

Oneida Tribe of Indians of Wisconsin



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



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

BC Resolution 05-13-15-C Leasing Law


- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 created a voluntary, alternative land leasing process available to Indian tribes by amending the Indian Long-Term Leasing Act of 1955; and
- WHEREAS,** under the HEARTH Act, once the governing Tribal leasing regulations have been submitted to, and approved by the Secretary of Interior, Indian tribes are authorized to negotiate and enter into leases without further approvals by the Secretary; and
- WHEREAS,** the purpose of the Leasing Law is to meet the requirements of the HEARTH Act by establishing a process under which the Tribe will be able to approve leases on Tribal trust land without additional approval of the Secretary of Interior; and
- WHEREAS,** the proposed amendment to Real Property Law removes the provision that outlines the procedures for processing leases of Tribal land and replaces it with a provision that defers to the Leasing Law; and
- WHEREAS,** the Leasing Law sets out the Tribe's authority to issue, review, approve and enforce leases; and
- WHEREAS,** a public meeting on the Leasing Law and Real Property Law amendments was held on April 2, 2015, in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the Leasing Law is hereby adopted.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Leasing Law shall be effective thirty (30) days after approval by the Secretary of Interior.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 6 members were present at a meeting duly called, noticed and held on the 13th day of May, 2015; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Tribal Secretary
Oneida Business Committee

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

Chapter 65 LEASING

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65.1. Purpose and Policy

65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe's authority to issue, review, approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Tribe will be able to approve leases on Tribal trust land without additional approval of the Secretary of the Interior.

65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk to the Tribe.

65.2. Adoption, Amendment, Repeal

65.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and shall take effect thirty (30) days after approval by the Secretary of the Interior.

65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law shall not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon approval by the Oneida Business Committee.

65.2-3. 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.

65.2-4. In the event of a conflict between a provision of this Law and a provision of another Tribal law, the provisions of this Law shall control.

(a) To the extent that this Law conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

(b) To the extent that any lease to which this Law applies conflicts with this Law, this Law shall control.

65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

65.3. Definitions

65.3-1. 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) "Assignment" shall mean an agreement between a lessee and an assignee whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

(b) "Cultural Heritage Department" shall mean the Tribal entity responsible for conducting cultural reviews as required under this Law.

(c) "Cultural review" shall mean a review of the anticipated effects of a proposed lease or lease document on archaeological, cultural and/or historic resources.

(d) "Day" or "days" shall mean calendar days, unless otherwise specified.

- (e) “Encumbrance” shall mean a claim or liability that is attached to property.
- (f) “Environmental, Health and Safety Division” shall mean the Tribal entity responsible for conducting environmental reviews as required under this Law.
- (g) “Environmental review” shall mean a review of the anticipated environmental effects of a proposed lease or lease document.
- (h) “Improvements” shall mean buildings, other structures, and associated infrastructure attached to the leased premises.
- (i) “Land Management” shall mean the Division of Land Management or other Tribal entity responsible for entering into leases of Tribal land.
- (j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the lessee is granted a right to use or occupy Tribal land, for a specified purpose and duration.
- (k) “Lease document” shall mean a lease amendment, lease assignment, sublease or encumbrance.
- (l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- (m) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy Tribal land by a lease under this Law, or one who has the right to use or occupy a property under a lease.
- (n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of Tribal land subject to a lease, and any administrator or assign of the Tribe.
- (o) “Performance bond” shall mean a bond given to ensure the timely performance of a lease.
- (p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.
- (q) “Sublease” shall mean a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.
- (r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- (s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee status.
- (t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by the United States in trust for the Tribe; land held by the Tribe subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for a Tribal corporation chartered under Section 17 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.

65.4. General Provisions

65.4-1. *Applicable Land.* This Law applies to all Tribal land.

65.4-2. *Applicable Leases.*

- (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this Law shall apply to all residential, agricultural and business leases executed by the Tribe and to all actions and decisions taken in connection with those leases. Provided that, nothing herein shall be construed to affect the terms and conditions of leases existing when this Law goes into effect or amendments, assignments, subleases or encumbrances made to those leases.
- (b) This Law shall not apply to mineral leases or to any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

- 65.4-3. *Applicable Law.* In addition to this Law, leases approved under this Law are subject to:
- (a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable federal law;
 - (b) applicable federal laws; and
 - (c) any specific federal statutory requirements that are not incorporated in this Law.
- 65.4-4 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Law.
- 65.4-5. All disputes over residential, agricultural and business leases shall be resolved under the laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to waive the Tribe's sovereign immunity.
- 65.4-6. After the Secretary approves this Law, all leases of Tribal trust land approved and executed under this Law shall be effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Law and reassumes responsibility for such approval.

65.5. Lease and Lease Document Requirements

65.5-1. *Information and Application.* Land Management shall approve and execute all leases. Information on obtaining residential, agricultural or business leases or lease documents shall be available at Land Management. Parties interested in obtaining a residential, agricultural or business lease or lease document shall submit an application to Land Management.

- (a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease and lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding leases and lease documents.

65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the following:

- (a) A description of the land or building being leased; business leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems;
- (b) The effective date and term of the lease;
- (c) The purpose of the lease and authorized uses of the leased premises;
- (d) The parties to the lease;
- (e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;
- (f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;
- (g) Who will be responsible for any taxes applied to the property and/or improvements;
- (h) Due diligence requirements that apply, if any;
- (i) Performance bond and insurance requirements that apply, if any;

- (j) Land Management or the Secretary has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with federal regulations, to enter the leased premises for inspection and to ensure compliance with the lease;
- (k) The lessee holds the United States and the Tribe harmless from any loss, liability or damages resulting from the lessee's use or occupation of the leased premises;
- (l) The lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct; and
- (m) Land Management or the Secretary may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports or information available for inspection and duplication.

65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

- (a) whether improvements may be constructed;
- (b) ownership of improvements;
- (c) responsibility for constructing, operating, maintaining and managing improvements;
- (d) removal of improvements;
- (e) whether a lessee may develop equity in improvements and sell its interest in the lease based on the equity; and
- (f) the lessor's right of first refusal to purchase the lessee's interest, if any.

65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor and the lessee, unless otherwise provided herein and shall contain the effective date of the lease document.

- (a) The lease may authorize subleases only upon approval and execution from Land Management. This in no way relieves the parties from carrying out their duties under the lease.
- (b) The lease may authorize encumbrances, including leasehold mortgages, on the leasehold interest for the purpose of financing to develop and improve the premises. Approval of the encumbrance by Land Management is required.
- (c) The lease shall not authorize mortgages that encumber title to Tribal land.

65.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States.

65.5-6. *Environmental and Cultural Reviews.* Land Management shall not approve a lease or lease document until an environmental review and a cultural review, as required under section 65.9, have been completed. Leases approved and executed in violation of this section shall be null and void.

65.5-7. *Documentation.* The following are required for a party to enter into a lease:

- (a) a signed lease; and
- (b) any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource and land use requirements.

65.6. Residential Leases

65.6-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to residential leases.

65.6-2. A residential lease shall be entered into for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

65.6-3. *Duration.* Residential leases shall not exceed seventy-five (75) years.

65.7. Agricultural Leases

65.7-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to agricultural leases.

65.7-2. An agricultural lease shall be entered into for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

65.7-3. *Duration and Renewal.* Agricultural leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.7-4. *Land Management.* Agricultural leases shall require the lessee to manage land in accordance with any agricultural resource management plan developed by the Tribe.

65.8. Business Leases

65.8-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to business leases.

65.8-2. A business lease shall be entered into for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.

65.8-3. *Duration and Renewal.* Business leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.8-4. *Supporting Documents.* All applicants for business site leases shall submit the following documents to Land Management:

- (a) financial statement;
- (b) site survey and legal description, if applicable;
- (c) other documents as may be required by any business site leasing management plan developed by the Tribe.

65.8-5. *Appraisal, Local Studies.*

(a) The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of the Tribal land shall be attached to every business site lease.

(b) Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Tribal land shall be attached to every business site lease.

65.8-6. *Fair Annual Lease Value.*

(a) No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lessee is in the development period;

(2) Land Management is providing an incentive for businesses to locate on Tribal land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such business; or

(3) Land Management determines such action is in the best interest of the Tribe.

(b) A lease may:

(1) Be structured at a flat lease rate; and/or

(2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or

(3) Be structured based on a percentage of gross receipts, or based on a market indicator; and/or

(4) Be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved; and/or

(5) Be amended to allow for lease rate adjustments; and/or

(6) Provide for periodic review. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee and included in any lease file.

65.8-7. *Performance Bond.* If a performance bond is required under a business lease, a performance bond shall be obtained by the lessee in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

(a) The annual lease payment;

(b) The estimated development cost of improvements; and

(c) Any additional amount necessary to ensure compliance with the lease.

65.9. Environmental and Cultural Reviews

65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document until an environmental review and a cultural review have been completed.

65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the request of the Environmental, Health and Safety Division on all proposed leases and lease documents. The environmental review shall be conducted in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings.

65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the Cultural Heritage Department on all proposed leases and lease documents. The cultural review shall be conducted in accordance with the permit review requirements for undertakings established in the Protection and Management of Archeological & Historical Resources law.

65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety Division shall forward a completed environmental review and the cultural review to Land Management for consideration in the approval or denial of a lease or lease document.

(a) Before approving a lease or lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.

(b) The Environmental, Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

65.10. Lease Management

65.10-1. *Management Plan.* Land Management shall:

- (a) manage existing leases as well as those executed pursuant to this Law; and
- (b) institute a leasing management plan that employs sound real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

65.10-2. *Accounting.* Land Management shall implement an accounting system that generates invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases and lease documents of Tribal trust land, except residential subleases and encumbrances, to the Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to Tribal trust land are the property of the United States and the Tribe. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Tribe.

65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs associated with issuing a lease or lease document, or conducting any other administrative transaction.

65.11. Enforcement

65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and the lease terms. This includes the power to enter the premises, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this Law and leases.

65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.

65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the expiration or cancellation of a lease, or a person occupies a property without Land Management's approval, Land Management shall take action to recover possession of the property; and/or pursue additional remedies, such as damages, if applicable.

65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from Land Management, and the failure to pay such amounts shall be treated as a breach of the lease.

65.12. Appeals

65.12-1. The lessee or an interested party may appeal a determination of Land Management in accordance with the Judiciary law and any applicable rules of procedure.

End.

Adopted-BC-05-13-15-C