amendment, Repeal**

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A, BC-05-09-18-A, and emergency amended by BC-\_\_-\_\_-\_\_-\_\_.

601.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. 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.

601.2-4. 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, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**601.3. Definitions**

601.3-1. 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, subject to 601.4-5.

(a) “Broker” means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.

(b) “Certified survey map” means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal governments.

(c) “Comprehensive Housing Division” means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential

- 38 services offered by the Nation, including but not limited to, all rental programs, the rent-  
39 to-own program, and the residential sales and mortgages programs.
- 40 (d) “Easement” means a real property right to cross or otherwise utilize the land of another  
41 for a specified purpose.
- 42 (e) “Estate” means a person’s interest in real property or other property.
- 43 (f) “Fiduciary” means a person required to act for the benefit of another person on all  
44 matters within the scope of their relationship and by such a relationship owes another duties  
45 of good faith, trust, confidence and candor. For the purposes of this law, both brokers and  
46 salespersons are “fiduciaries.”
- 47 (g) “Guardian ad litem” means a guardian appointed by the Judiciary on behalf of an  
48 incompetent or minor party.
- 49 (h) “Individual fee land” means real property held in fee status by an individual or group  
50 of individuals.
- 51 (i) “Individual trust land” means individual Tribal land held in trust by the United States  
52 of America for the benefit of a Tribal member.
- 53 (j) “Judiciary” means the judicial system that was established by Oneida General Tribal  
54 Council resolution GTC-01-07-13-B to administer the judicial authorities and  
55 responsibilities of the Nation.
- 56 (k) “Land Management” means the entity within the Nation responsible for maintaining  
57 the Oneida Nation Register of Deeds, entering into and administering agricultural and  
58 commercial leases on behalf of the Nation, processing trust transactions and land  
59 acquisition transactions, and for fulfilling other responsibilities as identified within this  
60 law.
- 61 (l) “Land use license” means an agreement entered into by the Nation providing a party  
62 the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and  
63 a specific duration, which may require the Nation to be compensated for such use.
- 64 (m) “Leasehold mortgage” means a mortgage, deed of trust, or other instrument that  
65 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the  
66 lessee to a lender or other mortgagee.
- 67 (n) “Nation” means the Oneida Nation.
- 68 (o) “Personal representative” means a person to whom authority to administer a decedent’s  
69 estate have been granted by Land Management or the Judiciary.
- 70 (p) “Probate” or “Administration” means any proceeding relating to a decedent’s estate,  
71 whether there is or is not a will.
- 72 (q) “Real property” means land and anything growing on, attached to, or erected on the  
73 land, excluding anything that may be severed without injury to the land.
- 74 (r) “Reservation” means all the property within the exterior boundaries of the Reservation  
75 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
76 and any lands added thereto pursuant to federal law.
- 77 (s) “Restricted fee status” means an interest in real property which includes a provision in  
78 the deed or will that, upon the happening or failure to happen of a certain event, the title of  
79 the purchaser or devisee shall be limited, enlarged, changed or terminated.
- 80 (t) “Rule” means a set of requirements, including fee schedules, enacted by the  
81 Comprehensive Housing Division, Land Management, Oneida Planning Department  
82 and/or the Oneida Land Commission in accordance with the Administrative Rulemaking  
83 law, based on authority delegated in this law in order to implement, interpret and/or enforce  
84 this law.

85 (u) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of  
 86 Indian Affairs system for maintaining and tracking land title documents and all legal  
 87 documents relating to land transactions.

88 (v) “Title status report” means a report issued by the Bureau of Indian Affairs after a title  
 89 examination which shows the proper legal description of a tract of Tribal land; current  
 90 ownership, including any applicable conditions, exceptions, restrictions or encumbrances  
 91 on records; and whether the land is in unrestricted, restricted, trust, or other status as  
 92 indicated by the records in a Land Titles and Records Office.

93 (w) “Tribal fee land” means land held in fee status by the Nation.

94 (x) “Tribal land” means Tribal fee land and Tribal trust land.

95 (y) “Tribal member” means an individual who is an enrolled member of the Nation.

96 (z) “Tribal trust land” means the surface estate of land or any interest therein held by the  
 97 United States in trust for the Nation; land held by the Nation subject to federal restrictions  
 98 against alienation or encumbrance; land reserved for federal purposes; and/or land held by  
 99 the United States in trust for the Nation under Section 17 of the Indian Reorganization Act,  
 100 25 U.S.C §477, et. seq.

#### 101 102 **601.4. General Provisions**

103 601.4-1. *Applicable Real Property*. The provisions of this law extend to all Tribal member’s  
 104 individual fee land and Tribal member’s individual trust land within the Reservation boundaries  
 105 and all Tribal land.

106 601.4-2. *Tribal Land Base*. Land Management shall administer all transactions which add real  
 107 property to the Tribal land base under the provisions of this law.

108 601.4-3. *Sale of Tribal Land Prohibited*. The sale of Tribal land is specifically prohibited by this  
 109 law, unless the intent of the transaction is the consolidation or partition of Tribal trust land and/or  
 110 individual trust land.

111 601.4-4. *New Land Assignments Prohibited*. The Nation may not acknowledge any new land  
 112 assignments. Further, in order to be eligible for a Tribal loan issued against a real property interest  
 113 held as a land assignment, the land assignment shall first be converted to a residential lease.

114 601.4-5. *Wisconsin Probate Code and its Related Chapters*. In instances where the Nation lacks  
 115 definition, procedure, or legal precedent in a probate matter, the Nation shall use Wisconsin’s  
 116 Probate Code and its related chapters for guidance.

117 601.4-6. *Wisconsin Real Property Law*. The Nation shall follow all applicable portions of the  
 118 Wisconsin Real Property law when acquiring individual fee land.

119 601.4-7. *No Waiver of Sovereign Immunity*. Nothing in this law may be construed as a waiver of  
 120 the Nation’s sovereign immunity.

#### 121 122 **601.5. Holding of Ownership**

123 601.5-1. Interests in real property by more than one (1) person may be held in the following ways:

124 (a) *Joint Tenancy with the Right of Survivorship*. Pursuant to this ownership mechanism  
 125 each owner has an equal, undivided interest in the real property. When an owner dies,  
 126 his/her share is divided among the remaining owners; the last living owner owns the entire  
 127 property.

128 (1) Real property owned by married persons is held under this mechanism unless  
 129 they have executed a valid marital property agreement specifically stating that the  
 130 real property in question is held as tenants in common.



131 (b) *Tenancy in Common*. Pursuant to this ownership mechanism each owner has a  
132 percentage of divided interest in the real property. When an owner dies, his/her interest is  
133 divided among his/her devisees or heirs.

134 (1) Real property owned by more than one (1) person, other than married persons,  
135 is owned under this mechanism unless a deed or transfer document specifically  
136 states the real property is held as joint tenants with rights of survivorship.  
137

#### 138 **601.6. Legal Descriptions**

139 601.6-1. The legal description for any real property transferred under this law shall be derived  
140 from a certified survey map or survey completed by a registered land surveyor according to  
141 currently accepted minimum industry standards for property surveys. If the plat of survey changes  
142 the legal description of the certified survey map for the same piece of property, the certified survey  
143 map's legal description shall be used on transfer documents along with the survey description,  
144 which shall be designated as "Also Known As ..." Section, township, range and fourth principal  
145 meridian shall be included in all legal descriptions.

146 601.6-2. Every land survey shall be made in accordance with the county register of deeds' records  
147 for fee land, and in accordance with the Oneida Nation Register of Deeds' records for Tribal trust  
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149 boundaries such as deeds, maps, certificates of title, title status reports, Tribal leases, Tribal home  
150 purchase agreements, center line and other boundary line locations.

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152 identification of line or boundaries.

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154 the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and  
155 encroachments, as applicable.

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157 estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

158 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease to  
159 Tribal members, the address is an adequate legal description of the real property.  
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#### 161 **601.7. Title Transfer**

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163 Department of Interior and approved by the Land Management to update abstracts or provide title  
164 insurance on real property scheduled for trust acquisition.

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166 terms of form, content, period of search, destroyed or lost records and abstracter's  
167 certificate.

168 (b) When researching land title for real property within the Reservation which is being  
169 considered for trust acquisition, Land Management shall request the title company to search  
170 the title back to the original allottee, in order to ensure that patents or Indian deeds were  
171 legally issued.

172 (c) Any valid liens or encumbrances shown by the commitment for title insurance shall be  
173 eliminated before the title is transferred into trust.

174 (d) After land is in trust both a title search of county records and a title status report  
175 requested by Land Management from the Bureau of Indian Affairs shall verify all valid  
176 encumbrances, if any, on the title. For the purposes of this section, a valid encumbrance is  
177 one that has been preapproved, in writing, by Land Management based on a standard  
178 operating procedure that is effective upon approval by the Oneida Land Commission.

179 (e) Land Management applications to convert Tribal fee land into Tribal trust land require  
180 an Oneida Land Commission resolution approving the conversion.

181 601.7-2. *Deeds.* A deed is the formal document used by the Land Management to transfer title  
182 from one (1) party to another.

183 (a) A valid deed shall:

184 (1) Be in writing;

185 (2) Identify the grantor (seller) and grantee (buyer);

186 (3) Provide the legal description of the real property;

187 (4) Identify the interest conveyed, as well as any conditions, reservations,  
188 exceptions, or rights of way attached to the interest;

189 (5) Be signed by or on behalf of each of the grantors (sellers);

190 (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if  
191 applicable; and

192 (7) Be delivered to the grantee (buyer).

193 (b) In addition to the requirements listed in section 601.7-2(a), a deed prepared for trust  
194 acquisition shall include:

195 (1) The federal authority for trust acquisition;

196 (2) Any exceptions or exclusions from the State of Wisconsin's fees or other  
197 transfer requirements;

198 (3) The approximate acreage of the real property being transferred to trust; and

199 (4) The authority and signature of the appropriate Department of Interior official  
200 who accepts the real property into trust.

201 (c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds  
202 office, provided that, once the real property is in trust, the title shall be recorded with the  
203 Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records  
204 Office.

205 601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and  
206 order from the Judiciary, and may occur in the following ways:

207 (a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire  
208 Tribal member individual fee land within the Reservation for public uses without the  
209 consent of private owners.

210 (1) For the purposes of this section, public uses include, but are not limited to,  
211 environmental protection, streets, highways, sanitary sewers, public utility/sites,  
212 waste treatment facilities and public housing.

213 (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate  
214 an agreeable taking by making an offer to purchase based on an appraisal of the  
215 real property. The appraisal amount may be based on an appraisal provided by the  
216 Nation. In the event the property owner objects to the Nation's appraisal, they may  
217 obtain an independent appraisal at their own cost. For the purposes of this section,  
218 an appraisal means process for estimating a piece of real property's value.

219 (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

220 (b) *Foreclosure.* Foreclosures may occur subject to the Mortgage and Foreclosure law  
221 when a Tribal member ceases payment on a leasehold mortgage.

222 (c) *Tribal Land Consolidation.* Section 207 of the Indian Land Consolidation Act (Pub.L.  
223 No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98  
224 Stat. 3171) is incorporated into this law, which provides a mechanism for real property  
225 within the Reservation to escheat, or pass, to the Nation.

226 (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership  
227 interest in real property escheats, or passes, to the Nation under the following  
228 circumstances, provided that the Nation shall provide just compensation for the  
229 interest:

- 230 (A) The real property is within the Reservation boundaries;
- 231 (B) The decedent's ownership in the given parcel of land is two percent  
232 (2%) or less of the total acreage; and
- 233 (C) The interest is incapable of earning one hundred dollars (\$100) in any  
234 one (1) of the five (5) years immediately following the decedent's death.

235 (2) A decedent's heirs may appeal a land consolidation under this section to the  
236 Judiciary.

237 (3) Land consolidation is subject to the probate requirements, as included in this  
238 law and accompanying rules.

239 (d) *Transferring Interests Inherited by Non-Tribal Members.* If the owner of an interest of  
240 real property which is held in trust or restricted fee status located within the Reservation  
241 devises such interest to a non-Tribal member, the Nation may acquire the interest by paying  
242 the fair market value of the interest determined as of the date of the decedent's death. Such  
243 transfer is effective upon receipt of an order transferring inherited interests from the  
244 Judiciary pursuant to section 205 of the Indian Land Consolidation Act.

245 (1) An order transferring inherited interests may not be granted if:

- 246 (A) While the decedent's estate is pending, the non-Indian devisee  
247 denounces his or her interest in favor of a Tribal member person;
- 248 (B) The interest is part of a family farm that is devised to a member of the  
249 immediate family of the decedent, provided that such a restriction shall be  
250 recorded as part of the deed relating to the interest involved; or
- 251 (C) The devisee agrees in writing that the Nation may acquire the interest  
252 for fair market value only if the interest is offered for sale to a person or  
253 entity that is not a member of the immediate family of the owner of the  
254 interest.

255 (e) *Easements for Landlocked Properties.* Land Management and the Oneida Land  
256 Commission shall jointly develop rules regarding requests for easements for landlocked  
257 properties.

258 601.7-4. Land Management shall work with the Oneida Law Office in order to pursue an  
259 involuntary transfer of title.

## 261 **601.8. Probate**

262 601.8-1. Land Management shall process and administer probate estates and, where necessary,  
263 shall refer probate estates to the Oneida Judiciary for formal administration. Land Management  
264 and the Oneida Land Commission shall jointly create any rules necessary to administer probate  
265 estates. Land Management shall:

- 266 (a) Process applications for probate administration;
- 267 (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate  
268 decedent's property pursuant to applicable laws and rules;
- 269 (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- 270 (d) Require and receive affidavits of service;
- 271 (e) Receive waiver and consent to probate administration forms and any related affidavits;
- 272 (f) Issue notice to creditors of the probate's administration, receive creditor claims for  
273 consideration and settlement, and issue discharge of creditors when appropriate;

- 274 (g) Receive and process all estate inventories;  
 275 (h) Receive and process, when possible, land transactions in accordance with this law and  
 276 receive proof of recording documents;  
 277 (i) Receive estate receipts;  
 278 (j) In undisputed matters, receive and process statement of personal representative to close  
 279 estate and issue discharge of personal representative; and  
 280 (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and  
 281 participate in the Judiciary's proceedings as necessary.

282 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring  
 283 appointment of a guardian ad litem and shall have all the above powers conferred upon Land  
 284 Management in such cases. In addition, the Judiciary shall hear and administer probate estates in  
 285 which Land Management seeks appointment as a personal representative.  
 286

### 287 **601.9. Leasing of Real Property**

288 601.9-1. In accordance with the Leasing law, Land Management shall administer and process all  
 289 leasing of Tribal land for agricultural and commercial purposes and the Comprehensive Housing  
 290 Division shall administer and process all leasing of Tribal land for residential purposes. The  
 291 Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this  
 292 law, the responsible parties designated herein shall administer and process leases of both Tribal  
 293 fee land and Tribal trust land in accordance with the Leasing law.  
 294

### 295 **601.10. Records**

296 601.10-1. *Purpose.* Land Management shall oversee the administration of the Oneida Nation  
 297 Register of Deeds which shall accept and record documents related to real property located within  
 298 the Reservation, as well as documents related to all Tribal fee land, regardless of where it is located.

299 601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents  
 300 that provide evidence of activities affecting real property title, preserve the record of a title  
 301 document and give constructive notice of changes to a title document. Further, such documents  
 302 shall be originals, signed duplicates or certified copies. The following documents may be accepted  
 303 by the Oneida Nation Register of Deeds.

- 304 (a) Deeds;  
 305 (b) Probate orders;  
 306 (c) Mortgages and other valid liens;  
 307 (d) Easements, covenants, and restrictions;  
 308 (e) Certified survey maps and plats of survey;  
 309 (f) Patents;  
 310 (g) Declarations of involuntary transfer or taking;  
 311 (h) Satisfactions;  
 312 (i) Leases made pursuant to the Leasing law;  
 313 (j) Home ownership agreements made pursuant to the Landlord-Tenant law;  
 314 (k) Marriage agreements; and  
 315 (l) Correction of title defects.

316 601.10-3. *Accessibility.* The Oneida Nation Register of Deeds shall provide open access to land  
 317 records and title documents.

318 601.10-4. *Trust Land.* All documents pertaining to Tribal trust land and individual trust land shall  
 319 be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles  
 320 and Records Office.

321 601.10-5. *Tribal Seal*. The Nation’s Secretary shall provide Land Management with the Nation’s  
322 seal to be used to authenticate documents which are certified by the Oneida Nation Register of  
323 Deeds.

324  
325 **601.11. Real Estate Education Requirements and Certifications**

326 601.11-1. *Wisconsin Real Estate Education and Exam Required*. All persons engaging in the  
327 acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate  
328 closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to  
329 obtain a Wisconsin Real Estate License, but shall fulfill the pre-license education requirement,  
330 pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of  
331 continuing education requirements as required of Wisconsin real estate licensees. The Land  
332 Management director shall select which continuing education courses are required and the Oneida  
333 Law Office shall provide the director with a recommendation. In addition to Wisconsin’s minimum  
334 education requirements as applied to the Nation’s real estate employees in this law, Land  
335 Management shall require such employees to attend real estate training specific to the Nation’s  
336 goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.

337 (a) While Wisconsin real estate law allows persons engaged in the sale of real estate to  
338 earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular  
339 employees of the Nation and, therefore, shall waive any commission for which they might  
340 otherwise be eligible.

341 (b) It is critical to the Oneida Nation’s goal to reacquire property within the original  
342 Reservation boundaries to have employees educated and experienced in executing real  
343 estate transactions. Accordingly, Land Management shall employ a minimum of one (1)  
344 employee whose primary focus is real estate acquisitions and shall ensure that a minimum  
345 of two (2) employees are educated and trained as backups to the primary.

346 601.11-2. *TAAMS Certification Required*. All persons responsible for encoding leasing  
347 information shall obtain a TAAMS certification, which includes, but is not limited to, the following  
348 positions:

- 349 (a) Residential and Commercial Leasing Specialists;
- 350 (b) Land Title and Trust Manager; and
- 351 (c) Title Examiner.

352 601.11-3. *Fiduciary Responsibility*. All persons engaged in the buying or selling of Tribal land  
353 shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all  
354 applicable Tribal and federal laws.

355  
356 **601.12. Organization**

357 601.12-1. *Comprehensive Housing Division*. The Comprehensive Housing Division shall oversee  
358 all residential transactions within the Reservation and shall process and administer such  
359 transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law,  
360 the Leasing law and/or the Eviction and Termination law; including any corresponding rules. In  
361 addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise  
362 joint rulemaking authority to provide process requirements, including but not limited to  
363 advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation  
364 is selling a residential property.

365 601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7)  
366 elected Tribal members and shall:

- 367 (a) Interpret the provisions of this law and create policy to guide Land Management in  
368 implementing the same;

- 369 (b) Approve or deny all easements and land use licenses;
- 370 (c) Review and adopt Land Management’s standard operating procedures for entering into
- 371 agriculture and commercial leases pursuant to the Leasing law;
- 372 (d) Approve or deny all acquisition of Tribal land;
- 373 (e) Allocate and assign land uses to all Tribal land, except those uses governed by the
- 374 Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the
- 375 Oneida Planning Department shall develop in collaboration with affected Oneida divisions
- 376 and departments and the Oneida Land Commission; and
- 377 (f) Name all buildings, roads, parks and the like on Tribal land.

378 601.12-3. *Land Management.* Land Management shall implement this law in accordance with the  
379 policy directives provided by the Oneida Land Commission. Land Management shall:

- 380 (a) Forward requests for easements and land use licenses to the Oneida Land Commission
- 381 based on the easement and land use license rules jointly developed by Land Management
- 382 and the Oneida Land Commission;
- 383 (b) Administer and oversee the Oneida Nation Register of Deeds;
- 384 (c) Enter into and administer agricultural and commercial leases pursuant to the Leasing
- 385 law and the Eviction and Termination law and any corresponding rules;
- 386 (d) Prepare title reports and process trust transactions; and
- 387 (e) Process land acquisition transactions as approved by the Oneida Land Commission.

388 601.12-4. *Administrative Rulemaking Authority.* The Comprehensive Housing Division, Oneida  
389 Land Commission, and Land Management are delegated rulemaking authority as needed to  
390 exercise the authority granted and manage the responsibilities bestowed upon each area as  
391 identified in this law.

392 *End.*

~~394~~ \_\_\_\_\_

- 396
- 397 Adopted-BC-05-29-96-A
- 398 Amended-BC-03-01-06-D
- 399 Amended-BC-04-28-10-E
- 400 Amended-BC-02-25-15-C
- 401 Amended-BC-05-13-15-B
- 402 Amended-BC-02-08-17-A
- 403 Emergency Amended - BC-06-14-17-A
- 404 Amended-BC-05-09-18-A
- 405 Emergency Amended – BC-\_\_-\_\_-\_\_-\_\_



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



### AGENDA REQUEST FORM

- 1) Request Date: 1/15/20
- 2) Contact Person(s): Kathryn LaRoque  
Dept: \_\_\_\_\_  
Phone Number: 414-630-9881 Email: kklaroque@gmail.com
- 3) Agenda Title: Change to Bylaws
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
The membership was changed from 7 to 5 based on the inactivity of previous members 2 years ago. The current board has 7 committed members that are active in attending meetings, coordinating volunteers for Elections, volunteering for SEOTS events, and fundraising for board efforts. This change of membership will likely dissolve the progress made.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Met Quorum since June 2018
- 2) Raised \$300 with only board donations
- 3) 4 applicants as alternate for 1/25/20 election (as requested by the Election Board to alleviate costs of
- 4) Need 7 members for board events (Since we are not employees of SEOTS it is difficult to get enough volunteers to organize events. Board members have a duty to participate) travel & rooms)
- 5) Please list any laws, policies or resolutions that might be affected: \_\_\_\_\_
- 6) Please list all other departments or person(s) you have brought your concern to: \_\_\_\_\_
- 7) Do you consider this request urgent?  Yes  No

If yes, please indicate why:

One of our members term ends in February - We want to keep her!

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester: \_\_\_\_\_

Please send this form and all supporting materials to:

**LOC@oneidation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376





**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



## AGENDA REQUEST FORM

- 1) Request Date: January 8, 2020
- 2) Contact Person(s): Jennifer Falck  
 Dept: Legislative Reference Office  
 Phone Number: 869-4312 Email: jfalck@oneidation.org
- 3) Agenda Title: Emergency Amendments to the Tobacco law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
On December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to change the minimum age for the sale of tobacco products from eighteen to twenty-one. In order to be compliant with this federal law, an emergency amendment to the Tobacco law is necessary.

List any supporting materials included and submitted with the Agenda Request Form

- |                |          |
|----------------|----------|
| 1) <u>memo</u> | 3) _____ |
| 2) _____       | 4) _____ |

- 5) Please list any laws, policies or resolutions that might be affected:  
Tobacco law
- 6) Please list all other departments or person(s) you have brought your concern to:  
Oneida Retail
- 7) Do you consider this request urgent?  Yes  No  
 If yes, please indicate why:  
In order to comply with recently amended federal law.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

Jennifer A. Falck 1/8/2020

*Please send this form and all supporting materials to:*

**LOC@oneidation.org**  
 or  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376



TO: Legislative Operating Committee  
FROM: Jen Falck, LRO Director  
DATE: January 15, 2020  
RE: Tobacco Law Emergency Amendments

Emergency amendments to the Tobacco law (the “Law”) are requested in order to comply with an amendment to the Federal Food, Drug, and Cosmetic Act. On December 20, 2019, President Trump signed into law an amendment to increase the minimum age of sale of tobacco products from eighteen (18) to twenty-one (21). The amendment was effective immediately. Tobacco products include cigarettes, tobacco and e-cigarettes.

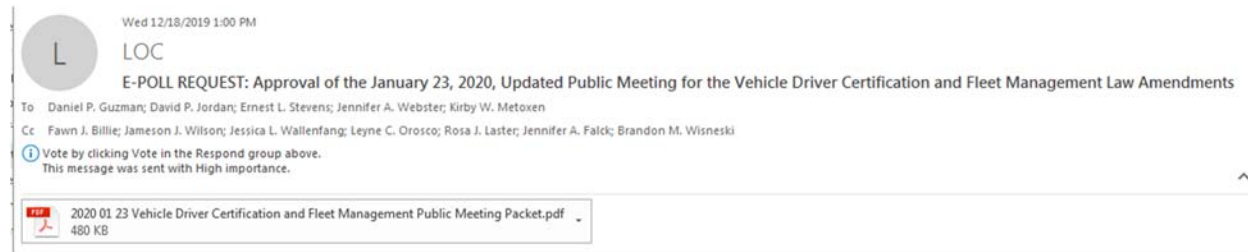
The Oneida Retail operations have been compliant with the minimum age change since January 1, 2020.

The Tobacco law regulates the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. Currently, the Law does not allow the sale of tobacco products to any person under the of age of eighteen (18). [1 O.C. 115.6-3]. This emergency amendment to the Law would change the minimum age provision from eighteen (18) to twenty-one (21) years of age and become effective immediately.

### **Requested Action**

Add the Tobacco law emergency amendments to the Active Files List.

## December 18, 2019, Legislative Operating Committee E-Poll Approval of January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendments



### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the January 23, 2020, updated public meeting for the amendments to the Vehicle Driver Certification and Fleet Management law.

### EXECUTIVE SUMMARY

During the December 18, 2019, Legislative Operating Committee meeting the Legislative Operating Committee approved a motion to approve the public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 16, 2020. Upon sending the public meeting notice to the Kalihwisaks in a request for publication in the January 2, 2020, Kalihwisaks edition, the Legislative Reference Office was informed that the next Kalihwisaks edition would be January 9, 2020.

The Kalihwisaks 2019 Schedule identified a submission deadline of December 26, 2019, for inclusion in the January 2, 2020, Kalihwisaks edition. The Vehicle Driver Certification and Fleet Management law amendments public meeting was then scheduled based off of the January 2, 2020, Kalihwisaks edition date. The publication of the public meeting notice in the January 2, 2020, Kalihwisaks edition would have met the ten (10) business day notice requirement of the Legislative Procedures Act for January 16, 2020, public meeting date. [1 O.C. 109.8-2(c)].

The January 2020 Kalihwisaks publication schedule was changed from the typical first and third Thursday of the month, to the second and fourth Thursday of the month, thus eliminating the January 2, 2020, Kalihwisaks edition and replacing it with a January 9, 2020, Kalihwisaks edition. Therefore, the Legislative Operating Committee cannot hold a public meeting for the Vehicle Driver Certification and Fleet Management law amendments on January 16, 2020, as directed during the December 18, 2019, Legislative Operating Committee meeting if the public meeting notice will not be published in the Kalihwisaks until January 9, 2020, since that would only provide five (5) business days of notice.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for January 15, 2020, and immediate action is required by the Legislative Operating Committee to submit a public meeting notice to the Kalihwisaks by its January 2, 2020, submission deadline for inclusion in the January 9, 2020, Kalihwisaks edition. The public meeting notice is required to be published in the January 9, 2020, Kalihwisaks edition for a January 23, 2020, public meeting date.

### REQUESTED ACTION

Approve the updated public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 23, 2020, instead of January 16, 2020.

**DEADLINE FOR RESPONSE**

**December 18, 2019 at 3:00 p.m.**

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

**E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, Kirby Metoxen. Daniel Guzman King did not provide a response.

Wed 12/18/2019 1:25 PM  
David P. Jordan  
RE: E-POLL REQUEST: Approval of the January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendm

To: LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan  
Cc: Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski

Support

Wed 12/18/2019 1:30 PM  
Jennifer A. Webster  
Re: E-POLL REQUEST: Approval of the January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendm

To: LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen  
Cc: Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski

Approve

Sent from my Samsung Galaxy smartphone.

Wed 12/18/2019 1:35 PM  
Ernest L. Stevens  
Re: E-POLL REQUEST: Approval of the January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendm

To: Jennifer A. Webster; LOC; Daniel P. Guzman; David P. Jordan; Kirby W. Metoxen  
Cc: Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski

Approve

Get [Outlook for Android](#)

Wed 12/18/2019 2:00 PM  
Kirby W. Metoxen  
RE: E-POLL REQUEST: Approval of the January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendm

To: LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster  
Cc: Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski

Support

**Kirby Metoxen**  
Kirby Metoxen, Councilman  
[kmetox@oneidanation.org](mailto:kmetox@oneidanation.org)  
Work Phone: (920) 869-4441  
Fax: (920) 869-4040

**ONEIDA NATION PUBLIC MEETING NOTICE****Thursday, January 23, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room  
N7210 Seminary Rd., Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to**

LOC@oneidanation.org

**Ask Questions here**

LOC@oneidanation.org

920-869-4312

**VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT LAW AMENDMENTS**

The purpose of this law is 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.

**The amendments to the Vehicle Driver Certification and Fleet Management law will:**

1. Revise the qualifications to become a certified driver of the Nation;
2. Revise and simplify the process for suspending a person's driver certification;
3. Clarify that other violations of this law that do not result in the suspension or revocation of a driver's license will be handled by disciplinary action instead of suspension of driver certification;
4. Revise the restriction on driving while using prescription or over the counter medications;
5. Require mileage reimbursement requests to be submitted within 30 days of driving the miles or by the end of the fiscal year, whichever is sooner;
6. Ban the use of e-cigarettes in fleet vehicles; and
7. Clarify that weapons are banned in fleet vehicles and personal vehicles used for official business.

**PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, JANUARY 30, 2020**

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

**PROVIDING EFFECTIVE PUBLIC COMMENTS**

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



**✓ READ THE PUBLIC MEETING MATERIALS:** Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.

**✓ PREPARE YOUR COMMENTS:** When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
The requirements for obtaining driver certification are too strict.	We should look at decreasing the age requirement for driver certification.	In section 210.4-2 the requirement to be at least 18 years old should be revised to 16 years old to allow more people who are employed by the Nation to be a certified driver.



Lot\$les Kayanl^sla Khale> Nya>teka>sl#htake

Lonatl\$hute> Kayanl^sla

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

### SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<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, with certain exceptions;</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>		
Purpose	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].		
Affected Entities	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.		
Related Legislation	Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

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

## SECTION 3. CONSULTATION AND OUTREACH

- 15
- 16 A. Representatives from the following departments or entities of the Nation participated in the  
17 development of this law and legislative analysis: Human Resources Department (Equal Employment  
18 Opportunity, Employment and Recruitment, Training and Development, Personnel Services), Risk  
19 Management, and Fleet Management.
- 20 B. The following laws of the Nation were reviewed in drafting this analysis: Personnel Policies and  
21 Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.
- 22 C. In addition, the following laws or policies of other governments, tribes and organizations were  
23 reviewed:
- 24     ▪ Ho Chunk Nation Fleet Ordinance; and
  - 25     ▪ State of WI Fleet Driver and Management Policies and Procedures
- 26

## SECTION 4. PROCESS

- 27
- 28 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 29 B. The law was added to the Active Files List on February 7, 2018.
- 30 C. At the time this legislative analysis was developed, the following work meetings had been held  
31 regarding developments of these amendments and legislative analysis:
- 32     ▪ July 15, 2019: Work meeting with HRD and Risk Management.
  - 33     ▪ July 29, 2019: Work meeting with HRD and Risk Management.
  - 34     ▪ August 13, 2019: Work meeting with HRD and Risk Management.
  - 35     ▪ September 4, 2019: Work meeting with LOC.
  - 36     ▪ October 2, 2019: Work meeting with HRD, Risk Management and Fleet Management.
  - 37     ▪ October 16, 2019: Work meeting with LOC.
  - 38     ▪ October 24, 2019: Work meeting with LOC
  - 39     ▪ November 5, 2019: Work meeting with LOC, HRD and Risk Management.
  - 40     ▪ December 4, 2019: Work meeting with LOC.
- 41



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

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

**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.

- 50
- 51 ■ **Change to Drug and Alcohol (OWI) Restrictions.** Currently, if an individual has had a drug or  
 52 alcohol conviction within the past three (3) years, such as an OWI, that individual cannot drive for  
 53 the Nation. These amendments reduce this timeframe to twelve (12) months.
- 54 ○ *Current.* An individual cannot become a certified driver if they have had a driving citation  
 55 related to drugs and alcohol within the past three (3) years. This includes OWI (Operating  
 56 While Intoxicated), DUI (Driving Under the Influence), or PAC (Prohibited Alcohol  
 57 Concentration) citations.

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

### **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

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

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

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

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

- 136 ■ *Current Requirement.* The current vehicle insurance requirement is one hundred thousand dollars  
137 (\$100,000) per person, three hundred thousand dollars (\$300,000) per motor vehicle crash for  
138 bodily injury, and (\$25,000) for property damage. These amounts remain unchanged in the  
139 amendments.
- 140 ■ *New Option for Combined Single Limit:* As an alternative, employees of the Nation may instead  
141 opt to carry a “combined single limit” of two hundred and fifty thousand dollars (\$250,000). A  
142 combined single limit is a type of insurance policy with a maximum dollar amount that covers any  
143 combination of injuries or property damage, rather than split limits for each type of coverage as in  
144 a typical policy. This option was added at the recommendation of Risk Management.
- 145 ■ *Effect.* Employees are still required to carry minimum vehicle insurance but may now opt to carry  
146 either split coverage (\$100k/\$300k/\$25k) or a combined single limit coverage (\$250k).

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

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

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

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

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

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

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

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

208 **G. *Driver Safety Training.*** The current law requires all drivers certified to drive a fleet vehicle to complete  
209 driver safety training every three (3) years. These amendments will now require all certified drivers to  
210 complete this safety training, regardless of whether they drive a fleet vehicle or a personal vehicle on  
211 official business.

- 212     ▪ *Training Responsibility Moved to HRD.* In addition, rather than Environmental Health and Safety  
 213     Division, it will now be HRD’s responsibility to provide and monitor this training [2 O.C. 210.5-  
 214     2]. During an LOC meeting, HRD Training and Development noted that there may be an expense  
 215     related to purchasing or developing a driver safety training program.
- 216     ▪ *Training Exemptions.* Finally, individuals who are already required to comply with state or federal  
 217     driver safety requirements (such as police officers) are exempt from the safety training offered by  
 218     Oneida HRD.

219  
 220     **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.
<i>Exemption if employee already completed specialized driver training?</i>	Yes.	Yes.

- 221
- 222     **H. New 30-Day Deadline to Submit Mileage.** Employees and officials of the Nation seeking mileage  
 223     reimbursement for miles driven while conducting official business will now be required to submit their  
 224     mileage forms within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is  
 225     sooner [2 O.C. 210.5-4(b)].
- 226     **I. Approval of Passengers in Fleet Vehicles.** Previously, the Oneida Business Committee was  
 227     responsible for authorizing passengers in a fleet vehicle who were not employees, officials, volunteers,  
 228     or individuals being transported as part of a program, service or to conduct business. In order to increase  
 229     efficiency, the Fleet Management department will now be responsible for authorizing these types  
 230     passengers [2 O.C. 210.6-7(c)].
- 231     **J. Drug Testing Requirement for Motor Vehicle Crashes.** When a certified driver is involved in a motor  
 232     vehicle crash or damage involving a fleet vehicle or personal vehicle driven on official business, the  
 233     driver must immediately report the crash and complete an incident report. The current law also states  
 234     that the driver must comply with “any applicable alcohol and drug testing requirements established in  
 235     other laws of the Nation.” This reference to drug testing requirements in other laws has been deleted.
- 236     ▪ *Drug and Alcohol Free Workplace law.* Although this reference has been deleted, employees of the  
 237     Nation are still required to follow the Drug and Alcohol Free Workplace law. This policy states  
 238     that if an employee is involved in a work-related accident, he or she must immediately inform their  
 239     supervisor and, as a condition of employment, participate in pre-employment, reasonable suspicion,  
 240     and follow-up testing upon the request of an appropriate authority [2 O.C. 202.8-3 and 8-4].
  - 241     ▪ *Effect.* Although the reference to alcohol and drug testing is deleted in this particular law,  
 242     employees of the Nation may still be required to participate in alcohol and drug testing in  
 243     accordance with the Drug and Alcohol Free Workplace law as a condition of their employment.
- 244     **K. Copy of Internal Reviews.** When there is a motor vehicle crash or damage involving a fleet vehicle or  
 245     personal vehicle on official business, the Fleet Management Department and Risk Management

246 Department coordinate and conduct an internal review of the incident. These departments may  
247 recommend that an individual receive disciplinary action based on the incident. For example, discipline  
248 can be recommended if an employee recklessly damages a fleet vehicle.

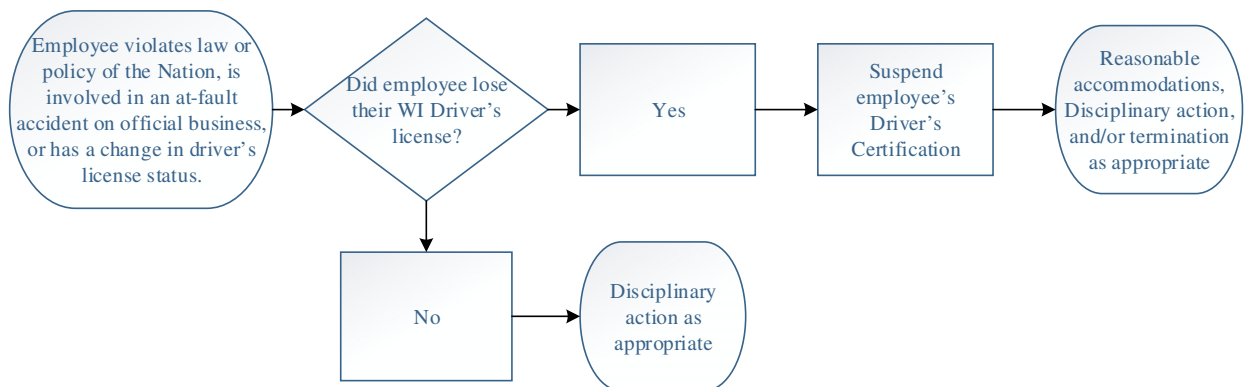
- 249 ■ *Reports Required for Both Fleet Vehicles and Personal Vehicle Crashes.* The current law states  
250 that internal reviews are to be conducted “whenever necessary” for motor vehicle crashes involving  
251 fleet vehicles, specifically. Now, internal reviews will be required for both fleet vehicles and  
252 personal vehicles driven on official business in the event of a motor vehicle crash or damage [2  
253 *O.C. 210.7-1*].
- 254 ■ *Copies of Reports to Area Managers.* Previously, these reports were provided to the driver and  
255 driver’s supervisor. Now these reports will also be provided to the driver’s area manager. The intent  
256 is to ensure that the driver’s area manager is kept informed of incidents and can ensure that issues  
257 are addressed with employees [2 *O.C. 210.7-2*].

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

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

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

276  
277 **Chart 3. Proposed Driver Certification Suspension Process.**  
278



279



**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.”

281 **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.

282

283 **N. Minor Drafting Changes.** Additional minor drafting changes have been made throughout the law for  
 284 clarity.

285

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

287 **A. References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this  
 288 law.

289 

- *Personnel Policies and Procedures.* “In addition to the suspension of driver certification, a  
 290 supervisor may take disciplinary action against an individual in accordance with the Nation’s laws  
 291 and policies governing employment if an employee...” [2 O.C. 210.8-7].

292 

- *Travel and Expense Policy.* “A vehicle shall be rented in accordance with the Nation’s laws and  
 293 policies governing travel. Every vehicle rented shall include the purchase of the maximum  
 294 collision damage waiver offered by the rental company” [2 O.C 210.6-9(a)].

295 

- o *Conflict.* The Travel and Expense Policy states that “insurance on all car rentals is  
 296 covered by the Oneida Tribe’s insurance policy.” However, this does not reflect current  
 297 practice. In addition, the Travel and Expense Policy conflicts with both the current  
 298 Vehicle Driver Certification law and the proposed amendments, which both require the  
 299 purchase of maximum collision damage waiver from the rental company, as this is more  
 300 cost effective for the Nation.

301 

- o *Recommendation:* The LOC and LRO should note the discrepancy in the Travel and  
 302 Expense Policy and identify that section of the Travel and Expense Policy as an area for  
 303 future amendments.

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

- 307     ▪ *Drug and Alcohol Free Workplace.* This law applies to all applicants for employment, whether  
308 external or internal, and all employees during working hours, when on-call, and when operating a  
309 vehicle owned by the Nation or a vehicle rented by the Nation. An employee is prohibited from  
310 the use of prohibited drugs and alcohol during working hours, when on-call, and when operating  
311 a vehicle owned by the Nation or a vehicle rented by the Nation [2 O.C. 202.4-1 and 4-2].
- 312     ▪ *Clean Air Policy.* “Except as provided in 411.4-1(b)(1) and 411.4-2, no person may smoke... in  
313 any vehicle owned or operated by the Tribe” [4 O.C. 411.4-1(c)].

314

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

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

- 317     ▪ *Suspension of Driver Certification.* A supervisor shall suspend an individual’s driver certification  
318 if the individual’s driver’s license is suspended or revoked by the State or becomes invalid for any  
319 other reason [2 O.C. 210.8-2].
- 320     ▪ *Disciplinary Action.* In addition to the suspension of a driver certification, a supervisor may take  
321 disciplinary action against an individual in accordance with the Personnel Policies and Procedures  
322 [2 O.C. 210.8-7].

323

## 324 **SECTION 8. OTHER CONSIDERATIONS**

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

- 326     ▪ ***Number of Driver Certification Suspensions:***
  - 327         ○ 2017: 3
  - 328         ○ 2018: 13
  - 329         ○ 2019: 6
- 330     ▪ ***Number of Employees Separated from Employment Due to Loss of Driver Certification:***
  - 331         ○ 2019: 2
- 332     ▪ ***Number of Job Applicants Screened Out Due to OWI or Driving Convictions:***
  - 333         ○ HRD does not currently track this information. However, between July and November of  
334 2019, at least five (5) applicants were screened out for not meeting driver certification  
335 requirements.  
336 *Source: Email communications with HRD, 11/5/19.*
- 337     ▪ ***Number of Fleet Vehicles***
  - 338         ○ The Nation currently owns 209 fleet vehicles. 200 of these vehicles are permanently  
339 assigned to a department of the Nation.  
340 *Source: Email communication with Fleet Management, 10/29/19.*

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

<i>Fiscal Year</i>	<i># of Incidents</i>	<i># of Incidents At Fault</i>
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

348

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

349

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

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

360     ▪ *Conclusion.* The LOC intends to add a grandfather clause for current certified drivers that have  
 361 had three (3) or more moving violations or at-fault accidents within the past two (2) years. It is  
 362 expected that this grandfather clause will state that new restrictions on moving violations shall  
 363 apply only to new applicants, new hires, or job transfers that occur after the adoption date of  
 364 this law.

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

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

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

377     ▪ *Conclusion.* The LOC intends to direct HRD to offer an updated training to employees of the  
 378 Nation on the new provisions of this law. This directive will be included in the adopting  
 379 resolution of these amendments. The LOC will consult with HRD to determine a reasonable  
 380 timeframe for HRD to develop and offer this training. During the LOC meeting on December

381 4, 2019, a representative of HRD Training and Development recommended allowing at least  
 382 180 days for HRD to develop the training on the new amendments.

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

- 389 ■ *Example Scenario.* In other words, an individual can be hired with a clean driving record,  
 390 receive driver certification from the Nation, then have three (3) or more moving violations  
 391 within a 2-year period during their employment, but still keep their driver certification because  
 392 they never lost their valid driver’s license as a result of the moving violations. However, if that  
 393 same individual were to leave their employment with the Nation and later apply for another  
 394 position in the organization, that individual could not become a certified driver, because they  
 395 are now applying as a new driver and must pass the driving record check.

396  
 397 **Chart 7. Driving Record Requirement Comparison**

Scenario	Driving Record Requirements	Outcome
<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 year period or an OWI in the past 12 months results in denial of driver certification.
<i>Current employee who is already a certified driver for the Nation (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 <u>does not</u> result in loss of driver certification unless the employee’s driver’s license was revoked or suspended.
<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 in 2 year period or an OWI in the past 12 months results in denial of driver certification.

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

405  
 406

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

412       ▪ *Data:* HRD estimated that roughly 700 out of 950 program/non-divisional positions require a  
413 driver’s license. Data for gaming positions was not available at the time this analysis was  
414 drafted.

415       ▪ *Recommendation:* During a work meeting, the LOC encouraged HRD to review job  
416 descriptions and determine whether it is necessary for certain jobs to require a driver’s license.  
417 If the LOC wishes to formalize this request to HRD, the LOC could send a memo or include in  
418 the adopting resolution for this law a timeline or forum for where this information should be  
419 brought back (such as HRD’s quarterly report).

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

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

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

428

**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  
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~~

**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 complete the driver safety training provided and monitored by the Human Resources  
150 Department every three (3) years.

- 151 (a) Exemption. An individual who is required to maintain compliance with any specialized  
152 driver safety training requirements imposed by state or federal regulatory agencies shall be  
153 exempt from the requirement to complete the driver safety training provided by the Human  
154 Resources Department.

155 **210.5-3. Fleet Vehicle Responsibilities.** When operating a fleet vehicle, an individual shall:

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

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

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

177 **210.5-5. Notification Requirements.** An individual shall notify his or her supervisor if he or she:

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

185 **210.64-2. Fleet Vehicles**

186 210.6-1. Fleet Management- Department. The Nation’s Fleet Management Department shall:  
187 ~~(a) Purchase purchase,~~ manage, and monitor the use of ~~Tribal vehicles,~~ the Nation’s fleet vehicles.  
188 The Fleet Management Department’s responsibilities shall include, but are not limited to:  
189 (a) Maintain a list of all fleet vehicles that are available for use, including ~~the removal of~~  
190 vehicles permanently assigned to specific entities of the Nation;  
191 (b) Remove unsafe vehicles from the fleet;  
192 ~~(b)c) Obtain estimates of and schedule Tribal fleet~~ vehicle repairs when necessary;  
193 ~~(c) Participate in motor vehicle crash investigations;~~  
194 ~~(d) Participate in situations requiring approval of driver certifications;~~  
195 ~~(e) (d) Install or remove global positioning system monitors on Tribal~~ equipment on fleet  
196 vehicles;  
197 (e) Ensure the Nation’s logo is on all fleet vehicles; and  
198 (f) Ensure that all Tribal fleet vehicles are equipped with a mileage log and an auto incident  
199 kit which contains forms and instructions for reporting any incident; ~~and.~~  
200 ~~(g) Maintain a list of all fleet vehicles that are available for use by drivers; including~~  
201 ~~vehicles permanently assigned to specific departments.~~

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

206 210.4-46-3. Risk Management- Department. The Risk Management shall:  
207 ~~(a) Secure~~ Department shall be responsible for securing and ~~maintain~~ maintaining insurance  
208 coverage for all Tribal fleet vehicles; ~~or may designate another party to do so;~~ Additional  
209 responsibilities of the Risk Management Department shall include, but is not limited to:  
210 ~~(b) Provide~~(a) Providing auto insurance identification cards in every Tribal fleet vehicle;  
211 ~~(c) Process~~(b) Processing all submitted vehicle claims and related information; ~~and~~  
212 ~~(d) Submit~~(c) Submitting claims to the insurance company;  
213 ~~(e) Participate in motor vehicle crash investigations; and~~

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

- 219 (a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the  
220 following purposes:  
221 (1) Personal use for non-business purposes;  
222 (2) Towing cargo for personal reasons;  
223 (3) Hauling loads that could structurally damage the vehicle; and/or  
224 (4) Jump starting vehicles, other than fleet vehicles.

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

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

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

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

234 210.6-6. Temporary Use

235 ~~210.4 5. Human Resources Department.~~ The Human Resources Department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

## 281 **210.5. Driver Responsibilities**

282 ~~210.5 1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:~~

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

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

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

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

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

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

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

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

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

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

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

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

304 ~~(B) Navigation devices~~

305 ~~(C) Communication equipment used while performing services for the~~  
306 ~~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 ~~electd or appointed official of the Nation or volunteer; and~~

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

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

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

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

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

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

333 ~~(3) any passengers are authorized to travel in a Tribal vehicle, in accordance with~~  
334 ~~210.6-3.~~

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

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

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

343 210.6-3. The following individuals may travel in a Tribal vehicle:

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

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

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

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

354 210.6-4. When a driver uses a Tribal vehicle, he or she shall:

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

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

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

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

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

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

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

369 ~~(a) Personal use or non-business miles, except as authorized under the Business Committee~~  
370 ~~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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

470 ~~(b) Mileage Reimbursement.~~

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

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

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

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

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

481 ~~210.8 3. Additional Requirements~~

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

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

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

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

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

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

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

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

501  
502 **210.9. Motor Vehicle Crashes; or Damage Involving Tribal to Vehicles**

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

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

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

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

515 ~~(2) an injury to the driver or another person that requires medical intervention by~~  
516 ~~law enforcement or emergency personnel, or treatment at a medical facility;~~  
517 ~~or attention;~~

518 ~~(2) death of a person; or~~

519 (3) damage to property that does not belong to the driver or the Nation; or

520 (4) a Tribal vehicle being disabled and/or needing to be towed.

521 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and

522 (c) provide the Fleet Management Department and Risk Management Department with a  
523 completed auto incident report by the end of the next business day immediately following  
524 the motor vehicle crash or damage.

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

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

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

533 (a) Fleet Management and Risk Management:

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

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

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

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

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

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

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

550 **210.8 for a minimum. Suspension of Driver Certification and Other Enforcement**

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

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

557 (a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program  
558 in accordance with applicable laws and policies of the Nation.

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.

729 Amended BC- - - - .

**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 complete the  
115 driver safety training provided and monitored by the Human Resources Department every three  
116 (3) years.

117 (a) *Exemption.* An individual who is required to maintain compliance with any specialized  
118 driver safety training requirements imposed by state or federal regulatory agencies shall be  
119 exempt from the requirement to complete the driver safety training provided by the Human  
120 Resources Department.

121 210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

122 (a) Complete a vehicle mileage log;

123 (b) Not transport unauthorized passengers;

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

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

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

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

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

134 210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official  
135 business, an individual shall:

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

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

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

143 210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

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

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

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

150

## 151 **210.6. Fleet Vehicles**

152 210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall  
153 purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management  
154 Department's responsibilities shall include, but are not limited to:

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

157 (b) Remove unsafe vehicles from the fleet;

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

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

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

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

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

167 210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible  
168 for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities  
169 of the Risk Management Department shall include, but is not limited to:

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

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

172 (c) Submitting claims to the insurance company.

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

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

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

180 (2) Towing cargo for personal reasons;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 226 **210.7. Motor Vehicle Crashes or Damage to Vehicles**

227 210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal  
228 vehicle driven on official business, an individual shall be subject to the following reporting  
229 requirements; provided that, if an individual sustains injuries that make it impossible to meet the  
230

231 reporting deadlines identified herein; the driver shall instead make the required reports as soon as  
232 he or she is able to do so:

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

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

239 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and

240 (c) provide the Fleet Management Department and Risk Management Department with a  
241 completed auto incident report by the end of the next business day immediately following  
242 the motor vehicle crash or damage.

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

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

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

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

- 253 (1) provided to the driver, the driver's supervisor, and the driver's area manager;  
254 and
- 255 (2) provided to the Human Resources Department if the Fleet Management  
256 Department and Risk Management Department recommend disciplinary action.

257

## 258 **210.8. Suspension of Driver Certification and Other Enforcement**

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

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

265 (a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program  
266 in accordance with applicable laws and policies of the Nation.

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

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

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

- 277 (a) Reassign the individual to a position which does not require driving;
- 278 (b) Provide non-driving accommodation within the position;
- 279 (c) Remove the driving requirement from the job description;



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

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

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

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

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

298  
299 *End.*

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

301 Amended BC-\_\_-\_\_-\_\_-\_\_.

# 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	2	3	4
5	6	7 12:15pm PUBLIC MEETING: Sanctions and Penalties for Elected Officials Law (BC_Conf_Room) - Clorissa	8	9	10	11
12	13	14	15 9:00am LOC (BCCR) - Jennifer A. Falck	16	17	18
19	20 8:30am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. 6:00pm GTC Meeting (Radisson)	21	22	23 12:15pm PUBLIC MEETING: Vehicle Driver Certification and Fleet Management Amendments (BC_Conf_Roo	24	25
26	27	28	29	30 9:00am FW: LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	31	Feb 1

# February 2020

February 2020

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March 2020

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29	30	31				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 26	27	28	29	30	31	Feb 1
2	3	4	5 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) - LOC	6	7	8
9	10	11	12	13 10:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	14	15
16	17	18	19 9:00am LOC (BCCR) - Jennifer A. Falck	20	21	22
23	24	25	26	27 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	28	29