

# Oneida Tribe of Indians of Wisconsin

## **Legislative Reference Office**

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
(800) 236-2214  
<http://oneida-nsn.gov/LOC>



## **Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
David P. Jordan, Councilmember  
Jennifer Webster, Councilmember

## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

July 1, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
  - 1. June 17, 2015 LOC Meeting Minutes
- III. Current Business**
  - 1. Flag Code
  - 2. Removal Law Amendments
  - 3. Election Board Bylaws Amendments
  - 4. ONGO Amendments
- IV. New Submissions**
  - 1. Public Use of Tribal Land Emergency Amendments
  - 2. Community Support Fund Policy Amendments
  - 3. Petition: Powless Per Capita Payments
- V. Additions**
- VI. Administrative Updates**
  - 1. LOC Sponsor List
- VII. Executive Session**
- VIII. Recess/Adjourn**

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## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

June 17, 2015 9:00 a.m.

**PRESENT:** Brandon Stevens, Fawn Billie, David P. Jordan

**EXCUSED:** Tehassi Hill, Jennifer Webster

**OTHERS PRESENT:** Candice Skenandore, Lynn Franzmeier, Krystal John, Douglass McIntyre, RC Metoxen, Rae Skenandore, Fawn Cottrell, Terry Cornelius, Daril Peters, Jordyn Rasmussen, Mike Debraska (via SEOTS)

### I. Call To Order and Approval of the Agenda

Brandon Stevens called the June 17, 2015 Legislative Operating Committee meeting to order at 9:04 a.m.

Motion by Fawn Billie to approve the agenda with the addition of the 60-day action plan for the Tribal Hearing Bodies/Administrative Court; seconded by David P. Jordan. Motion carried unanimously.

### II. Minutes to be approved

#### 1. June 3, 2015 LOC Meeting Minutes

Motion by David P. Jordan to approve the June 3, 2015 LOC meeting minutes; seconded by Fawn Billie. Motion carried unanimously.

### III. Current Business

#### 1. Petition: Genskow- OBC Accountability, Repeal Judiciary & Open Records Law (1:14-2:32)

Motion by David P. Jordan to forward the Petition: Genskow- OBC Accountability, Repeal Judiciary & Open Records Law to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

#### 2. Children's Code (2:40-7:37)

Motion by David P. Jordan to grant the 30-day extension requests and to accept the memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

#### 3. Election Board Bylaws Amendments (7:38-17:58)

Motion by David P. Jordan to defer the Election Board Bylaws Amendments to the sponsor to bring back a report in two weeks; seconded by Fawn Billie. Motion carried unanimously.

**4. Investigative Leave Policy Amendments (18:00-37:32)**

Motion by David P. Jordan to approve the Resolution amending the Investigative Leave Policy and to forward the Investigative Leave Policy Amendments to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

**IV. New Submissions**

**1. Back Pay Policy Amendments (37:35-40:03)**

Motion by David P. Jordan to add the Back Pay Policy Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**V. Additions**

**1. Tribal Hearing Bodies/Administrative Court (40:05-45:03)**

Motion by David P. Jordan to forward the Tribal Hearings Bodies/Administrative Court to an LOC work meeting(s) to discuss the 60-day action plan; seconded by Fawn Billie. Motion carried unanimously.

**VI. Administrative Updates**

**1. LOC Quarterly Report (45:05-48:45)**

Motion by Fawn Billie to forward the LOC Quarterly Report to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

**2. LOC Priority List (48:48-59:25)**

Motion by David P. Jordan to accept the updated LOC Priority List as FYI; seconded by Fawn Billie. Motion carried unanimously.

**3. LOC Budget (59:33-1:06:22)**

Motion by David P. Jordan to approve the FY 2016 LOC Budget noting that the LOC is operating on a minimal budget; seconded by Fawn Billie. Motion carried unanimously.

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by David P. Jordan to adjourn the June 17, 2015 Legislative Operating Committee Meeting at 10:10 a.m.; seconded by Fawn Billie. Motion carried unanimously.



# Legislative Operating Committee

## July 1, 2015

### Flag Code

**Submission Date:** April 22, 2015

- ☐ Public Meeting:  
☐ Emergency Enacted:

**LOC Sponsor:** Jennifer Webster

**Summary:** *The OBC requested that the LOC develop a flag code policy. ONVAC received complaints from non-Tribal members about how the Tribal Flag is displayed. ONVAC's concerns are there is no protocol for those who oversee flag responsibilities to follow, no one is identified as the person that has the authority to lower the flag to half-staff, what should the height and position of the Tribal Flag be compared to the US Flag, etc.*

**4/22/15 OBC:** Motion by Jennifer Webster to request the Legislative Operating Committee to develop a flag code policy and consider adding it to the active files list, seconded by Lisa Summers. Motion carried unanimously

**5/6/15 LOC:** Motion by Jennifer Webster to add the Tribal Flag Code to the active files list with herself as the sponsor and defer the Tribal Flag Code to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.

**6/8/15:** Work Meeting held. Attendees included John Breuninger, Kerry Metoxen, Lynn Franzmeier, Candice Skenandore, Brandon Stevens, Tehassi Hill, Jenny Webster, Fawn Billie, Danelle Wilson, David Jordan, Apache Danforth, RC Metoxen.

#### Next Steps:

- Review memorandum and defer to Sponsor to continue work and bring back when ready.

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Fawn Billie, Councilmember

David P. Jordan, Councilmember

Jennifer Webster, Councilmember

## Memorandum

**TO:** Legislative Operating Committee  
**FROM:** Jennifer Webster, Councilmember   
**DATE:** June 22, 2015  
**RE:** Flag Code

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On April 22, 2015, a request the Legislative Operating Committee (LOC) develop a flag code policy was accepted by the Oneida Business Committee. On May 6, 2015, the LOC added the Flag Code to the Active Files List with myself as the sponsor. Approximately sixty days have passed since the original submission of this item and thirty days have passed since the LOC added this item to the Active Files List. This memorandum serves as an update as to where the legislation is at in the LOC process.

Since the May 6, 2015 meeting of the LOC, there was a work meeting held on June 8, 2015 and one is currently scheduled for June 30, 2015.

I am asking that you defer this item back to my office for further work and I will bring back the Law when it is ready.

## Requested Action

Motion to accept the memorandum regarding the status of the Flag Code as FYI.



# Legislative Operating Committee

## July 1, 2015

# Removal Law Amendments

**Submission Date:** December 17, 2014

☒ Public Meeting: 4/30/15

☐ Emergency Enacted:

**LOC Sponsor:** Fawn Billie

**Summary:** *These amendments will give the OBC the ability to remove elected members of boards, committees and commissions upon petition or request by the board, committee or commission. The OBC removal process will not be amended.*

**12/17/14 LOC:** Motion by Fawn Billie to add the Removal Law Amendments to the active files list with herself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**02/18/15 LOC:** Motion by Fawn Billie defer the Removal Law Amendments for a legislative analysis and a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

**4/3/15 LOC:** Motion by Jennifer Webster to forward the Removal Law Amendments to an April 30th, 2015 Public Meeting; seconded by Tehassi Hill. Motion carried unanimously.

**4/30/15:** Public Meeting Held.

### Next Steps:

- Defer the Removal Law Amendments public meeting comments to a work meeting to be held immediately following the conclusion of the July 1, 2015 LOC meeting.

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquele J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Douglass A. McIntyre, Staff Attorney  
Candice E. Skenandore, Legislative Analyst  
**DATE:** May 20, 2015  
**RE:** Removal Law Amendments: Public Meeting Comment Review

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On April 30, 2015, a public meeting was held regarding proposed amendments to the Removal Law (Law). Amendments to the Law include:

- Remove language that states that investigative leaves do not apply to investigations regarding appeals of disciplinary actions or employee complaint investigations.
- Reduce how long an employee can be placed on investigative leave, this timeframe has been reduced from 30 calendar days to 15 calendar days.
- Reduce how long an employee's investigative leave can be extended, this timeframe has been reduced from 30 calendar days to 15 calendar days.
- Require the employee's supervisor to notify the employee when to return to work and/or the disciplinary action that will be taken.
- Amend the appeal process, only allowing the employee to appeal a disciplinary action that arises from and investigation.

This memorandum is submitted as a review of the oral comments received during the public meeting process; no written comments were received. The public meeting draft with comments, as well as the comments received, have been attached for your review.

**Comment 1. Removal of Elected Official.**

From line 34-35 of the analysis: The final vote on whether to remove an elected Official would be made by the OBC, instead of the GTC.

**Mike Debraska:** Oh, also, just one last... or two last quick points. I looked at line 34 of the Removal Law, actually lines 34 and 35 it says "the final vote on whether to remove an elected official will be made by the OBC instead of GTC, I think that's extremely dangerous as well. I think that an elected official, and again, the reason why I state that is let's say as a GTC member I've got a problem with what is happening or not happening in a certain manner and I file a complaint...shouldn't that then come to GTC so GTC can make a determination rather than just the Business Committee? Or let's say the Business Committee makes a determination and finds against ... do I then need to bring a petition? To say hey, I need to get this addressed because I don't agree with you guys. I think that kind of, to me, again, that smacks of our constitutional rights, or some of our constitutional rights being abridged.

*Response*

The proposed amendments to the current Removal Law require a majority of GTC support to pass the legislation. There are no recommended changes based on this comment.

**Comment 2. Policy.**

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.

**Brian Doxtator:** 4.1-2: “orderly and fair” - according to a legal definition is “arranged to dispose in some order or pattern governed by law” – nowhere in the Law does it talk about timeliness of removals or efficiency. We need, an obvious timeline somewhere in there.

*Response*

The commenter correctly indicates that there is no timeline contained in Section 4.1-2 and no overarching timeline within the proposed amendments. There are several specific time requirements in 4.5-4(a), 4.6-1, 4.7-3, 4.8-1 and require “prompt” action in 4.5-4 and 4.5-6. If LOC wishes to have a more specific time requirement in place, the best location would be in section 4.5-4 and 4.5-6 replacing “promptly” with a specific time.

**Comment 3. Authority to Amend and Repeal.**

4.2-2. This Law may be amended or repealed by the General Tribal Council only pursuant to the procedures set out in the Legislative Procedures Act.

**Mike Debraska:** 4.2-2. It says “The law may be amended or repealed by the General Tribal Council only, only pursuant to the procedures set out in the Legislative Procedures Act. I think a portion of that needs to be taken out, to just reflect that “This law may be amended or repealed by the General Tribal Council,” period. I get real, real concerned when our ability is limited. It stifles us and it stifles GTC to say “oh, we have to follow this procedure. We know when something is going wrong and something is not working and somebody is not doing what they’re supposed to be doing, GTC becomes the supreme governing authority and should just be able to say “that’s it. We’re going to take you out. So I think that needs to be amended.

*Response*

The Legislative Procedures Act was adopted by the General Tribal Council in resolution GTC #01-07-13-A to ensure that there is a standard process followed in the creation of new laws. The language in 4.2-2 should be changed to the following to conform with Section 16.11-1(b) of the Legislative Procedures Act:

4.2-2. This Law may be amended or repealed by the Oneida General Tribal Council only pursuant to the procedures set out in the Legislative Procedures Act.

**Comment 4. Repeal.**

4.2-4. ~~All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically~~

~~re-enacted after adoption of this law. Specifically, the following resolutions are repealed by this law.~~  
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) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)

**Mike Debraska:** Additionally, I looked at the laws that are going to be repealed. And that's at 4.2-4, also, I noticed that several GTC resolutions and two BC resolutions would also be replaced. One of my questions to you is, or a question I have in general, is did GTC approve of the Legislative Procedures Act? And if so, when? Because I don't ever recall GTC approving that. So, I look at that and I say there's something serious with that because that needs to be taken a look at as well as the removal ordinance. And the removal ordinance is cited several times in the Comprehensive Policy Governing Boards, Committees and Commissions, but yet that's not stated in here as being repealed. I don't know if the Business Committee is looking at bringing that in but if it is, that's certainly something that needs to be governed around this as well, because it does state in that policy, the Comprehensive Policy Governing Boards, Committees and Commissions, what are the things that would govern that removal. Additionally I do want to know in particular, why these particular pieces of legislation are being replaced? Those four that were mentioned at 4.2-4. I think that really needs to be clarified and brought back to GTC so that we can see specifically what it is that's being replaced. Thank you.

**Brandon Stevens:** So you would like those pieces of legislation to be within the presentation? Like as far as, what we're trying to accomplish in updating, I guess the relevancy to the Removal Law? As far as information? Because this is all going to GTC.

**Mike Debraska:** I'm sorry, I missed that last point.

**Brandon Stevens:** Because this is all going to GTC. Are you saying you want those pieces of legislation within the presentation, I guess, to show the relevancy in the Removal Law? Okay.

**Mike Debraska:** Exactly, because I want to know what's being replaced with what. And I think if GTC doesn't have that, again, I look at this and think, once again, I am being asked to make an informed decision on less than all the accurate information because if I don't know what's being replaced with what, then I am doing more legwork to find out what's really going on here. What did they replace, what didn't they replace, what's happening, what's not happening?

**Brandon Stevens:** Ok. So from here, we'll take this back, the LOC will look at all the public hearing comments and there will be more, I guess kicks at the cat with this legislation to see, okay, are we clarifying anything that you have questions on. And so, there'll be about three more, I believe, three more chances so we can get this cleared up with you and if any more questions arise, we'll make sure those questions can be answered, and it'll help us have a better presentation to General Tribal Council when it comes forward. And the one question that you did ask, was when was the Legislative Procedures Act adopted by General Tribal Council and that would be January 7, 2013.

**Mike Debraska:** Thank you.

*Response*

The proposed changes update the language used in Section 4.2-4 to comply with Section 16.11-1(d) of the Legislative Procedures Act. The four listed ordinances and laws (listed below) have already been repealed. There are no changes recommended based on this comment.

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members);
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance);
- (c) BC-1-03-96-B (BC Adoption of Removal Law), and
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law).

#### **Comment 5. Elected Official Definition.**

(b) “Elected official” means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee.

**Mike Debraska:** And then the last... under the definitions under 4.3-1 under subsection (b) where it talks about “Elected official” means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee. If the BC aren’t elected officials, what are they?

**Brandon Stevens:** Okay, we’ll clarify that, because I know why we did that, it’s the purpose of this Law, because the Removal Law actually specifically mentions the Business Committee members. But we’ll clarify that, because it does seem a little out there; every law that says that it excludes Business Committee members always raises the question of “what about the Business Committee members?” So we’ll figure that one out and how to... yeah, it’s a two part thing, but we’ll explain that a little bit better.

#### *Response*

The intent of the proposed amendments is to provide a new removal process for elected officials, including the Business Committee. The Business Committee is left out of the definition because elected officials have their final determination made by the Business Committee. To avoid having the Business Committee handle a determination of one of its own members internally, a final determination is made by the General Tribal Council. There are no changes recommended based on this comment.

#### **Comment 6. Judiciary Definition.**

(c) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC—#1-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

**Bradley Graham:** That would be under definitions, that would be including the BC, to take it out of the Judiciary was the other one I had.

#### *Response*

There are no recommended changes based on this comment.

#### **Comments 7 & 8. Grounds for Removal-OBC.**

4.4-1. Oneida Business Committee. A member of the Oneida Business Committee may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation;
- (b) intentional mis-use of Tribal funds;
- (c) alcohol use while performing official responsibilities or use of illegal drugs at any time;
- (d) if he or she no longer meets the qualifications for office;
- (e) violating a Tribal law which specifies removal as a penalty; or
- (f) felony conviction while in office.

**Brian Doxtator:** Grounds for removal: 4.4(e). “(e)” needs to be removed. There’s only one law, actually two now, but ... one law, which allows for removal. The Code of Ethics. <twaliw@seh states that enforcement, this code will be enforced according to the following government officials may be subject to removal if elected or termination . . . anyway, the sentence structure in that basically says that you can only be removed if a law says you can be removed for violating the law. And there’s only really one major law - Conflict of Interest has it - but it’s the Code of Ethics. So the only way you can remove an official for violating the Law is in alignment with what the Code of Ethics says. I really strongly recommend that the sentence either is restated to “in violation of all laws, GTC resolutions and BC resolutions,” even though we see resolutions as law. In theory, an elected official could violate personnel policies and procedures, their oath, GTC resolutions, GTC directive, and there’s nothing that gives enough to remove that.

#### *Response*

The commenter wants Section 4.4-1(e) amended to read:

(e) violating any Tribal laws, General Tribal Council resolutions or Oneida Business Committee resolutions; or

Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Mike Debraska:** Additionally I looked at the grounds for removal under 4.4 and some of these, I have some concerns with. Particularly (d), (e) and (f). What are the qualifications for office? I look at that and I say, that’s kind of a blanket statement to me, it doesn’t really mean anything.

#### *Response*

The qualifications for elected officials can be found in Section 2.5 of the Oneida Election Law and other specific requirements and/or exceptions are set out in adopted by-laws or other documents. The minimum requirements are listed in Section 2.5-2 are listed below. There are no recommended changes based on this comment.

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

(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

#### **Comment 9 & 10. Grounds for Removal-Elected Office.**

4.4-2. Elected Official. An elected official may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation;
- (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason ~~provided that this subsection shall not apply to the Oneida Business Committee;~~
- (c) violation of the by-laws, operating agreements, laws, regulations or Standard Operating Procedures of the board, committee or commission;
- (d) intentional mis-use of Tribal funds;
- ~~(de)~~ alcohol use while performing official responsibilities or use of illegal drugs at any time;
- ~~(ef)~~ if he or she no longer meets the qualifications for office;
- ~~(fg)~~ violating a Tribal law which specifies removal as a penalty; or
- (gh) felony conviction while in office.

**Mike Debraska:** Just commenting on what Brad eluded there, as well, under 4.4-2 "elected official" I noticed that on section (b) it says "failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve month period for any reason" which isn't under the Business Committee under 4.4-1. And I think I believe it should be. I think if a BC member's elected here, if you are not going to attend the meetings, what function are you serving? Because it certainly isn't for the people.

#### *Response*

The commenter correctly indicates that the requirement on elected officials in Section 4.4-2(b) to "attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason" is not present for OBC Members in the corresponding Section 4.4-1. Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Mike Debraska:** The other one is violating a Tribal law, which Brian already touched upon, and the last one is (f) Felony conviction while in office. I think a felony conviction prior to office should also be in there. I don't believe anybody should be in a position of power if they've got felonies on their record. And there's nothing that would stop that, according to this. So I think that becomes a major issue.

**Bradley Graham:** While going through this again, I see under 4.4-2... you have felony conviction while in office, that should be felony conviction before or while in office. I mean, there should be a personal background investigation.

#### *Response*

The commenters correctly indicate that the proposed legislation does not allow for removal for a felony committed prior to taking office. However the proposed legislation concerns conduct of the OBC and elected officials while in office. A more appropriate amendment for this comment

would be in the Oneida Election Law. There are no recommended changes to the Law based on these comments.

### **Comments 11. Limitation on Number of Removals**

4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an ~~elected official~~ Oneida Business Committee member. No petition shall request the removal of more than one (1) ~~elected official~~ Oneida Business Committee member.

**Bradley Graham:** And you also have in there that “no petition should request the removal of more than one” - that should be taken out. You got three, four Business Committee members – or any officials, they shouldn’t be done one at a time. You should be able to bring 2, 3, 4, or the whole works, for a removal. So I’d like to see that taken out too. That’s pretty much it that I noticed.

#### *Response*

The comment wishes to allow more than one OBC member to be on a single petition under the legislation. The proposed legislation does not prohibit a person from seeking multiple petitions at the same time. Additionally requiring only one individual per petition avoids potential issues under 4.10-3(a) challenging the authenticity of a signature to each recalled individual. There are no changes recommended based on this comment. If changes are made based on this comment then 4.9-3 should also be amended.

### **Comment 12. Limitation on Number of Words in a Petition.**

[4.5-1] The petition shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words,

**Brian Doxtator:** 4.5: Petition. 200 words needs to be removed, we need to focus more on the facts and not the, granted you don’t want a dissertation, you don’t want a 17 page dissertation, but 200 words is not, it’s almost undoable to be able to succinctly explain why and what. And so, I think the law needs to be more focused on the facts and not 200 words.

**Bradley Graham:** You’ll have to excuse me, I didn’t have this right away to go through it, but one of the things I agree with like Brian said, is that 200 word deal.

#### *Response*

The commenter correctly points out that Section 4.5-1 currently has a limitation of two hundred (200) words on a petition. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 should also be amended.

### **Comment 13. Require Number of Voters.**

[4.5-1] . . . and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the votes~~s~~ cast in the previous general election, whichever is greater.

**Brian Doxtator:** Take out the 50 eligible voters, it has no value. I know it’s in the Constitution but that’s more about calling a GTC meeting. It adds no value to the process.

**Mike Debraska:** Additionally, I looked at some of this stuff, here the 50 voters, which Brian already touched upon, this kind of... reflecting here...

*Response*

This comment wishes to remove the minimum fifty (50) eligible voter requirement for petitions. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 should also be amended.

**Comment 14. 30-day Timeline.**

4.5-2. The petition shall be filed within thirty (30) days after the date the first signature is obtained on the petition.

**Brian Doxtator:** Petitions shall be filed within 30 days once you start acquiring signatures: based upon my experience, you have got to educate, you have to do a lot of things. And 30 days is not enough time. I'm recommending to at least 60 to provide more time, because it's not just going to get signatures, you're actually talking, visiting with people. You're looking at a half hour, 45 minutes per person; when you meet the threshold of how many signatures you need, it's just not doable.

**Bradley Graham:** The 30-day filing, that's basically the same as it was, but like I said, all elected positions should be the same. Nobody should be separated. Because the people are the ones electing you in ... and it doesn't matter what board, committee or commission.

*Response*

The commenter correctly indicates that the timeline under Section 4.5-2 of there is a thirty (30) day filing requirement from the date of the first signature. This mirrors the timeline under the current Removal Law Section 4.5-2. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-1 (a) should also be amended.

**Comment 15. Petition Content Requirements.**

4.5-3. The petition shall contain, in ink:

(a) The appropriate lines for the eligible voter's:

- (1) Printed name;
- (2) Signature;
- (3) Street address; and
- (4) Enrollment number.

(b) An oath verifying the fact that:

- (1) The circulator witnessed each person sign the petition;
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be; and
- (3) The petition was signed in the presence of the witness on the date indicated.

**Brain Doxtator:** 4.5-3(a) and (b): this section is more administrative, not law. Either remove, replace sentence structure; mandating "the Secretary's Office shall create a process for removal petitions." And just take out that whole, "you need your name, address..." whatever that is. That's just administrative, it's not a law thing.

*Response*

The commenter wants Section 4.5-3 removed and the petition requirements left to the discretion of Secretary's Office. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 (a) should also be amended.

**Comments 16. Preliminary Review-OBC**

**Brian Doxtator:** And I do have issue with "elected officials do not have" ...I don't ... elected officials don't have the same rights as citizens and if they truly violate the Law and it's something administratively ... process is not adhered to, then it's, then it's done. And yet, the elected official still could have violated the law. And I'm not saying we should violate their due process, but I think a little bit more... elasticity around this issue?

**Bradley Graham:** I'd say take the Judiciary out completely. It should be like it always has been – people get a petition, it was present it, the names are verified, and the process went through GTC. Judiciary should not be involved in this. At all. Completely. It should be up to General Tribal Council for removal for all elected positions. That includes the Business Committee. Appointed positions are done by the Business Committee. Youse guys take care of that. The elected positions are done by the people for the people. And they are the ones who should handle the removals. Whether it takes one meeting or two meetings, it doesn't matter.

*Response*

The intent behind the proposed Amendments is to change the current removal process. There are no changes recommended based on this comment. If changes are made based on these comments then 4.10 should also be amended.

**Comment 17. Preliminary Review Timeframe.**

4.6-1. The Judiciary, upon receipt of the petition shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal.

**Brian Doxtator:** 4.6: preliminary review; 20 calendar days. Process is not efficient. I'm just saying, preliminary review, 20 calendar days, it's not efficient.

*Response*

The commenter correctly indicates that the timeline under Section 4.6-1 of the proposed legislation sets a twenty (20) day requirement for holding a preliminary review. This mirrors the timeline under the current Removal Law Section 4.6-1. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.10-1 should also be amended

**Comment 18. Signatures Reviewed by Judiciary.**

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected official~~ Oneida Business Committee member whose removal is sought. The motion shall be filed within

twenty (20) calendar days of service of the certified copy of the petition upon the ~~elected official~~Oneida Business Committee member sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures; and
- (b) whether the signature is that of an eligible voter.

**Brian Doxtator:** 4.6-3: adds no value to the removal process.

#### *Response*

The commenter wishes to have Section 4.6-3 removed. The Section provides an added step specifically allowing an OBC member, and an elected official in the corresponding 4.10-3, to challenge the signatures separate from the Preliminary Review and Hearing. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on these comments then 4.10-3 should also be amended.

#### **Comment 19. Hearing-OBC**

**Brian Doxtator:** 4.7: Hearing. Language needs to be re-worded to support the concept that they either validated the information is valid or the information/data is invalid. When you have a hearing, it's almost like, you're at a court hearing, trying to... argue against and for. And the way the law is written, it should be more about the hearing is to validate that yes you have the facts, yes these are the validated facts, and yes this goes to General Tribal Council. No, you don't have facts? It's not validated, it's not true; we're not sending it to General Tribal Council. This is whatever... hearsay or rumors, or whatever. But to have an actual hearing and then you send it to General Tribal Council? That's ridiculous.

**Ed Delgado:** So that's my comments. But mainly I came here to just talk about added charges on the day of trial. That's totally unthinkable. But the other ones are important too. But I don't support going back to the old way where an investigative body interviews and studies the facts – but they're totally political, and they're not judges and judicial hearing bodies, and even though I spoke against the Judiciary on this, at least it was a hearing. You could present your side and they had to prove what they said if they did not prove it. Yaw^ko.

#### *Response*

Section 4.7 preserves the due process of the official facing removal by providing a hearing in which parties can present evidence, question and cross-examine witnesses and ensure that the rights of the accused are protected as provided in Article III, Section 3 of the Oneida Constitution. There are no changes recommended based on this comment. If changes are made based on these comments then 4.11 may also need to be amended.

#### **Comments 20. Rights of OBC Members at Hearings.**

4.7-1. *Rights of ~~Elected Official~~Oneida Business Committee Member at Hearing.* An ~~elected official~~Oneida Business Committee member whose removal is sought shall have the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented by counsel of his or her choice.

**Ed Delgado:** I know you left pretty much intact the removal of a BC member, but, and I covered this before with the old OBC, under the preliminary hearing, it restricts that the

discussions can only be on the allegations in the petition. But it doesn't say, when you have your hearing, it doesn't protect the accused from being, from new charges being added on the day of the hearing. I know it's unthinkable that maybe you didn't put it in here, because who would think that you could do that? But in my removal, the day of the hearing, new charges were added. And my attorney said "how do you expect me to defend my client when I had no chance to study those allegations, or to bring witnesses, or create an argument against those allegations?" And the response of the Judiciary was, "it'll be all right, don't worry about it." Well, I think since that's part of our history now, as a removal hearing, it was allowed once. Unless you want it to happen again, I think you need to provide that you can't add allegations on the day of the hearing. New charges. It's like you're on trial for bank robbery and on the day of your trial you're charged with... murder or something. It's just unthinkable. Anywhere. And we shouldn't allow it here. And it happened, so we need to remedy it with mentioning it in the Removal Law under hearings.

**Ed Delgado:** *written*-It would also like to submit written testimony recommending that once the hearing begins whereby the petitioner has to prove his allegations, that no additional charges can be added. In the most recent Removal attempt, the court (Oneida Appeals Commission) added an additional charge on the day of the hearing. The charge was in no way part of any petition submitted to the Tribal Secretary's Office and the defendant had no opportunity to prepare a defense. Unthinkable behavior for any court, but it happened here on our Reservation and by our court of that time. As improper as it was, I believe that the OBC has the responsibility to insure that such court behavior does not happen again by prohibiting it in the amended law.

#### *Response*

The commenter expresses concern of new allegations being added late in the proceeding. However, Section 4.5-1 provides that a petition may not be amendment after it is filed with the Tribal Secretary. The language used in 4.7-3 *Findings* limits a judge to the "determine whether each allegation of the petition has been proven ... and such allegations constitute sufficient grounds for removal..." No changes are recommended based on this comment.

**Ed Delgado:** But, speaking for the person being removed. It's a great expense. It could be. You're going to have to have a lawyer there, and that could cost you thousands. I know one removal, my removal – three days of hearings. Very, very expensive proposition.

**Ed Delgado:** Mainly the main questions on those were that: who is going to cover the cost of the .... "I know it says at your own cost", but what if those allegations fail? What if they're a bunch of lies? You still paid the \$3000 ... there should be a way whereby the accuser is responsible. Or else they can just go out there and make the allegations, you can be shown to be not guilty of the things and you still have to pay the costs. The accuser should be responsible, and if he can't prove those allegations? He or she should be responsible for those court costs, and the attorney fees.

#### *Response*

The commenter expresses concern over the cost of legal representation in the event the allegations fail and the individual is not removed. Changes based on the comment are a policy decision best left to the discretion of the LOC.

### Comment 21. Burden of Proof.

4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official~~ Oneida Business Committee member shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

**Brian Doxtator:** Burden of proof. Clear and convincing evidence is a medium level of burden of proof which is a more rigorous standard of proof to meet than the preponderance of evidence standard. So if you have facts, I really think the law should get away from clear and convincing evidence and it should be the preponderance of evidence – it is less rigorous and so forth.

**Mike Debraska:** And again, he touched on this as well, the burden of proof. I really think that needs to be clarified a little bit better. Burden of proof.

**Ed Delgado:** I'd like to comment on a couple more things being said here today. I think I already said that under the old process, before the Removal [law] was passed, the Removal [law] of 1981 or something, General Tribal Council, after receiving the petition, organized an investigative body who acted somewhat like a... to gather facts. Well, those are highly political and not a judicial body. Anyone accused of a very... of crimes against their tribe, or their nation, they should prove it. And they should prove it by clear and convincing evidence, not a preponderance of the evidence; that means you can have a lot of evidence there, half of it could be lies, or all of it could be lies, but at least you've got a big old case there. It's not asking too much to, when you're going to take away the people's vote, and remove an elected person that...

*[his phone rings]*

...hmmm. Some things never change.

*[laughter]*

... that they prove that you did it. Prove it with clear and convincing evidence that you did those things.

**Ed Delgado:** *written*-regarding comments regarding Amendments on Removal Law which would lower the burden of proof from the current "Proof by Clear and Convincing Evidence," I do not agree that the standard should be lowered to a standard of proof by a "Preponderance of the Evidence." Not only is a removal of an elected official too important an issue to have him/her adjudged such as by a lower standard, but it gives the appearance that the newly elected Oneida Business Committee has an agenda to remove someone of its members. Also, what's wrong with the current standard of having to prove a petitioner's allegations with clear and convincing evidence. It is only reasonable that when someone makes allegations against another human being, that such allegation(s) would have to be proved with clear and convincing evidence.

### *Response*

The burden of evidence currently used is clear and convincing, which requires a showing that it is "highly probable or reasonably certain". The commenter requests a lower level of preponderance of evidence, which requires a showing of a "greater weight of the evidence". Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on these comments then 4.11-2 should also be amended.

### Comment 22. Findings.

4.7-3. *Findings.* The Judiciary shall, within twenty (20) calendar days after the preliminary review has been completed, determine whether each allegation of the petition has been proven by clear and convincing evidence, and whether such allegations constitute sufficient

grounds for removal under 4.4-1. If the Judiciary determines that sufficient grounds have not been proven the Judiciary shall dismiss the petition. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary shall forward the written findings to the Tribal Chair.

**Brian Doxtator:** 4.7-3: Findings – the process is unclear in the law.

*Response*

Section 4.7-3 concerns the findings of the Judiciary after the preliminary review. The Judiciary is to determine whether each allegation has been proven under the standard of law and whether it meets the grounds listed in 4.4-1. Depending on the findings, the Judiciary either dismisses the petition or forwards to the Tribal Chair. This process must be completed within twenty (20) days after the preliminary review. No changes are recommended based on the comment. If changes are made based on this comment then 4.11-3 should also be amended.

**Comment 23. General Tribal Council Meeting-OBC**

**Bradley Graham:** It's been General Tribal Council, period. We could have one meeting, to determine the facts, whether to proceed or not, and then have another meeting if we need to. But all this other stuff has got to be taken out, period. This could be a simple law. You've got way too much garbage in here. You're protecting certain people, you're allowing certain people to do things that shouldn't be doing it, just rewrite this whole thing, make it simple. I mean, petition signed – people have taken their time, they've verified their facts. You don't need the Judiciary; you don't need anyone else involved in this. The people who elected the people should be the ones deciding on who gets removed, period. Thank you.

**Ed Delgado:** I totally disagree with anyone saying that, well, you can sign a petition and go to GTC and GTC can adjudicate that provision, that wrongdoing. GTC is not an adjudicative body and they don't know how and they won't do it right, they'll play strictly on politics and people who are accused of things could be removed and they never did it. It's just politics, pure politics... at least they're having a trial. It gives you a chance.

*Response*

There are no changes recommended based on this comment.

**Comment 24. Vote requirement to Remove OBC Member**

4.8-3. *Determination.* ~~An elected official~~An Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General Tribal Council at a meeting called for the purpose of considering the removal.

**Mike Debraska:** 4.8-3 under termination Oneida Business Committee member may only be removed from office upon the affirmative vote of 2/3 majority which again, Brian touched upon, I don't think that should be in there.

**Bradley Graham:** What you got under 4.8 – I'm looking at the back part, the General Tribal Council meeting, where you've got 2/3 majority – take the "majority" out. It's either majority vote or 2/3 vote, that's parliamentary, I don't like hearing that, that's something the white government uses, it's not actually in the Robert Rules, parliamentary law, so, it's either majority vote we need or 2/3 vote. And in this case it would just be 2/3 vote. So that would be

line 144.

*Response*

The comment is referring to the use of “two-thirds (2/3) majority” in Section 4.8-3. It is suggested that the word “majority” at line 210 be removed. The Section should read:

4.8-3. *Determination.* ~~An elected official~~An Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) ~~majority~~ of the General Tribal Council at a meeting called for the purpose of considering the removal.

**Comment 25. Quorum Requirement.**

4.8-4. *Quorum.* If the meeting of the General Tribal Council fails to obtain a quorum, the removal petition shall be dismissed.

**Brian Doxtator:** 4.8-4: Quorum. Factual information shall be provided to... so I was thinking on the... if there's no quorum at General Tribal Council, I agree that this sends a message. But if you have factual information and General Tribal Council doesn't meet, the elected official still has violated the law based on facts. And what I'm saying is if there is no quorum, that information should go to the Business Committee because they need to protect our assets within the organization, the elected official may lose their email, may lose access to financial databases, maybe even lose supervisory capabilities if they supervise staff. Just because it becomes political doesn't mean it didn't happen. And if we're... I know we're looking at politics here but are also looking at facts. And if something is factual... just because there was no quorum doesn't make it not happen. And I think the Business Committee then should say “Ok, they weren't removed, there was no quorum, however, this is something that did happen, and we need to address that within the organization.

*Response*

The commenter is asking for an amendment that would allow for punishment and/or stripping away of the authority of an Oneida Committee Business if findings in Section 4.7-3 are made by the judiciary but the General Tribal Council fails to meet the quorum needed to remove. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.12-4 should also be amended.

**Comment 26. Removal Requests-Elected Official.**

4.9-4. *Removal Requests.* A board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request.

**Mike Debraska:** Additionally, under 4.9-4 removal requests, a board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request. My question to you is: Why can't GTC members do this as well? Shouldn't GTC have that ability as well? If you've got individuals who are serving on boards, committees and commissions, what about, say, the Election Board where time and time again, things are happening, things are going wrong. We know people whose rights are being abridged. Shouldn't

GTC be able to come to the Business Committee and say, “this is it, we’re going to file a formal complaint”? Is it a complaint process? Is it a removal process? I don’t know. What is that particular process? And how should that be done? Because I look at it and say “GTC’s rights are being abridged here when you’re saying only the Business Committee should have this authority, that kind of becomes to me very dangerous as well because then there are no system of checks and balance.

#### *Response*

The commenter wishes for the General Tribal Council to have the ability to file a removal request under Section 4.9-4. While Section 4.9-3 allows “any eligible voter”, including GTC members, to file a petition to remove an elected official, a GTC member would still be under the petition requirements of 4.9-3. Changes based on the comment are a policy decision best left to the discretion of the LOC.

#### **Comment 27. Preliminary Review-Elected Official.**

4.10-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the review. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. If the Judiciary determines that a removal request does not contain valid action by the board, committee or commission the removal request shall be dismissed.

**Mike Debraska:** So, given that, I also look at the Judiciary’s ability here in this process, because at 4.10-4, it says that if the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. But yet earlier, it says that the Enrollments Office would verify those signatures. At what particular juncture, does the Judiciary then supersede Enrollments? If Enrollments has already verified those signatures and allowed that to go forward, then why is the Judiciary suddenly being more dismissive on that? That to me doesn’t make any sense. They should not have that authority. Not at that point. If somebody went out and took the time to collect those signatures because something is wrong, then for the Judiciary to arbitrarily and capriciously dismiss it and say “we find insufficient signatures”, that was already vetted at the Enrollments office. They shouldn’t be getting two bites at the apple. Sorry, I disagree with that. I think it abridges GTC’s rights and our Constitutionality. So those are just some of the points I have.

**Bradley Graham:** And like Mike said with the Judiciary, why would they have any rights to go through the names? They don’t. That’s Enrollments. Enrollments has always verified the names. Correct? So why put the Judiciary in there? The Appeals or nobody else has ever been involved in any removals.

**Bradley Graham:** And like Mike was saying, the verification of the signatures. It has always been done by Enrollments, like I said Judiciary should have nothing to do with this, period. They can’t remain unbiased because they sit in on stuff, they hear things, and like I said it should be up to us, the people of this Tribe to determine who stays, who goes. We voted youse in; that includes all of the elected officials.

#### *Response*

The commenters correctly point out that Enrollment Department is already tasked with checking

signatures:

4.5-4. Upon receipt of a petition, the Tribal Secretary shall promptly:

- (a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, determine whether the petition contains the requisite number of signatures of eligible voters; and

However the court has already been given the ability to review during the Preliminary Review in Section 4.6-3:

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected official~~ Oneida Business Committee member whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition upon the ~~elected official~~ Oneida Business Committee member sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures; and
- (b) whether the signature is that of an eligible voter.

No changes are recommended based on this comment. If changes are made based on this comment, then 4.6-3 should also be amended.

#### **Comment 28. Rights of Elected Officials.**

4.11-1. Rights of Elected Official at Hearing. An elected official whose removal is sought shall have the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented by counsel of his or her choice.

4.11-2. Burden of Proof. A person seeking the removal of an elected official shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

**Ed Delgado:** So, this is... you're trying to do it to get board members who are not showing up or making... doing bad things... have a way to hold them accountable. So when I was reading that I was looking at the processes, and for the processes, it ...shows, it doesn't provide an avenue whereby someone being accused of wrongdoing to... I know they have a hearing, and thank goodness for the hearings.

**Ed Delgado:** And it doesn't say who represents the board or commission who is trying to remove that board member. It says "the person" which is inconsistent with their purposes is that either a petition can remove that Board member, and we're not talking about BC, or the Board, Committee or Commission. But it says in your proposal: "the person" is responsible for approving those facts. It doesn't say which person on that Board and it also doesn't say: does the board have an attorney and who pays for that attorney? Is that the Tribe? Or is that the Board? The Board members?

#### *Response*

The commenter points out that Section 4.11-2 only provides for a "person" which is inconsistent with the removal requests to be filed by a board, committee, or commission. It is recommended that Section 4.11-2 be changed to read:

4.11-2. *Burden of Proof.* A person seeking the removal of an elected official or an appointed representative of the requesting board, committee, or commission shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

The commenter also expresses concern over who would represent the board, committee, or commission, if legal representation of the board, committee, or commission is allowed and who would pay legal costs. Changes based on this portion of the comment are a policy decision best left to the discretion of the LOC.

#### **Comment 29. OBC Determination.**

4.12-3. *Determination.* An elected official may only be removed from office upon the affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for the purpose of considering the removal.

**Ed Delgado:** Also under there it says they can be removed by six votes. It doesn't say whether or not the chairwoman or chairman can vote. I know you mentioned it in our amendments, proposed amendments for the Constitution? It specifically mentions that, you know, eight votes with the chair not voting. So on this one maybe you need to determine whether or not you want the Chair to vote; what is the intent there. Otherwise, the Constitution doesn't really say.

**Ed Delgado:** *written*-Finally, I understand the issue that the OBC is trying to solve with the amendments which would provide a lesser number of signatures required for the removal of an elected official other than an OBC member. However, I just do not believe that the General Tribal Council will agree to giving up their authority to be the final decision maker in a removal. I've heard by some, "We elected them and we should have the authority to remove them." I support that concept. However, perhaps if you give the OBC the following responsibility: Upon proof of the allegations in the court, the OBC shall support the decision of the court and set a date whereby the General Tribal Council could either support or reject the court's decision. A special meeting of the GTC would not be required as our Oneida Constitution only requires a special meeting for OBC members.

#### *Response*

The commenter requests the proposed amendments be changed so that the General Tribal Council could have final decision to either support or reject the court's decision. Changes based on the comment are a policy decision best left to the discretion of the LOC.

#### **Comment 30. General Comments**

**Brian Doxtator:** So, I think, if anything, the timelines truly need to be looked at. It should not take 8, 9, 10, 11 months to try and remove an elected official. That's ridiculous, it's inefficient, and wherever you can streamline the process and make it by law, our law – because the Judiciary has to follow our law, not their processes. It has to move much more quicker than nine, ten months. So anyway, that's my comments for today, I say yaw^ko.

#### *Response*

The commenter is correct that there is no underlining timeline. However, after the filing of the petition, there are certain timeline requirements under the legislation totaling 90 days:

- 4.5-4 Tribal Secretary promptly submits petition to Enrollment Department;
- 4.5-4(a) Within five (5) days for Enrollment Department to verify signatures;
- 4.5-6 Tribal secretary promptly submits to Judiciary;
- 4.6-1 Within twenty (20) days Judiciary has to hold a preliminary review;
- 4.7-3 Within twenty (20) days after preliminary review judiciary must make findings and forward to GTC;
- 4.8-1 Within forty-five (45) days GTC hold special meeting

If LOC wishes to incorporate more specific time requirements the most prudent location would be in section 4.5-4 and 4.5-6 replacing “promptly” with a specific time frame.

**Bradley Graham:** So this whole thing needs to be rewritten. It has to be more precise and clear. You can’t have one department doing something; another department doing something else.

*Response*

There are no changes recommended based on this comment.

**Ed Delgado:** I think we need to look back at the purpose of the Removal Law. Some of the discussions taking place when it was passed. When it was passed, a lot of the boards, committees commissions, elected and non-elected, they were determining in session, their own session, they were doing a lot of removals and politics, and whatnot. The Business Committee, after hearing those, and having a lot of discussion decided maybe, for elected officials, that the position should be that the General Tribal Council put them in, and the General Tribal Council should be the body to take them out. Although I do understand the need for some of these boards, committees and commissions, where nobody is going to have the initiative to take out an elected commission, commissioner, a board, or whatever, they’re just not going to do it. Concentrate on the BC maybe, but not so much on a Board.

*Response*

There are no changes recommended based on this comment.

**Conclusion**

There were multiple comments provided on the Law, both at the public meeting and in writing which the LOC should consider and incorporate as appropriate. After the LOC reviews the comments and provides direction as to any changes necessary based on the comments, the draft and analysis should be updated and may be prepared for OBC consideration.

**Chapter 4**  
**REMOVAL LAW**  
**Kwah On^ <luwalihut@kwas Kayanl^hsla**  
Just when they will remove him our kind of laws

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|---|---|
| <ul style="list-style-type: none"> <li>4.1. Purpose and Policy</li> <li>4.2. Adoption, Amendment, Repeal</li> <li>4.3. Definitions</li> <li>4.4. Grounds for Removal</li> <li>4.5. Petition – Oneida Business Committee</li> <li>4.6. Preliminary Review – Oneida Business Committee</li> <li>4.7. Hearing – Oneida Business Committee</li> </ul> | <ul style="list-style-type: none"> <li>4.8. General Tribal Council Meeting – Oneida Business Committee</li> <li>4.9. Removal – Elected Official</li> <li>4.10. Preliminary Review – Elected Official</li> <li>4.11. Hearing – Elected Official</li> <li>4.12. Oneida Business Committee Meeting – Elected Official</li> </ul> |
|---|---|

<b>Analysis by the Legislative Reference Office</b>					
<b>Title</b>	The Removal Law (the Law)				
<b>Requester</b>	Oneida Law Office; Trust/Enrollment Committee	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	Stating that the current removal process is too costly, the Trust & Enrollment Committee has requested changes to the Removal Law that would enable Tribal boards, committees and commissions (entities) to remove elected members who fail to attend meetings or violate the entity's bylaws.				
<b>Purpose</b>	These proposed amendments do not enable an entity to directly remove its' own elected officials; but do enable those entities avoid the current petition process by directly filing a formal request seeking removal of an elected member. Also: the process is changed so that for all elected officials <u>except</u> Oneida Business Committee members; the Oneida Business Committee would have the final vote on whether to remove the member, instead of the General Tribal Council.				
<b>Authorized/ Affected Entities</b>	Judiciary, OBC, elected officials and the entities on which they serve.				
<b>Due Process</b>	Elected officials can request that the Judiciary review the validity of removal petition signatures or the action taken for a removal request. The official is also entitled to both a preliminary and a formal hearing before the Judiciary; and then the GTC (for OBC members) or OBC (for all other elected officials) would vote on whether to remove the elected official.				
<b>Related Legislation</b>	Comprehensive Policy Governing Boards, Committees and Commissions				
<b>Policy Mechanism</b>	Removal process				
<b>Enforcement</b>	Dismissal of the removal request/petition.				

### Overview

The proposed amendments to the Removal Law (the Law) change the current process for removing elected officials from office. Instead of one single removal process for all elected officials, the amendments split this Law into two separate parts – one sets out the process for removing Oneida Business Committee (OBC) members from office, and the other sets out the process for removing all other elected officials. The proposed amendments distinguish the OBC,

8 which was established by the Tribal Constitution; from other boards, committees and  
9 commissions, which were created by Tribal law.

10  
11 *Removal of an OBC Member*

12 OBC members would still be subject to the same removal process established under the  
13 current Removal law - *i.e.* a signed petition is submitted; a preliminary and then formal hearing  
14 are held before the Judiciary; and if the petitioner proves with clear and convincing evidence that  
15 grounds for removal exist, then a GTC meeting must be called within 45 days for GTC to vote  
16 on whether to remove the elected official. The only noticeable difference is that the Law no  
17 longer specifically requires the Tribal Chair to call a GTC meeting within 45 days of receiving  
18 the Judiciary's findings; instead it states that a GTC meeting shall be held within 45 days after  
19 receiving the findings. [4.5 to 4.8]

20 *Removal of all other elected Officials*

21 All other elected Officials would still be subject to the same removal process established  
22 under the current Law, with three main differences:

- 23 • There are now two ways (instead of one) to begin the removal process:
  - 24 1) **Petition.** The current petition process would continue to be available.
  - 25 2) **Removal Request.** The amendments allow a Tribal board, committee or  
26 commission (entity) to seek removal of one of its elected Officials by submitting a  
27 removal request to the Tribal Secretary's Office. In order to submit a formal  
28 removal request; the entity must approve, by majority vote, of taking such action.  
29 [4.9-4] The Official may request that the Judiciary review the validity of the  
30 action taken by the entity. [4.10-3] For the preliminary and formal hearings before  
31 the Judiciary; the entity is deemed to be the other party to the action, and is  
32 responsible for proving the allegations against the elected Official at the formal  
33 hearing. [4.11-2 and 4.11-3]
- 34 • **The final vote on whether to remove an elected Official would be made by the OBC,**  
35 **instead of the GTC.**<sup>1</sup> A special OBC meeting must be called for that purpose, and if six  
36 members of the OBC vote for removal, then the official is removed from office. The  
37 OBC meeting must be held within 45 days after receiving the Judiciary's findings; and  
38 the removal request/petition must be dismissed if the OBC fails to obtain quorum at the  
39 special meeting. [4.12]
- 40 • Currently, the Law lists various grounds for which an elected Official can be removed  
41 from office. The amendments add a new grounds for removal, which applies to all elected  
42 officials except OBC members: an Official can be removed from office for violating the  
43 entity's bylaws, operating agreements, laws, regulations or Standard Operating  
44 Procedures. [4.4-1(c)]

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<sup>1</sup> **Mike Debraska:** Oh, also, just one last... or two last quick points. I looked at line 34 of the Removal Law, actually lines 34 and 35 it says "the final vote on whether to remove an elected official will be made by the OBC instead of GTC, I think that's extremely dangerous as well. I think that an elected official, and again, the reason why I state that is let's say as a GTC member I've got a problem with what is happening or not happening in a certain manner and I file a complaint...shouldn't that then come to GTC so GTC can make a determination rather than just the Business Committee? Or let's say the Business Committee makes a determination and finds against ... do I then need to bring a petition? To say hey, I need to get this addressed because I don't agree with you guys. I think that kind of, to me, again, that smacks of our constitutional rights, or some of our constitutional rights being abridged.

## Miscellaneous

Various language and formatting changes are made to reflect the fact that the OBC officials are subject to different removal requirements; and the Adoption; Amendment; Repeal language (Section 2) was revised to comply with the Legislative Procedures Act. Except as described above; these changes do not affect the content of the Law.

A public meeting was held for this item on April 30, 2015. The comments received by the LOC during that public meeting and following public comment period have been reviewed and considered for this draft.

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## Chapter 4 REMOVAL LAW

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### 4.1. Purpose and Policy

4.1-1. The purpose of this Law is to govern the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin.

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.<sup>2</sup>

### 4.2. Adoption, Amendment, Repeal

4.2-1. This Law is adopted by the General Tribal Council by ~~GTC~~ Resolution ~~#1GTC-01-09-06-A~~ and amended by Resolution BC-05-28-14-B- and by Resolution GTC.

4.2-2. This Law may be amended or repealed by the General Tribal Council only pursuant to the procedures set out in the Legislative Procedures Act.<sup>3</sup>

4.2-3. 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.

4.2-4. ~~All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law. Specifically, the following resolutions are repealed by this law~~ 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:

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<sup>2</sup> **Brian Duxtator:** 4.1-2: “orderly and fair” - according to a legal definition is “arranged to dispose in some order or pattern governed by law” – nowhere in the Law does it talk about timeliness of removals or efficiency. We need, an obvious timeline somewhere in there.

<sup>3</sup> **Mike Debraska:** 4.2-2. It says “The law may be amended or repealed by the General Tribal Council only, only pursuant to the procedures set out in the Legislative Procedures Act. I think a portion of that needs to be taken out, to just reflect that “This law may be amended or repealed by the General Tribal Council,” period. I get real, real concerned when our ability is limited. It stifles us and it stifles GTC to say “oh, we have to follow this procedure. We know when something is going wrong and something is not working and somebody is not doing what they’re supposed to be doing, GTC becomes the supreme governing authority and should just be able to say “that’s it. We’re going to take you out. So I think that needs to be amended.

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)<sup>4</sup>

4.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 4.3. Definitions

4.3-1. This section shall govern the definitions of words or phrases ~~as used herein~~ within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Counsel" means an attorney or advocate.

~~(b)~~ (b) "Elected official" means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee.<sup>5</sup>

(c) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-~~#1-01~~-07-13-B to administer the judicial authorities and responsibilities of the Tribe.<sup>6</sup>

~~(d)~~ "Tribe" means the Oneida Tribe of Indians of Wisconsin.

### 4.4. Grounds for Removal

~~4.4-1.~~ 4.4-1. Oneida Business Committee. A member of the Oneida Business Committee may be removed from office for any of the following reasons:

(a) failure to attend four (4) regularly scheduled meetings without a written explanation;

(b) intentional mis-use of Tribal funds;

(c) alcohol use while performing official responsibilities or use of illegal drugs at any time;

(d) if he or she no longer meets the qualifications for office;

(e) violating a Tribal law which specifies removal as a penalty; or<sup>7</sup>

<sup>4</sup> **Mike Debraska:** Additionally, I looked at the laws that are going to be repealed. And that's at 4.2-4, also, I noticed that several GTC resolutions and two BC resolutions would also be replaced. One of my questions to you is, or a question I have in general, is did GTC approve of the Legislative Procedures Act? And if so, when? Because I don't ever recall GTC approving that. So, I look at that and I say there's something serious with that because that needs to be taken a look at as well as the removal ordinance. And the removal ordinance is cited several times in the Comprehensive Policy Governing Boards, Committees and Commissions, but yet that's not stated in here as being repealed. I don't know if the Business Committee is looking at bringing that in but if it is, that's certainly something that needs to be governed around this as well, because it does state in that policy, the Comprehensive Policy Governing Boards, Committees and Commissions, what are the things that would govern that removal. Additionally I do want to know in particular, why these particular pieces of legislation are being replaced? Those four that were mentioned at 4.2-4. I think that really needs to be clarified and brought back to GTC so that we can see specifically what it is that's being replaced. Thank you.

<sup>5</sup> **Mike Debraska:** And then the last... under the definitions under 4.3-1 under subsection (b) where it talks about "Elected official" means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee. If the BC aren't elected officials, what are they?

<sup>6</sup> **Bradley Graham:** That would be under definitions, that would be including the BC, to take it out of the Judiciary was the other one I had.

(f) felony conviction while in office.<sup>8</sup>

**4.4-2. Elected Official.** An elected official may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation;
- (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason ~~provided that this subsection shall not apply to the Oneida Business Committee.~~<sup>9</sup>
- (c) violation of the by-laws, operating agreements, laws, regulations or Standard Operating Procedures of the board, committee or commission;
- (d) intentional mis-use of Tribal funds;
- (~~e~~) alcohol use while performing official responsibilities or use of illegal drugs at any time;
- (~~e~~f) if he or she no longer meets the qualifications for office;
- (~~f~~g) violating a Tribal law which specifies removal as a penalty; or
- (~~g~~h) felony conviction while in office.<sup>10</sup>

#### **4.5. Petition – Oneida Business Committee**

**4.5-1.** Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an ~~elected official.~~ Oneida Business Committee member. No petition shall request the removal of more than one (1) ~~elected official.~~ Oneida Business Committee member.<sup>11</sup> The petition shall state

<sup>7</sup> **Brian Doxtator:** Grounds for removal: 4.4(e). “(e)” needs to be removed. There’s only one law, actually two now, but ... one law, which allows for removal. The Code of Ethics. <twaliw@seh states that enforcement, this code will be enforced according to the following government officials may be subject to removal if elected or termination . . . anyway, the sentence structure in that basically says that you can only be removed if a law says you can be removed for violating the law. And there’s only really one major law - Conflict of Interest has it - but it’s the Code of Ethics. So the only way you can remove an official for violating the Law is in alignment with what the Code of Ethics says. I really strongly recommend that the sentence either is restated to “in violation of all laws, GTC resolutions and BC resolutions,” even though we see resolutions as law. In theory, an elected official could violate personnel policies and procedures, their oath, GTC resolutions, GTC directive, and there’s nothing that gives enough to remove that.

<sup>8</sup> **Mike Debraska:** Additionally I looked at the grounds for removal under 4.4 and some of these, I have some concerns with. Particularly (d), (e) and (f). What are the qualifications for office? I look at that and I say, that’s kind of a blanket statement to me, it doesn’t really mean anything.

<sup>9</sup> **Mike Debraska:** Just commenting on what Brad eluded there, as well, under 4.4-2 “elected official” I noticed that on section (b) it says “failure to attend fifty percent (50%) of an entity’s regular scheduled meetings within a twelve month period for any reason” which isn’t under the Business Committee under 4.4-1. And I think I believe it should be. I think if a BC member’s elected here, if you are not going to attend the meetings, what function are you serving? Because it certainly isn’t for the people.

<sup>10</sup> **Mike Debraska:** The other one is violating a Tribal law, which Brian already touched upon, and the last one is (f) Felony conviction while in office. I think a felony conviction prior to office should also be in there. I don’t believe anybody should be in a position of power if they’ve got felonies on their record. And there’s nothing that would stop that, according to this. So I think that becomes a major issue.

**Bradley Graham:** : While going through this again, I see under 4.4-2... you have felony conviction while in office, that should be felony conviction before or while in office. I mean, there should be a personal background investigation.

<sup>11</sup> **Bradley Graham:** And you also have in there that “no petition should request the removal of more than one” - that should be taken out. You got three, four Business Committee members – or any officials, they shouldn’t be done one at a time. You should be able to bring 2, 3, 4, or the whole works, for a removal. So I’d like to see that taken out too. That’s pretty much it that I noticed.

with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words<sup>12</sup>, and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the votes cast in the previous general election, whichever is greater<sup>13</sup>. A petition may not be amended after it is filed with the Tribal Secretary.

4.5-2. The petition shall be filed within thirty (30) days after the date the first signature is obtained on the petition.<sup>14</sup>

4.5-3. The petition shall contain, in ink:

(a) The appropriate lines for the eligible voter's:

(1) Printed name;

(2) Signature;

(3) Street address; and

(4) Enrollment number.

(b) An oath verifying the fact that:

(1) The circulator witnessed each person sign the petition;

(2) Each signature appearing thereon is the genuine signature of the person it purports to be; and

(3) The petition was signed in the presence of the witness on the date indicated.<sup>15</sup>

4.5-4. Upon receipt of a petition, the Tribal Secretary shall promptly:

(a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, determine whether the petition contains the requisite number of signatures of eligible voters; and

(b) Notify the ~~elected official~~ Oneida Business Committee member sought to be removed that a petition has been filed seeking his or her removal by providing a copy of the uncertified petition.

4.5-5. If the Enrollment Department determines that the petition does not contain the requisite number of signatures, the Tribal Secretary shall so certify to the Oneida Business Committee and

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<sup>12</sup> **Brian Doxtator:** 4.5: Petition. 200 words needs to be removed, we need to focus more on the facts and not the, granted you don't want a dissertation, you don't want a 17 page dissertation, but 200 words is not, it's almost undoable to be able to succinctly explain why and what. And so, I think the law needs to be more focused on the facts and not 200 words.

**Bradley Graham:** You'll have to excuse me, I didn't have this right away to go through it, but one of the things I agree with like Brian said, is that 200 word deal.

<sup>13</sup> **Brian Doxtator:** Take out the 50 eligible voters, it has no value. I know it's in the Constitution but that's more about calling a GTC meeting. It adds no value to the process.

**Mike Debraska:** Additionally, I looked at some of this stuff, here the 50 voters, which Brian already touched upon, this kind of... reflecting here...

<sup>14</sup> **Brian Doxtator:** Petitions shall be filed within 30 days once you start acquiring signatures: based upon my experience, you have got to educate, you have to do a lot of things. And 30 days is not enough time. I'm recommending to at least 60 to provide more time, because it's not just going to get signatures, you're actually talking, visiting with people. You're looking at a half hour, 45 minutes per person; when you meet the threshold of how many signatures you need, it's just not doable.

**Bradley Graham:** The 30-day filing, that's basically the same as it was, but like I said, all elected positions should be the same. Nobody should be separated. Because the people are the ones electing youse in ... and it doesn't matter what board, committee or commission.

<sup>15</sup> **Brain Doxtator:** 4.5-3(a) and (b): this section is more administrative, not law. Either remove, replace sentence structure; mandating "the Secretary's Office shall create a process for removal petitions." And just take out that whole, "you need your name, address..." whatever that is. That's just administrative, it's not a law thing.

file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4.5-6. If the Enrollment Department determines that the petition contains the requisite number of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be served upon the ~~elected official~~ Oneida Business Committee member sought to be removed and forward a copy of the same to the Judiciary.

4.5-7. In the event the removal of the Tribal Secretary is sought, the Tribal Vice Chairperson shall perform the duties assigned to the Secretary under this ~~L~~Law.

#### **4.6. Preliminary Review – Oneida Business Committee**<sup>16</sup>

4.6-1. The Judiciary, upon receipt of the petition shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal.<sup>17</sup> The Judiciary may request that the parties submit arguments in writing, and the parties may be represented by counsel.

4.6-2. If the Judiciary determines that a petition does not allege sufficient grounds for removal, the petition shall be dismissed. If the Judiciary determines that the petition alleges sufficient grounds for removal, the Judiciary shall conduct a hearing under 4.7.

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected official~~ Oneida Business Committee member whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition upon the ~~elected official~~ Oneida Business Committee member sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures; and
- (b) whether the signature is that of an eligible voter.<sup>18</sup>

4.6-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the ~~inspection~~review. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed.

~~4.6-5. In the event the removal of a member of the Judiciary is sought, the Clerk of Courts shall convene a panel of three (3) judges who are members of the Wisconsin Tribal Judges Association to carry out the Judiciary's responsibilities under this law.~~

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<sup>16</sup> **Brian Doxtator:** And I do have issue with "elected officials do not have" ...I don't ... elected officials don't have the same rights as citizens and if they truly violate the Law and it's something administratively ... process is not adhered to, then it's, then it's done. And yet, the elected official still could have violated the law. And I'm not saying we should violate their due process, but I think a little bit more... elasticity around this issue?

**Bradley Graham:** I'd say take the Judiciary out completely. It should be like it always has been – people get a petition, it was present it, the names are verified, and the process went through GTC. Judiciary should not be involved in this. At all. Completely. It should be up to General Tribal Council for removal for all elected positions. That includes the Business Committee. Appointed positions are done by the Business Committee. Youse guys take care of that. The elected positions are done by the people for the people. And they are the ones who should handle the removals. Whether it takes one meeting or two meetings, it doesn't matter.

<sup>17</sup> **Brian Doxtator:** 4.6: preliminary review; 20 calendar days. Process is not efficient. I'm just saying, preliminary review, 20 calendar days, it's not efficient.

<sup>18</sup> **Brian Doxtator:** adds no value to the removal process.

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187 **4.7. Hearing – Oneida Business Committee**<sup>19</sup>

188 4.7-1. *Rights of ~~Elected Official~~Oneida Business Committee Member at Hearing.* An ~~elected~~  
189 ~~official~~Oneida Business Committee member whose removal is sought shall have the right to  
190 present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her  
191 expense, be represented by counsel of his or her choice.<sup>20</sup>

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<sup>19</sup> **Brian Doxtator:** 4.7: Hearing. Language needs to be re-worded to support the concept that they either validated the information is valid or the information/data is invalid. When you have a hearing, it's almost like, you're at a court hearing, trying to... argue against and for. And the way the law is written, it should be more about the hearing is to validate that yes you have the facts, yes these are the validated facts, and yes this goes to General Tribal Council. No, you don't have facts? It's not validated, it's not true; we're not sending it to General Tribal Council. This is whatever... hearsay or rumors, or whatever. But to have an actual hearing and then you send it to General Tribal Council? That's ridiculous.

**Ed Delgado:** So that's my comments. But mainly I came here to just talk about added charges on the day of trial. That's totally unthinkable. But the other ones are important too. But I don't support going back to the old way where an investigative body interviews and studies the facts – but they're totally political, and they're not judges and judicial hearing bodies, and even though I spoke against the Judiciary on this, at least it was a hearing. You could present your side and they had to prove what they said if they did not prove it. Yaw^ko.

<sup>20</sup> **Ed Delgado:** I know you left pretty much intact the removal of a BC member, but, and I covered this before with the old OBC, under the preliminary hearing, it restricts that the discussions can only be on the allegations in the petition. But it doesn't say, when you have your hearing, it doesn't protect the accused from being, from new charges being added on the day of the hearing. I know it's unthinkable that maybe you didn't put it in here, because who would think that you could do that? But in my removal, the day of the hearing, new charges were added. And my attorney said "how do you expect me to defend my client when I had no chance to study those allegations, or to bring witnesses, or create an argument against those allegations?" And the response of the Judiciary was, "it'll be all right, don't worry about it." Well, I think since that's part of our history now, as a removal hearing, it was allowed once. Unless you want it to happen again, I think you need to provide that you can't add allegations on the day of the hearing. New charges. It's like you're on trial for bank robbery and on the day of your trial you're charged with... murder or something. It's just unthinkable. Anywhere. And we shouldn't allow it here. And it happened, so we need to remedy it with mentioning it in the Removal Law under hearings.

**Ed Delgado:** *written*-It would also like to submit written testimony recommending that once the hearing begins whereby the petitioner has to prove his allegations, that no additional charges can be added. In the most recent Removal attempt, the court (Oneida Appeals Commission) added an additional charge on the day of the hearing. The charge was in no way part of any petition submitted to the Tribal Secretary's Office and the defendant had no opportunity to prepare a defense. Unthinkable behavior for any court, but it happened here on our Reservation and by our court of that time. As improper as it was, I believe that the OBC has the responsibility to insure that such court behavior does not happen again by prohibiting it in the amended law.

**Ed Delgado:** And that person making those allegations, if they fail to prove those, maybe they need to hold a ... be held to some consequences. Because they sure did cost the Tribe a lot of money, and the person being accused a lot of money. And basically what you have, often, is a bunch of lies.

**Ed Delgado:** But, speaking for the person being removed. It's a great expense. It could be. You're going to have to have a lawyer there, and that could cost you thousands. I know one removal, my removal – three days of hearings. Very, very expensive proposition.

**Ed Delgado:** Mainly the main questions on those were that: who is going to cover the cost of the .... "I know it says at your own cost", but what if those allegations fail? What if they're a bunch of lies? You still paid the \$3000 ... there should be a way whereby the accuser is responsible. Or else they can just go out there and make the allegations, you can be shown to be not guilty of the things and you still have to pay the costs. The accuser should be responsible, and if he can't prove those allegations? He or she should be responsible for those court costs, and the attorney fees.

192 | 4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official~~ Oneida Business  
193 | Committee member shall have the burden of proving by clear and convincing evidence<sup>21</sup> that  
194 | ground(s) for removal exist.

195 | 4.7-3. *Findings.* The Judiciary shall, within twenty (20) calendar days after the preliminary  
196 | review has been completed, determine whether each allegation of the petition has been proven by  
197 | clear and convincing evidence, and whether such allegations constitute sufficient grounds for  
198 | removal under 4.4-1. If the Judiciary determines that sufficient grounds have not been proven  
199 | the Judiciary shall dismiss the petition. If the Judiciary determines that the sufficient grounds  
200 | have been proven, the Judiciary shall forward the written findings to the Tribal Chair.<sup>22</sup>  
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<sup>21</sup> **Brian Duxtator:** Burden of proof. Clear and convincing evidence is a medium level of burden of proof which is a more rigorous standard of proof to meet than the preponderance of evidence standard. So if you have facts, I really think the law should get away from clear and convincing evidence and it should be the preponderance of evidence – it is less rigorous and so forth.

**Mike Debraska:** And again, he touched on this as well, the burden of proof. I really think that needs to be clarified a little bit better. Burden of proof.

**Ed Delgado:** I'd like to comment on a couple more things being said here today. I think I already said that under the old process, before the Removal [law] was passed, the Removal [law] of 1981 or something, General Tribal Council, after receiving the petition, organized an investigative body who acted somewhat like a... to gather facts. Well, those are highly political and not a judicial body. Anyone accused of a very... of crimes against their tribe, or their nation, they should prove it. And they should prove it by clear and convincing evidence, not a preponderance of the evidence; that means you can have a lot of evidence there, half of it could be lies, or all of it could be lies, but at least you've got a big old case there. It's not asking too much to, when you're going to take away the people's vote, and remove an elected person that...

*[his phone rings]*

...hmmm. Some things never change.

*[laughter]*

... that they prove that you did it. Prove it with clear and convincing evidence that you did those things.

**Ed Delgado:** *written*-regarding comments regarding Amendments on Removal Law which would lower the burden of proof from the current "Proof by Clear and Convincing Evidence," I do not agree that the standard should be lowered to a standard of proof by a "Preponderance of the Evidence." Not only is a removal of an elected official too important an issue to have him/her adjudged such as by a lower standard, but it gives the appearance that the newly elected Oneida Business Committee has an agenda to remove someone of its members. Also, what's wrong with the current standard of having to prove a petitioner's allegations with clear and convincing evidence. It is only reasonable that when someone makes allegations against another human being, that such allegation(s) would have to be proved with clear and convincing evidence.

<sup>22</sup> **Brian Duxtator:** 4.7-3: Findings – the process is unclear in the law.

**4.8. General Tribal Council Meeting – Oneida Business Committee<sup>23</sup>**

4.8-1. *Special Meeting.* ~~Upon receipt of~~ Within forty-five (45) calendar days of receiving the findings from the Judiciary, ~~the Tribal Chair shall call~~ a special General Tribal Council meeting shall be held to consider the findings ~~to be held within forty-five (45) calendar days after receipt of the Judiciary findings.~~

4.8-2. *Right to address the Council.* An ~~elected official~~ Oneida Business Committee member whose removal is sought shall have the right to address the General Tribal Council personally.

4.8-3. *Determination.* ~~An elected official~~ An Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General Tribal Council at a meeting called for the purpose of considering the removal.<sup>24</sup>

4.8-4. *Quorum.* If the meeting of the General Tribal Council fails to obtain a quorum, the removal petition shall be dismissed.<sup>25</sup>

**4.9. Removal – Elected Official**

4.9-1. An elected official may be subject to removal either by petition or by request of the board, committee or commission, which shall be filed within thirty (30) days after:

(a) the date the first signature is obtained on the petition; or

(b) the board, committee or commission adopts the removal request.

<sup>23</sup> **Bradley Graham:** It's been General Tribal Council, period. We could have one meeting, to determine the facts, whether to proceed or not, and then have another meeting if we need to. But all this other stuff has got to be taken out, period. This could be a simple law. You've got way too much garbage in here. You're protecting certain people, you're allowing certain people to do things that shouldn't be doing it, just rewrite this whole thing, make it simple. I mean, petition signed – people have taken their time, they've verified their facts. You don't need the Judiciary; you don't need anyone else involved in this. The people who elected the people should be the ones deciding on who gets removed, period. Thank you.

**Ed Delgado:** I totally disagree with anyone saying that, well, you can sign a petition and go to GTC and GTC can adjudicate that provision, that wrongdoing. GTC is not an adjudicative body and they don't know how and they won't do it right, they'll play strictly on politics and people who are accused of things could be removed and they never did it. It's just politics, pure politics... at least they're having a trial. It gives you a chance.

<sup>24</sup> **Mike Debraska:** 4.8-3 under termination Oneida Business Committee member may only be removed from office upon the affirmative vote of 2/3 majority which again, Brian touched upon, I don't think that should be in there.

**Bradley Graham:** What you got under 4.8 – I'm looking at the back part, the General Tribal Council meeting, where you've got 2/3 majority – take the "majority" out. It's either majority vote or 2/3 vote, that's parliamentary, I don't like hearing that, that's something the white government uses, it's not actually in the Robert Rules, parliamentary law, so, it's either majority vote we need or 2/3 vote. And in this case it would just be 2/3 vote. So that would be line 144.

<sup>25</sup> **Brian Duxtator:** 4.8-4: Quorum. Factual information shall be provided to... so I was thinking on the... if there's no quorum at General Tribal Council, I agree that this sends a message. But if you have factual information and General Tribal Council doesn't meet, the elected official still has violated the law based on facts. And what I'm saying is if there is no quorum, that information should go to the Business Committee because they need to protect our assets within the organization, the elected official may lose their email, may lose access to financial databases, maybe even lose supervisory capabilities if they supervise staff. Just because it becomes political doesn't mean it didn't happen. And if we're... I know we're looking at politics here but are also looking at facts. And if something is factual... just because there was no quorum doesn't make it not happen. And I think the Business Committee then should say "Ok, they weren't removed, there was no quorum, however, this is something that did happen, and we need to address that within the organization."

220 4.9-2. Upon receipt of a petition or removal request, the Tribal Secretary shall promptly notify  
221 the elected official sought to be removed that a petition or removal request has been filed seeking  
222 his or her removal by providing a copy of the uncertified petition or removal request.

223 4.9-3. Petitions. Any eligible voter may file a petition with the Tribal Secretary seeking the  
224 removal of an elected official. No petition shall request the removal of more than one (1) elected  
225 official. The petition shall state with particularity the facts upon which it is based and the  
226 specific grounds for removal, in not more than two hundred (200) words, and must be signed by  
227 fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the vote cast  
228 in the previous general election, whichever is greater. A petition may not be amended after it is  
229 filed with the Tribal Secretary.

230 (a) The petition shall contain, in ink:

231 (1) The appropriate lines for the eligible voter's:

232 (A) Printed name;

233 (B) Signature;

234 (C) Street address; and

235 (D) Enrollment number.

236 (2) An oath verifying the fact that:

237 (A) The circulator witnessed each person sign the petition;

238 (B) Each signature appearing thereon is the genuine signature of the  
239 person it purports to be; and

240 (C) The petition was signed in the presence of the witness on the date  
241 indicated.

242 (b) The Tribal Secretary shall promptly submit such petition to the Oneida Tribal  
243 Enrollment Department which shall, within five (5) business days, determine whether the  
244 petition contains the requisite number of signatures of eligible voters.

245 (1) If the Enrollment Department determines that a petition does not contain the  
246 requisite number of signatures, the Tribal Secretary shall so certify to the Oneida  
247 Business Committee and file the petition without taking further action, and the  
248 matter shall be at an end. No additional names may be added to the petition, and  
249 the petition shall not be used in any other proceeding.

250 (2) If the Enrollment Department determines that a petition contains the requisite  
251 number of signatures, the Tribal Secretary shall promptly cause a certified copy of  
252 the petition to be served upon the elected official sought to be removed and  
253 forward a copy of the same to the Judiciary.

254 4.9-4. Removal Requests. A board, committee, or commission may file a removal request with  
255 the Tribal Secretary for one of its members after adoption of a majority vote of the board,  
256 committee or commission regarding the removal request.<sup>26</sup> No removal request shall request the

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<sup>26</sup> **Mike Debraska:** Additionally, under 4.9-4 removal requests, a board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request. My question to you is: Why can't GTC members do this as well? Shouldn't GTC have that ability as well? If you've got individuals who are serving on boards, committees and commissions, what about, say, the Election Board where time and time again, things are happening, things are going wrong. We know people whose rights are being abridged. Shouldn't GTC be able to come to the Business Committee and say, "this is it, we're going to file a formal complaint"? Is it a complaint process? Is it a removal process? I don't know. What is that particular process? And how should that be done? Because I look at it and say

removal of more than one (1) elected official. The removal request shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words. A removal request may not be amended after it is filed with the Tribal Secretary.

(a) Upon verification by the Tribal Secretary of the action the board, committee or commission adopting the removal request, the Tribal Secretary shall promptly cause a certified copy of the removal request to be served upon the elected official sought to be removed and forward a copy of the same to the Judiciary.

(b) If the Tribal Secretary determines that a removal request does not meet the requirements of 4.9-4, the Tribal Secretary shall so certify to the Oneida Business Committee and file the removal request without taking further action, and the matter shall be at an end.

#### **4.10. Preliminary Review – Elected Official**

4.10-1. The Judiciary, upon receipt of the petition or removal request shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition or removal request would constitute sufficient grounds for removal. The Judiciary may request that the parties submit arguments in writing, and the parties may be represented by counsel.

4.10-2. If the Judiciary determines that a petition or removal request does not allege sufficient grounds for removal, the petition or removal request shall be dismissed. If the Judiciary determines that the petition or removal request alleges sufficient grounds for removal, the Judiciary shall conduct a hearing under 4.11.

4.10-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition or the validity of the action of the board, committee or commission adopting a removal request may be reviewed by the Judiciary upon motion of the elected official whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition or removal request upon the elected official sought to be removed. The motion shall be in writing and the grounds limited to one (1) or more of the following:

(a) the authenticity of the signatures on a petition;

(b) whether the signature on the petition is that of an eligible voter; or

(c) the validity of the action taken by a board, committee or commission in approving a removal request.

4.10-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the review. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed.<sup>27</sup> If the Judiciary determines that a removal

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"GTC's rights are being abridged here when you're saying only the Business Committee should have this authority, that kind of becomes to me very dangerous as well because then there are no system of checks and balance.

<sup>27</sup> **Mike Debraska:** So, given that, I also look at the Judiciary's ability here in this process, because at 4.10-4, it says that if the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. But yet earlier, it says that the Enrollments Office would verify those signatures. At what particular juncture, does the Judiciary then supersede Enrollments? If Enrollments has already verified those signatures and allowed that to go forward, then why is the Judiciary suddenly being more dismissive on that? That to me doesn't make any sense. They should not have that authority. Not at that point. If somebody went out and took

request does not contain valid action by the board, committee or commission the removal request shall be dismissed.

#### **4.11. Hearing – Elected Official**

**4.11-1. Rights of Elected Official at Hearing.** An elected official whose removal is sought shall have the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented by counsel of his or her choice.<sup>28</sup>

**4.11-2. Burden of Proof.** A person seeking the removal of an elected official shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

**4.11-3. Findings.** The Judiciary shall, within twenty (20) calendar days after the preliminary review has been completed, determine whether each allegation of the petition or removal request has been proven by clear and convincing evidence, and whether such allegations constitute sufficient grounds for removal under 4.4-2. If the Judiciary determines that sufficient grounds have not been proven the Judiciary shall dismiss the petition or removal request. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary shall forward the written findings to the Tribal Chair.

#### **4.12. Oneida Business Committee Meeting – Elected Official**

**4.12-1. Special Meeting.** Within forty-five (45) calendar days of receiving the findings from the Judiciary, a special Oneida Business Committee meeting shall be held to consider the findings.

**4.12-2. Right to address the Oneida Business Committee.** An elected official whose removal is sought shall have the right to address the Oneida Business Committee personally.

**4.12-3. Determination.** An elected official may only be removed from office upon the affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for the purpose of considering the removal.<sup>29</sup>

the time to collect those signatures because something is wrong, then for the Judiciary to arbitrarily and capriciously dismiss it and say “we find insufficient signatures”, that was already vetted at the Enrollments office. They shouldn’t be getting two bites at the apple. Sorry, I disagree with that. I think it abridges GTC’s rights and our Constitutionality. So those are just some of the points I have.

**Bradley Graham:** And like Mike said with the Judiciary, why would they have any rights to go through the names? They don’t. That’s Enrollments. Enrollments has always verified the names. Correct? So why put the Judiciary in there? The Appeals or nobody else has ever been involved in any removals.

**Bradley Graham:** And like Mike was saying, the verification of the signatures. It has always been done by Enrollments, like I said Judiciary should have nothing to do with this, period. They can’t remain unbiased because they sit in on stuff, they hear things, and like I said it should be up to us, the people of this Tribe to determine who stays, who goes. We voted youse in; that includes all of the elected officials.

<sup>28</sup> **Ed Delgado:** So, this is... you’re trying to do it to get board members who are not showing up or making... doing bad things... have a way to hold them accountable. So when I was reading that I was looking at the processes, and for the processes, it ...shows, it doesn’t provide an avenue whereby someone being accused of wrongdoing to... I know they have a hearing, and thank goodness for the hearings.

**Ed Delgado:** And it doesn’t say who represents the board or commission who is trying to remove that board member. It says “the person” which is inconsistent with their purposes is that either a petition can remove that Board member, and we’re not talking about BC, or the Board, Committee or Commission. But it says in your proposal: “the person” is responsible for approving those facts. It doesn’t say which person on that Board and it also doesn’t say: does the board have an attorney and who pays for that attorney? Is that the Tribe? Or is that the Board? The Board members?

<sup>29</sup> **Ed Delgado:** Also under there it says they can be removed by six votes. It doesn’t say whether or not the chairwoman or chairman can vote. I know you mentioned it in our amendments, proposed amendments for the

4.12-4. Quorum. If the meeting of the Oneida Business Committee fails to obtain a quorum, the removal request shall be dismissed.

*End.*<sup>30</sup>

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Adopted GTC-01-09-06-A  
Amended – BC-05-28-14-B

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Constitution? It specifically mentions that, you know, eight votes with the chair not voting. So on this one maybe you need to determine whether or not you want the Chair to vote; what is the intent there. Otherwise, the Constitution doesn't really say.

**Ed Delgado:** *written*-Finally, I understand the issue that the OBC is trying to solve with the amendments which would provide a lesser number of signatures required for the removal of an elected official other than an OBC member. However, I just do not believe that the General Tribal Council will agree to giving up their authority to be the final decision maker in a removal. I've heard by some, "We elected them and we should have the authority to remove them." I support that concept. However, perhaps if you give the OBC the following responsibility: Upon proof of the allegations in the court, the OBC shall support the decision of the court and set a date whereby the General Tribal Council could either support or reject the court's decision. A special meeting of the GTC would not be required as our Oneida Constitution only requires a special meeting for OBC members.

<sup>30</sup> **Brian Doxtator:** So, I think, if anything, the timelines truly need to be looked at. It should not take 8, 9, 10, 11 months to try and remove an elected official. That's ridiculous, it's inefficient, and wherever you can streamline the process and make it by law, our law – because the Judiciary has to follow our law, not their processes. It has to move much more quicker than nine, ten months. So anyway, that's my comments for today, I say yaw^ko.

**Bradley Graham:** So this whole thing needs to be rewritten. It has to be more precise and clear. You can't have one department doing something; another department doing something else.

**Ed Delgado:** I think we need to look back at the purpose of the Removal Law. Some of the discussions taking place when it was passed. When it was passed, a lot of the boards, committees commissions, elected and non-elected, they were determining in session, their own session, they were doing a lot of removals and politics, and whatnot. The Business Committee, after hearing those, and having a lot of discussion decided maybe, for elected officials, that the position should be that the General Tribal Council put them in, and the General Tribal Council should be the body to take them out. Although I do understand the need for some of these boards, committees and commissions, where nobody is going to have the initiative to take out an elected commission, commissioner, a board, or whatever, they're just not going to do it. Concentrate on the BC maybe, but not so much on a Board.

**Legislative Reference Office**

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**Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember  
David P. Jordan, Councilmember

**LEGISLATIVE OPERATING COMMITTEE**

Public Meeting on Investigative Leave Policy Amendments and Removal Law Amendments  
Business Committee Conference Room-2<sup>nd</sup> Floor  
Norbert Hill Center  
April 30, 2015 12:15 p.m.

**PRESENT:** Brandon Stevens, Tehassi Hill, Fawn Billie, David P. Jordan, Tani Thurner, Candice Skenandore, Danelle Wilson, Edward Delgado, Brian Doxtator, Brad Graham, Bill Graham, Matt J. Denny Sr., Rae Skenandore, Mike Debraska (videoconference from SEOTS)

**Investigative Leave Policy Amendments Public Meeting (00:01-03:00)**

**Brandon Stevens:** The Public Meeting, the Investigative Leave Policy Amendments and the Removal Law amendments. Okay, can we get a list of who's speaking? Okay, we'll start with the Investigative Leave Policy Amendments. Okay, we'll go briefly over what the amendments are proposed: Remove language that states that investigative leaves do not apply to investigations regarding appeals of disciplinary action or employee complaint investigations; reduce how long an employee can be placed on an investigative leave, this timeframe has been reduced from 30 calendar days to 15 calendar days; reduce how long an employee investigative leave can be extended, this timeframe has been reduced from 30 calendar days to 15 calendar days; require the employee's supervisor to notify the employee when to return to work and/or the disciplinary action will be taken; add an enforcement provision; amend the appeal process, only allowing the employee to appeal a disciplinary action that arises from an investigation. All right. So we have the Removal Law amendments... so we'll start with the Investigative Leave Policy – is there anyone who wishes to speak on the Investigative Leave Policy Amendments?

**Mike Debraska:** I just want to renew what I had stated earlier at the April 3<sup>rd</sup> LOC meeting, Brandon, which was, I think, too much power is being vested in the HR Manager to determine a lot of these things.

**Brandon Stevens:** Okay, we got that noted, and if there's any other questions or concerns regarding the Investigative Leave Policy I'll move to the Removal Law amendments.

**Removal Law Amendments (03:06-42:19)**

**Brandon Stevens:** All right. Removal Law amendments. I'm just going to briefly go over the notable... okay. Just briefly. As the final step in the removal process, General Tribal Council would still vote on the removal of an OBC member, but for all other elected officials, the OBC

would make the final decision, and the official would be removed from office if six OBC members voted in favor of the removal. The amendments enable Tribal boards, committees, and commissions to submit a formal removal request for their elected members, without having to collect signatures for a petition. In order to submit a removal request, the entity would only need to approve, by majority of taking such action. A new provision adds that if elected officials of a board, committee or commission violate their entity's bylaws, operating agreements, laws, regulations or SOPs, it's grounds for removal. All right, so we've got...first on the list is Brian Doxtator. Comments?

**Brian Doxtator:** I've got a green light here? All right. Yaw^ko to the LOC and for Fawn as sponsor, for this public hearing.

- 4.1-2: "orderly and fair" - according to a legal definition is "arranged to dispose in some order or pattern governed by law" – nowhere in the Law does it talk about timeliness of removals or efficiency. We need, an obvious timeline somewhere in there.
- Grounds for removal: 4.4(e). "(e)" needs to be removed. There's only one law, actually two now, but ... one law, which allows for removal. The Code of Ethics. <twaliw@seh states that enforcement, this code will be enforced according to the following government officials may be subject to removal if elected or termination . . . anyway, the sentence structure in that basically says that you can only be removed if a law says you can be removed for violating the law. And there's only really one major law - Conflict of Interest has it - but it's the Code of Ethics. So the only way you can remove an official for violating the Law is in alignment with what the Code of Ethics says. I really strongly recommend that the sentence either is restated to "in violation of all laws, GTC resolutions and BC resolutions," even though we see resolutions as law. In theory, an elected official could violate personnel policies and procedures, their oath, GTC resolutions, GTC directive, and there's nothing that gives enough to remove that.
- 4.5: Petition. 200 words needs to be removed, we need to focus more on the facts and not the, granted you don't want a dissertation, you don't want a 17 page dissertation, but 200 words is not, it's almost undoable to be able to succinctly explain why and what. And so, I think the law needs to be more focused on the facts and not 200 words.
- Take out the 50 eligible voters, it has no value. I know it's in the Constitution but that's more about calling a GTC meeting. It adds no value to the process.
- Petitions shall be filed within 30 days once you start acquiring signatures: based upon my experience, you have got to educate, you have to do a lot of things. And 30 days is not enough time. I'm recommending to at least 60 to provide more time, because it's not just going to get signatures, you're actually talking, visiting with people. You're looking at a half hour, 45 minutes per person; when you meet the threshold of how many signatures you need, it's just not doable.
- 4.5-3(a) and (b): this section is more administrative, not law. Either remove, replace sentence structure; mandating "the Secretary's Office shall create a process for removal petitions." And just take out that whole, "you need your name, address..." whatever that is. That's just administrative, it's not a law thing.
- And I do have issue with "elected officials do not have" ...I don't ... elected officials don't have the same rights as citizens and if they truly violate the Law and it's something administratively ... process is not adhered to, then it's, then it's done. And yet, the elected official still could have violated the law. And I'm not saying we should violate their due process, but I think a little bit more... elasticity around this issue?

- 4.6: preliminary review; 20 calendar days. Process is not efficient. I'm just saying, preliminary review, 20 calendar days, it's not efficient.
- 4.6-3 adds no value to the removal process.
- 4.7: Hearing. Language needs to be re-worded to support the concept that they either validated the information is valid or the information/data is invalid. When you have a hearing, it's almost like, you're at a court hearing, trying to... argue against and for. And the way the law is written, it should be more about the hearing is to validate that yes you have the facts, yes these are the validated facts, and yes this goes to General Tribal Council. No, you don't have facts? It's not validated, it's not true; we're not sending it to General Tribal Council. This is whatever... hearsay or rumors, or whatever. But to have an actual hearing and then you send it to General Tribal Council? That's ridiculous.
- Burden of proof. Clear and convincing evidence is a medium level of burden of proof which is a more rigorous standard of proof to meet than the preponderance of evidence standard. So if you have facts, I really think the law should get away from clear and convincing evidence and it should be the preponderance of evidence – it is less rigorous and so forth.
- 4.7-3: Findings – the process is unclear in the law.
- 4.8-4: Quorum. Factual information shall be provided to... so I was thinking on the... if there's no quorum at General Tribal Council, I agree that this sends a message. But if you have factual information and General Tribal Council doesn't meet, the elected official still has violated the law based on facts. And what I'm saying is if there is no quorum, that information should go to the Business Committee because they need to protect our assets within the organization, the elected official may lose their email, may lose access to financial databases, maybe even lose supervisory capabilities if they supervise staff. Just because it becomes political doesn't mean it didn't happen. And if we're... I know we're looking at politics here but are also looking at facts. And if something is factual... just because there was no quorum doesn't make it not happen. And I think the Business Committee then should say "Ok, they weren't removed, there was no quorum, however, this is something that did happen, and we need to address that within the organization.

So, I think, if anything, the timelines truly need to be looked at. It should not take 8, 9, 10, 11 months to try and remove an elected official. That's ridiculous, it's inefficient, and wherever you can streamline the process and make it by law, our law – because the Judiciary has to follow our law, not their processes. It has to move much more quicker than nine, ten months. So anyway, that's my comments for today, I say yaw^ko.

**Brandon Stevens:** Yo. Okay, I will go with Mike.

**Mike Debraska:** Just looking at this, and I've read and re-read this several times, um, I've got some real concerns here.

- 4.2-2. It says "The law may be amended or repealed by the General Tribal Council only, only pursuant to the procedures set out in the Legislative Procedures Act. I think a portion of that needs to be taken out, to just reflect that "This law may be amended or repealed by the General Tribal Council," period. I get real, real concerned when our ability is limited. It stifles us and it stifles GTC to say "oh, we have to follow this procedure. We know when something is going wrong and something is not working and somebody is not doing what they're supposed to be doing, GTC becomes the supreme

governing authority and should just be able to say “that’s it. We’re going to take you out. So I think that needs to be amended.

- Additionally I looked at the grounds for removal under 4.4 and some of these, I have some concerns with. Particularly (d), (e) and (f). What are the qualifications for office? I look at that and I say, that’s kind of a blanket statement to me, it doesn’t really mean anything. The other one is violating a Tribal law, which Brian already touched upon, and the last one is (f) Felony conviction while in office. I think a felony conviction prior to office should also be in there. I don’t believe anybody should be in a position of power if they’ve got felonies on their record. And there’s nothing that would stop that, according to this. So I think that becomes a major issue.
- Additionally, I looked at some of this stuff, here the 50 voters, which Brian already touched upon, this kind of... reflecting here...
- 4.8-3 under termination Oneida Business Committee member may only be removed from office upon the affirmative vote of 2/3 majority which again, Brian touched upon, I don’t think that should be in there.
- And again, he touched on this as well, the burden of proof. I really think that needs to be clarified a little bit better. Burden of proof.
- Additionally, under 4.9-4 removal requests, a board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request. My question to you is: Why can’t GTC members do this as well? Shouldn’t GTC have that ability as well? If you’ve got individuals who are serving on boards, committees and commissions, what about, say, the Election Board where time and time again, things are happening, things are going wrong. We know people whose rights are being abridged. Shouldn’t GTC be able to come to the Business Committee and say, “this is it, we’re going to file a formal complaint”? Is it a complaint process? Is it a removal process? I don’t know. What is that particular process? And how should that be done? Because I look at it and say “GTC’s rights are being abridged here when you’re saying only the Business Committee should have this authority, that kind of becomes to me very dangerous as well because then there are no system of checks and balance.
- Additionally, I looked at the laws that are going to be repealed. And that’s at 4.2-4, also, I noticed that several GTC resolutions and two BC resolutions would also be replaced. One of my questions to you is, or a question I have in general, is did GTC approve of the Legislative Procedures Act? And if so, when? Because I don’t ever recall GTC approving that. So, I look at that and I say there’s something serious with that because that needs to be taken a look at as well as the removal ordinance.
- And the removal ordinance is cited several times in the Comprehensive Policy Governing Boards, Committees and Commissions, but yet that’s not stated in here as being repealed. I don’t know if the Business Committee is looking at bringing that in but if it is, that’s certainly something that needs to be governed around this as well, because it does state in that policy, the Comprehensive Policy Governing Boards, Committees and Commissions, what are the things that would govern that removal.
- So, given that, I also look at the Judiciary’s ability here in this process, because at 4.10-4, it says that if the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. But yet earlier, it says that the Enrollments Office would verify those signatures. At what particular juncture, does the Judiciary then supersede Enrollments? If Enrollments has already verified those

signatures and allowed that to go forward, then why is the Judiciary suddenly being more dismissive on that? That to me doesn't make any sense. They should not have that authority. Not at that point. If somebody went out and took the time to collect those signatures because something is wrong, then for the Judiciary to arbitrarily and capriciously dismiss it and say "we find insufficient signatures", that was already vetted at the Enrollments office. They shouldn't be getting two bites at the apple. Sorry, I disagree with that. I think it abridges GTC's rights and our Constitutionality. So those are just some of the points I have.

- Additionally I do want to know in particular, why these particular pieces of legislation are being replaced? Those four that were mentioned at 4.2-4. I think that really needs to be clarified and brought back to GTC so that we can see specifically what it is that's being replaced. Thank you.

**Brandon Stevens:** So you would like those pieces of legislation to be within the presentation? Like as far as, what we're trying to accomplish in updating, I guess the relevancy to the Removal Law? As far as information? Because this is all going to GTC.

**Mike Debraska:** I'm sorry, I missed that last point.

**Brandon Stevens:** Because this is all going to GTC. Are you saying you want those pieces of legislation within the presentation, I guess, to show the relevancy in the Removal Law? Okay.

**Mike Debraska:** Exactly, because I want to know what's being replaced with what. And I think if GTC doesn't have that, again, I look at this and think, once again, I am being asked to make an informed decision on less than all the accurate information because if I don't know what's being replaced with what, then I am doing more legwork to find out what's really going on here. What did they replace, what didn't they replace, what's happening, what's not happening?

**Brandon Stevens:** Ok. So from here, we'll take this back, the LOC will look at all the public hearing comments and there will be more, I guess kicks at the cat with this legislation to see, okay, are we clarifying anything that you have questions on. And so, there'll be about three more, I believe, three more chances so we can get this cleared up with you and if any more questions arise, we'll make sure those questions can be answered, and it'll help us have a better presentation to General Tribal Council when it comes forward. And the one question that you did ask, was when was the Legislative Procedures Act adopted by General Tribal Council and that would be January 7, 2013.

**Mike Debraska:** Thank you.

**Brandon Stevens:** Yep.

**Mike Debraska:** And then the last... under the definitions under 4.3-1 under subsection (b) where it talks about "Elected official" means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee. If the BC aren't elected officials, what are they?

**Brandon Stevens:** Okay, we'll clarify that, because I know why we did that, it's the purpose of this Law, because the Removal Law actually specifically mentions the Business Committee members. But we'll clarify that, because it does seem a little out there; every law that says that it excludes Business Committee members always raises the question of "what about the Business Committee members?" So we'll figure that one out and how to... yeah, it's a two part thing, but we'll explain that a little bit better.

**Mike Debraska:** Oh, also, just one last... or two last quick points. I looked at line 34 of the Removal Law, actually lines 34 and 35 it says "the final vote on whether to remove an elected official will be made by the OBC instead of GTC, I think that's extremely dangerous as well. I think that an elected official, and again, the reason why I state that is let's say as a GTC member I've got a problem with what is happening or not happening in a certain manner and I file a complaint...shouldn't that then come to GTC so GTC can make a determination rather than just the Business Committee? Or let's say the Business Committee makes a determination and finds against ... do I then need to bring a petition? To say hey, I need to get this addressed because I don't agree with you guys. I think that kind of, to me, again, that smacks of our constitutional rights, or some of our constitutional rights being abridged.

**Brandon Stevens:** Okay. If there's nothing else, we'll move down the list, to Brad - Bradley.

**Brad Graham:** You'll have to excuse me, I didn't have this right away to go through it, but one of the things I agree with like Brian said, is that 200 word deal.

- I'd say take the Judiciary out completely. It should be like it always has been – people get a petition, it was present it, the names are verified, and the process went through GTC. Judiciary should not be involved in this. At all. Completely. It should be up to General Tribal Council for removal for all elected positions. That includes the Business Committee. Appointed positions are done by the Business Committee. Youse guys take care of that. The elected positions are done by the people for the people. And they are the ones who should handle the removals. Whether it takes one meeting or two meetings, it doesn't matter.
- That would be under definitions, that would be including the BC, to take it out of the Judiciary was the other one I had.
- The 30-day filing, that's basically the same as it was, but like I said, all elected positions should be the same. Nobody should be separated. Because the people are the ones electing youse in ... and it doesn't matter what board, committee or commission.
- What you got under 4.8 – I'm looking at the back part, the General Tribal Council meeting, where you've got 2/3 majority – take the "majority" out. It's either majority vote or 2/3 vote, that's parliamentary, I don't like hearing that, that's something the white government uses, it's not actually in the Robert Rules, parliamentary law, so, it's either majority vote we need or 2/3 vote. And in this case it would just be 2/3 vote. So that would be line 144.
- And like Mike was saying, the verification of the signatures. It has always been done by Enrollments, like I said Judiciary should have nothing to do with this, period. They can't remain unbiased because they sit in on stuff, they hear things, and like I said it should be up to us, the people of this Tribe to determine who stays, who goes. We voted youse in; that includes all of the elected officials.
- So this whole thing needs to be rewritten. It has to be more precise and clear. You can't have one department doing something; another department doing something else.

- And like Mike said with the Judiciary, why would they have any rights to go through the names? They don't. That's Enrollments. Enrollments has always verified the names. Correct? So why put the Judiciary in there? The Appeals or nobody else has ever been involved in any removals.
- It's been General Tribal Council, period. We could have one meeting, to determine the facts, whether to proceed or not, and then have another meeting if we need to. But all this other stuff has got to be taken out, period. This could be a simple law. You've got way too much garbage in here. You're protecting certain people, you're allowing certain people to do things that shouldn't be doing it, just rewrite this whole thing, make it simple. I mean, petition signed – people have taken their time, they've verified their facts. You don't need the Judiciary; you don't need anyone else involved in this. The people who elected the people should be the ones deciding on who gets removed, period. Thank you.

**Brandon Stevens:** Thanks, Brad. There's nobody else on the list for speaking, is there any other questions or concerns? Hmm, no, let me see. There's two Investigative Leave Policies, let's see... okay, you have a blank spot there, I'll put you in. Sorry, Ed. You were first, yeah, otherwise.

**Edward Delgado:** I think we need to look back at the purpose of the Removal Law. Some of the discussions taking place when it was passed. When it was passed, a lot of the boards, committees commissions, elected and non-elected, they were determining in session, their own session, they were doing a lot of removals and politics, and whatnot. The Business Committee, after hearing those, and having a lot of discussion decided maybe, for elected officials, that the position should be that the General Tribal Council put them in, and the General Tribal Council should be the body to take them out. Although I do understand the need for some of these boards, committees and commissions, where nobody is going to have the initiative to take out an elected commission, commissioner, a board, or whatever, they're just not going to do it. Concentrate on the BC maybe, but not so much on a Board. So, this is... you're trying to do it to get board members who are not showing up or making... doing bad things... have a way to hold them accountable. So when I was reading that I was looking at the processes, and for the processes, it ...shows, it doesn't provide an avenue whereby someone being accused of wrongdoing to... I know they have a hearing, and thank goodness for the hearings. I totally disagree with anyone saying that, well, you can sign a petition and go to GTC and GTC can adjudicate that provision, that wrongdoing. GTC is not an adjudicative body and they don't know how and they won't do it right, they'll play strictly on politics and people who are accused of things could be removed and they never did it. It's just politics, pure politics... at least they're having a trial. It gives you a chance. But, speaking for the person being removed. It's a great expense. It could be. You're going to have to have a lawyer there, and that could cost you thousands. I know one removal, my removal – three days of hearings. Very, very expensive proposition.

- And it doesn't say who represents the board or commission who is trying to remove that board member. It says "the person" which is inconsistent with their purposes is that either a petition can remove that Board member, and we're not talking about BC, or the Board, Committee or Commission. But it says in your proposal: "the person" is responsible for approving those facts. It doesn't say which person on that Board and it also doesn't say: does the board have an attorney and who pays for that attorney? Is that the Tribe? Or is that the Board? The Board members?

- Also under there it says they can be removed by six votes. It doesn't say whether or not the chairwoman or chairman can vote. I know you mentioned it in our amendments, proposed amendments for the Constitution? It specifically mentions that, you know, eight votes with the chair not voting. So on this one maybe you need to determine whether or not you want the Chair to vote; what is the intent there. Otherwise, the Constitution doesn't really say.
- Mainly the main questions on those were that: who is going to cover the cost of the .... "I know it says at your own cost", but what if those allegations fail? What if they're a bunch of lies? You still paid the \$3000 ... there should be a way whereby the accuser is responsible. Or else they can just go out there and make the allegations, you can be shown to be not guilty of the things and you still have to pay the costs. The accuser should be responsible, and if he can't prove those allegations? He or she should be responsible for those court costs, and the attorney fees.
- I know you left pretty much intact the removal of a BC member, but, and I covered this before with the old OBC, under the preliminary hearing, it restricts that the discussions can only be on the allegations in the petition. But it doesn't say, when you have your hearing, it doesn't protect the accused from being, from new charges being added on the day of the hearing. I know it's unthinkable that maybe you didn't put it in here, because who would think that you could do that? But in my removal, the day of the hearing, new charges were added. And my attorney said "how do you expect me to defend my client when I had no chance to study those allegations, or to bring witnesses, or create an argument against those allegations?" And the response of the Judiciary was, "it'll be all right, don't worry about it." Well, I think since that's part of our history now, as a removal hearing, it was allowed once. Unless you want it to happen again, I think you need to provide that you can't add allegations on the day of the hearing. New charges. It's like you're on trial for bank robbery and on the day of your trial you're charged with... murder or something. It's just unthinkable. Anywhere. And we shouldn't allow it here. And it happened, so we need to remedy it with mentioning it in the Removal Law under hearings.
- I'd like to comment on a couple more things being said here today. I think I already said that under the old process, before the Removal [law] was passed, the Removal [law] of 1981 or something, General Tribal Council, after receiving the petition, organized an investigative body who acted somewhat like a... to gather facts. Well, those are highly political and not a judicial body. Anyone accused of a very... of crimes against their tribe, or their nation, they should prove it. And they should prove it by clear and convincing evidence, not a preponderance of the evidence; that means you can have a lot of evidence there, half of it could be lies, or all of it could be lies, but at least you've got a big old case there. It's not asking too much to, when you're going to take away the people's vote, and remove an elected person that...

*[his phone rings]*

...hmmm. Some things never change.

*[laughter]*

... that they prove that you did it. Prove it with clear and convincing evidence that you did those things.

- And that person making those allegations, if they fail to prove those, maybe they need to hold a ... be held to some consequences. Because they sure did cost the Tribe a lot of

money, and the person being accused a lot of money. And basically what you have, often, is a bunch of lies.

So that's my comments. But mainly I came here to just talk about added charges on the day of trial. That's totally unthinkable. But the other ones are important too. But I don't support going back to the old way where an investigative body interviews and studies the facts – but they're totally political, and they're not judges and judicial hearing bodies, and even though I spoke against the Judiciary on this, at least it was a hearing. You could present your side and they had to prove what they said if they did not prove it. Yaw^ko.

**Brandon Stevens:** Yo. All right, well, thank you everyone, general intent is to make this as objective as possible. So those subjective thoughts and politicized comments and agendas are really kind of taken out of there, so we want to be really specific in to laws, statutes, resolutions, General Tribal Council directives, and seeing as the General Tribal Council elects the bodies that we're talking about that those directives should be first and foremost adhered to. So if there's nothing else, no other comments, I will close... Brad?

**Brad Graham:** While going through this again, I see under 4.4-2... you have felony conviction while in office, that should be felony conviction before or while in office. I mean, there should be a personal background investigation.

- And you also have in there that “no petition should request the removal of more than one” - that should be taken out. You got three, four Business Committee members – or any officials, they shouldn't be done one at a time. You should be able to bring 2, 3, 4, or the whole works, for a removal. So I'd like to see that taken out too. That's pretty much it that I noticed.

**Mike Debraska:** I have one more thing.

**Brandon Stevens:** Go ahead.

**Mike Debraska:** Just commenting on what Brad eluded there, as well, under 4.4-2 “elected official” I noticed that on section (b) it says “failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve month period for any reason” which isn't under the Business Committee under 4.4-1. And I think I believe it should be. I think if a BC member's elected here, if you are not going to attend the meetings, what function are you serving? Because it certainly isn't for the people.

**Brandon Stevens:** Okay. Noted. Seeing no other questions or discussions, I'll close this public meeting at 1:00 on the dot. Thank you everyone for your comments, and be on the lookout for the Kalihwisaks, when we re-do these...

**Mike Debraska:** Brandon, may I ask you, is there an audio recording of this meeting? A videotape?

**Brandon Stevens:** It's audio, yeah.

**Mike Debraska:** Audio?

**Brandon Stevens:** Yeah.

**Mike Debraska:** I can request that, then? From the Secretary's Office or Records Management?

**Brandon Stevens:** It'd be the Secretary's Office.

**Mike Debraska:** Okay, thank you.

**Brandon Stevens:** Thanks, Mike. Okay.

**-End of meeting-**

### Written Public Hearing Comments Re: Amendments to Removal Law

Regarding comments regarding Amendments on Removal Law which would lower the burden of proof from the current "Proof by Clear and Convincing Evidence," I do not agree that the standard should be lowered to a standard of proof by a "Preponderance of the Evidence." Not only is a removal of an elected official too important an issue to have him/her adjudged such as by a lower standard, but it gives the appearance that the newly elected Oneida Business Committee has an agenda to remove someone one of its members. Also, what's wrong with the current standard of having to prove a petitioner's allegations with clear and convincing evidence. It is only reasonable that when someone makes allegations against another human being, that such allegation(s) would have to be proved with clear and convincing evidence.

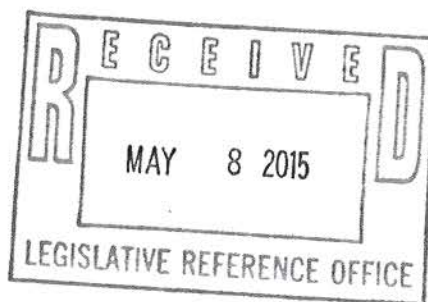
It would also like to submit written testimony recommending that once the hearing begins whereby the petitioner has to prove his allegations, that no additional charges can be added. In the most recent Removal attempt, the court (Oneida Appeals Commission) added an additional charge on the day of the hearing. The charge was in no way part of any petition submitted to the Tribal Secretary's Office and the defendant had no opportunity to prepare a defense. Unthinkable behavior for any court, but it happened here on our Reservation and by our court of that time. As improper as it was, I believe that the OBC has the responsibility to insure that such court behavior does not happen again by prohibiting it in the amended law.

Finally, I understand the issue that the OBC is trying to solve with the amendments which would provide a lesser number of signatures required for the removal of an elected official other than an OBC member. However, I just do not believe that the General Tribal Council will agree to giving up their authority to be the final decision maker in a removal. I've heard by some, "We elected them and we should have the authority to remove them." I support that concept. However, perhaps if you give the OBC the following responsibility: Upon proof of the allegations in the court, the OBC shall support the decision of the court and set a date whereby the General Tribal Council could either support or reject the court's decision. A special meeting of the GTC would not be required as our Oneida Constitution only requires a special meeting for OBC members.

Submitted by Edward Delgado

Please note that the above comments are in addition to verbal comments made at the Public Hearing.

Please allow for typos, I miss Kitty.





# Legislative Operating Committee

## July 1, 2015

# Election Board Bylaws Amendments

**Submission Date:** March 18, 2015

☐ Public Meeting:  
☐ Emergency Enacted:

**LOC Sponsor:** Brandon Stevens

**Summary:** *The Election Board had requested amendments to their Bylaws per the current Election Law and previous GTC action.*

**3/18/15 LOC:** Motion by Jennifer Webster to add the Election Board Bylaws Amendments to the active files list, and to defer this item to the Legislative Reference Office for processing and to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor.

**5/20/15 LOC:** Motion by Fawn Billie to accept the Election Board Bylaws Amendments memorandum; seconded by David P. Jordan. Motion carried unanimously.

**6/17/15 LOC:** Motion by David P. Jordan to defer the Election Board Bylaws Amendments to the sponsor to bring back a report in two weeks; seconded by Fawn Billie. Motion carried unanimously.

### Next Steps:

- Review the sponsor's report and determine next steps.



# Legislative Operating Committee

## July 1, 2015

### ONGO Amendments

**Submission Date:** September 17, 2014

☐ Public Meeting:  
☒ Emergency Enacted: 5/1/15  
 Expires: 11/1/15

**LOC Sponsor:** Brandon Stevens

**Summary:** *Amendments are being sought to permanently amend the Law to ensure compliance with NIGC requirements as well as update the Law.*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Amendments to the Oneida Nation Gaming Ordinance to the Active Files List on an emergency basis; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to direct the Legislative Reference Office to bring back an analysis, resolution and statement of effect for the October 1, 2014 LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.

*Note: Brandon Stevens will be the sponsor.*

**10/01/14 LOC:** Motion by Tehassi Hill to approve the resolution with the change from seven years to three years, and to forward it to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

**10/08/14 OBC:** Motion by Tehassi Hill to adopt resolution 10-08-14-C Oneida Nation Gaming Ordinance Emergency Amendments, seconded by Fawn Billie. Motion carried unanimously.

**03/25/15:** Oneida Gaming Commission requests a six-month extension so that all appropriate revisions can be made prior to permanent ONGO revisions are adopted by the LOC/OBC.

**04/15/15 LOC:** Motion by Fawn Billie to forward the ONGO Emergency Amendments to the Oneida Business Committee for consideration; seconded by Tehassi Hill. Motion carried unanimously.

**04/22/15 OBC:** Motion by Brandon Stevens to adopt resolution 04-22-15-B ONGO Emergency Amendments Extension, seconded by Fawn Billie. Motion carried unanimously.

**5/20/15 LOC:** Motion by Fawn Billie to defer the ONGO Amendments to the Legislative Reference Office and direct that a legislative and fiscal analysis be developed once the draft is completed; seconded by Tehassi Hill. Motion carried unanimously.

#### Next Steps:

- Review draft and analysis and consider forwarding to a July 23, 2015 public meeting.



*Notice of*  
**Public Meeting**

*to be held*

**July 30, 2015 at 12:15 p.m.**

**OBC Conference Room—2nd Floor, Norbert Hill Center**



***Topic: Oneida Nation Gaming Ordinance Amendments***

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ◆ Update the Ordinance in order to comply with National Indian Gaming Commission (NIGC) regulations by:
  - \* Requiring the identity of a person being interviewed for a background investigation to be kept confidential;
  - \* Requiring the Commission to retain all applications, investigative reports and eligibility determinations for at least three years from the date the applicant's employment was terminated;
  - \* Requiring the Commission to forward a copy of its decision to suspend, condition or revoke a license to NIGC within forty-five days of receiving NIGC's notification indicating that an employee is not eligible for a license.
  - \* Clarifying that the Commission takes fingerprints as required in the Ordinance.
  - \* Including the process for determining an applicant's eligibility for a license and notice to NIGC.
  - \* Clarifying when an Applicant may be issued a License
  - \* Including a section that allows for NIGC review of a License and actions that will or may be taken based on that review.
  - \* Requiring the Commission to forward a hearing decision regarding a License to NIGC if the License was suspended, conditioned or revoked based on a notification from NIGC.
  - \* Requiring an approved revenue allocation plan before per capita payments are made
- ◆ Clarify how the Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and when they become effective.

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

**Public Comment Period—Open until August 6, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

**Mail: Legislative Reference Office**  
**PO Box 365**  
**Oneida, WI 54155**

**Phone: (920) 869-4376 or (800) 236-2214**  
**E-Mail: [LOC@oneidanation.org](mailto:LOC@oneidanation.org)**  
**Fax: (920) 869-4040**

**Chapter 21**  
**Oneida Nation Gaming Ordinance**  
**Thatiwi⇒Stunya=tha Olihw@ke**  
**Matters of interest to where they make the money**

21.1. Purpose and Policy	21.11. Licenses, Generally
21.2. Adoption, Amendment, <del>Applicability</del> , Repeal	21.12. Gaming Employee License
21.3. Jurisdiction	21.13. Gaming Services Licensing and Non-Gaming Services Permitting
21.4. Definitions	21.14. Gaming Facility License
21.5. Oneida Business Committee: Powers and Duties	21.15. Gaming Operator License
21.6. Oneida Gaming Commission	21.16. Games
21.7. Gaming Surveillance: Powers, Duties and Limitations	21.17. Allocation of Gaming Funds
21.8. [Reserved for future use.]	21.18. Audits
21.9. Gaming Security Department	21.19. Enforcement and Penalties
21.10. Background Investigations	

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<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Oneida Nation Gaming Ordinance (ONGO)				
<b>Requester</b>	Tamara Vanschyndel (Oneida Gaming Commission)	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Taniquelle Thurner
<b>Reason for Request</b>	<p>On June 25, 2014, the Oneida Business Committee (OBC) adopted minor terminology amendments to ONGO, which replaced references to the Oneida Appeals Commission/Tribal Judicial System with the Tribal Judiciary. Those amendments were then submitted to the National Indian Gaming Commission (NIGC) for approval, as required. However, NIGC returned the submission after three discrepancies were found between ONGO and federal law/NIGC regulations. To address those discrepancies, the OBC adopted emergency amendments to ONGO on October 8, 2014, and extended the emergency adoption on April 22, 2015. The emergency amendments are set to expire on November 1<sup>st</sup>, 2015.</p> <p>Now, this draft is being presented for permanent adoption. The amendments include the changes adopted on an emergency basis, and additional changes made based on a request from the Oneida Gaming Commission.</p>				
<b>Purpose</b>	Governs Oneida Tribal gaming				
<b>Authorized/ Affected Entities</b>	NIGC, Oneida Gaming Commission, the Oneida Tribal Judiciary				
<b>Due Process</b>	The Gaming Commission hears appeals of licensing decisions, then Judiciary				
<b>Related Legislation</b>	Gaming SOPs, an agreement between HRD and the Gaming Commission for conducting background investigations (as required by ONGO 21.10-1)				
<b>Policy Mechanism</b>	Licensing				
<b>Enforcement</b>	Licensing Suspension, Revocation				

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**Overview**

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The proposed amendments make permanent the changes that were adopted on an emergency basis in 2014 in order to comply with NIGC requirements. Additional changes are made to one of those proposed amendments, and to:

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- Clarify that the Oneida Gaming Commission (the Commission) may issue a Gaming License (hereinafter: license) to new employees after they have notified the National Indian Gaming

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Commission (NIGC) of the determination of eligibility, without needing to wait for approval, objections, or any other a response from NIGC.

- Clarify requirements pertaining to Rules of Play and Oneida Gaming Minimum Internal Controls (Minimum Internal Controls), and how they are reviewed and adopted.
- Add detail, and improve clarity and consistency throughout the Law.

#### *Emergency Amendments*

The proposed amendments permanently adopt the changes adopted on an emergency basis on October 8, 2014, which were extended on April 22, 2015; which made in order to comply with federal law and NIGC requirements. These changes include:

1. Clarifying that the identity of any person interviewed in order to conduct a background investigation, is confidential. [21.10-2]
2. Requiring the Commission to retain various records for three years after a Gaming Employee's (hereinafter: employee) employment is terminated, instead of for seven years after the employee begins employment. [21.12-5(e)]
3. Adding that when the Commission makes a final decision to suspend, place a condition on or revoke a license based on information from NIGC that the employee is not eligible; the Commission must forward a copy of the decision to NIGC within 45 days. [21.12-9(e)]. These proposed permanent amendments also require the Commission to forward a copy of a final decision to suspend, place a condition on, or revoke a license when that action was taken based on information from another source besides NIGC. This additional change to ONGO is being made to reflect the Commission's current practice of doing so. [21.12-9(e)]

#### *Eligibility Determinations and Notifying NIGC*

When a new employee begins working at a Gaming Operation, his or her employment application, along with specific other information listed in the Law, must be submitted by the employee to the Commission, instead of from the Commission to the NIGC. [21.12-5(a)]

Within 60 days after a new employee starts, the Commission is still required to review the employee's background investigation, make a determination of whether the employee is eligible for a license, and to provide this information and determination to NIGC. However, the amendments add more detail - instead of just requiring the Commission to submit a "report" to NIGC, the amended Law requires the Commission to create an Investigative Report based on the employee's background investigation, and then, to submit to NIGC a Notice of Results of Background Investigation (Notice of Results). The amendments also identify the purpose for submitting this notice/information to NIGC: it is submitted for inclusion in the Indian Gaming Individual Record System. [21.12-5(b) and (c)]

New language identifies specific information that must be included in the Investigative Report and/or Notice of Results:

- The Investigative Report must identify the steps taken in conducting the employee's background investigation, the results obtained, the conclusions reached and the basis for those conclusions. It must also identify:
  - License(s) that have previously been denied;
  - Gaming licenses that have been revoked, even if subsequently reinstated;
  - Every known criminal charge brought against the employee within the 10 years before the application;
  - Every felony conviction or any ongoing prosecution. [21.12-5(c) and (d)(3)]

- The Notice of Results must include a copy of the Commission’s eligibility determination for that employee, a summary of the Investigative Report, and the employee’s name, date of birth, social security number, and start date. The amendments also add that additional or alternate information will be forwarded as directed in NIGC regulations or rules. [21.12-5(d)]

#### *Issuing a License to New Employees*

Amendments clarify that the Commission does not need to wait for a response from NIGC before issuing a license to the employee – after submitting the Notice of Results to NIGC, the Commission may issue the license at any time. [21.12-6] To support this, new language is added to clarify that the Commission not only makes the final decision on whether to issue a license, but also on whether to suspend or revoke a license, if one has already been issued. [21.12-8]

New requirements are added to reflect this change:

- Now, whenever the Commission issues or denies the issuance of a license to an employee, the Commission must notify NIGC within 30 days. [21.12-6]
- Any employee who does not have a license 90 days after the start of employment shall have his or her employment terminated. [21.12-6]
- If the NIGC notifies the Commission that an employee is not eligible for employment, the Commission must immediately suspend the employee’s license and provide the employee with written notice of the suspension and revocation, and notice of a time and place for a hearing on the proposed revocation. [21.12-8(d).]

#### **Rules of Play and Oneida Gaming Minimum Internal Controls**

The amendments change some of the requirements relating to Rules of Play and Oneida Gaming Minimum Internal Controls (Minimum Internal Controls), as follows:

- Rules of Play and Oneida Gaming Minimum Internal Controls currently become effective once they are adopted by the Oneida Business Committee (OBC). Under the amendments, they would become effective upon adoption by the Commission, but they are subject to review and ratification by the OBC.
- To clarify responsibilities, the amended Law makes Senior Gaming Management, instead of Gaming Operations, responsible for reviewing and providing comments on any proposed Rules of Play or Minimum Internal Controls.
- The amendments change the explanation of what Rules of Play and Minimum Internal Controls are. Instead of being identified as “adopted and approved industry standards” they are identified as “minimum standards.” And instead of stating that these standards are “for Gaming Operations”, the amendments identify them as standards “with which the Gaming Operations are required to comply and are audited against.” [21.6-14]

#### **Other**

Additional changes made to the Law include:

- Deleting a reference to the Administrative Procedures Act (APA) and replacing it with a reference to the Tribe’s “administrative procedures law.” This would resolve potential conflict with future changes to (or repeal of) the APA. [21.12-9(g)]
- Clarifying responsibilities by identifying the Commission as responsible for taking the fingerprints required for a license application. [21.12-2(m)]

- Specifically identifying what must be included in the Commission's written decision when a licensing decision is appealed: a determination of whether to uphold their original licensing decision, including whether to revoke or reinstate a license. [21.12-10]
- Adding that per capita payments can only be made pursuant to an approved revenue allocation plan. [21.17-1(b)]

### Miscellaneous

Sections 21.2 and 21.4 were updated to comply with the requirements of the Legislative Procedures Act. Various other minor amendments were made to ensure compliance with tribal drafting and formatting standards. These changes did not affect the content of the Law.

A public meeting has not been held.

### Considerations

1. Although both Federal Law [25 CFR 558.4] and this Law [21.12-9(e)] require certain licensing/hearing decisions to be sent to NIGC within 45 days, 21.12-10 also provides that any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission, within 15 days after receiving the decision. The Commission must certify the record within 30 days, and issue a written decision within 120 days after receiving the request, and then that decision may be appealed to the Judiciary on another timeline. These timelines exceed the 45 day-requirement and the Law does not identify whether any later decision would also need to be submitted to NIGC.

*Recommendation:* The LOC may want to consider identifying a timeline for notifying NIGC of any later decisions, and/or a requirement for notifying NIGC when any decisions that are submitted to NIGC are appealed.

2. Now that the Law clarifies that the Commission may issue or suspend a license without waiting for NIGC approval, it's not clear why the Law still identifies a 30-day period for NIGC to respond after being notified of the Commission's determination of eligibility (or ineligibility) for an employee to be licensed. Section 21.12-8 identifies that within 30 days after receiving the notice of results from the Commission (which includes a summary of the investigative report and the Commission's determination about whether the employee is eligible for a license):

- The NIGC Chairman may request additional information from the Commission concerning the employee, and such a request suspends the 30-day period until the NIGC Chairman receives the additional information.
- If NIGC notifies the commission that it has no objection to issuing the license, the Commission may grant the license to the employee.
- If the NIGC objects to issuing a license to the employee, the Commission must reconsider the application, but still makes the final decision.

Under the amendments, these provisions are revised to clarify that if NIGC notifies the Commission that it has no objection, the Commission may grant the license if it hasn't already done so. And if NIGC objects to the issuance of a license to the employee, the Commission still makes the final decision as to whether to issue a license, or if a license has already been issued, whether to suspend/revoke the license.

Now that the Commission does not have to wait for a response from NIGC before issuing a license, this 30-day timeline for an NIGC response may do more to confuse than to clarify; as it

doesn't appear to serve any purpose. For example, the Chairman of NIGC may request more information about an applicant during that 30 day period – but what happens if they request that information after the 30 day period? As written, this could be interpreted as meaning that the Commission does not need to comply with a request from the NIGC chair for more information, after those 30 days. Also, a request from the Chairman “tolls” (pauses) the 30 day period, and there does not seem to be a reason to toll a 30-day period since the Commission no longer has to wait for a response from NIGC before making a licensing decision.

*Recommendation:* The LOC may want to consider deleting the 30-day requirement or more clearly identifying when or how it is still necessary.

3. Section 21.12-8(d) states that if a NIGC notifies the Commission that a licensed Gaming Employee is not eligible for employment, the Commission must immediately suspend the license “in accordance with section 21.12-9.” However, section 21.12-9(c) states that a license may only be immediately suspended if, “in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee.” There may be confusion between these two provisions as to whether the intent is to always require immediate suspension whenever the NIGC notifies the Commission that an employee is ineligible, or if immediate suspension is only required after NIGC notifies the Commission of an employee’s ineligibility if the Commission determines it is necessary for the public interest, and effective regulation and control of Gaming Activities.

- Also 21.12-8(d) does not clearly create a separate requirement; it states that a license will immediately be suspended *in accordance with 21.12-9*. However, 21.12-9 and 21.12-9(e) both contain references to both 21.12-8(d) and 21.12-9(c) – these are circular references, because 21.12-8(d) refers to 21.12-9.
- There may also be confusion between 21.12-8(d) and 21.12-9, which refer to each other and it is not clear which provision supersedes the other, or how:
  - 21.12-8(d): the Commission shall immediately suspend the License in accordance with section 21.12-9.
  - 21.12-9. Except as provided in section 21.12-8(d) or 21.12-9(c), no License may be suspended or revoked except after notice and opportunity for hearing.

*Recommendation:* The LOC may want to consider either deleting 21.12-8(d) or adding clarification regarding how it deviates from 21.12-9, which already addresses what happens if the NIGC provides information that an employee is not eligible for a license.

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## Chapter 21

### Oneida Nation Gaming Ordinance

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#### 21.1. Purpose and Policy

21.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Tribe of Indians of Wisconsin regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and

hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

21.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Tribe is the primary beneficiary of its Gaming Operations and has the sole proprietary interest, and that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly, and that all internal departments, enterprises, officials and employees of the Oneida Tribe work cooperatively to advance the best interests of the Oneida Tribe to protect the Tribe's gaming resources, protect the integrity of all ~~g~~Gaming ~~a~~Aactivities operated under the jurisdiction set forth in this Ordinance and to ensure fairness of all games offered to the Tribe's gaming patrons.

## **21.2. Adoption, Amendment, ~~Applicability~~, Repeal**

21.2-1. *Adoption.* This Ordinance ~~is was~~ adopted ~~under the authority of the Constitution of by~~ the Oneida ~~Tribe of Indians of Wisconsin by Oneida~~ General Tribal Council ~~Resolution # 7~~by ~~resolution GTC-07-05-04-A~~ and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D ~~and~~, BC-06-25-14-B, ~~and~~.

21.2-2. *Amendment.* This Ordinance may be amended ~~or repealed~~ by the Oneida Business Committee or the Oneida General Tribal Council ~~pursuant to the procedures set out in accordance with Tribal law~~the Legislative Procedures Act.

21.2-3. *Severability.* Should a provision of this Ordinance or the application ~~of this Ordinance thereof to any person or circumstances~~ be held as invalid, ~~the such~~ invalidity shall not ~~effect~~affect other provisions of this Ordinance.

~~21.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions~~ which are considered to have legal force without the invalid portions.

~~21.2-4. inconsistent with~~In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this law. Specifically, Ordinance shall control. Provided that, this Ordinance repeals the following ~~resolutions are repealed by this law:~~

- (a) BC-~~04~~-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);
- (c) GTC-~~07-06~~-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-~~7-6~~07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-~~303~~-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-~~404~~-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

21.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

~~21.2-6.~~ *Name.* This Ordinance shall be known as the Oneida Nation Gaming Ordinance or ONGO.

21.2-~~67~~. *Preemptive Authority.* The Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

## **21.3. Jurisdiction**

21.3-1. *Territorial Jurisdiction.* This Ordinance extends to all land within the exterior

boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

21.3-2. *Subject Matter Jurisdiction*. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Oneida Tribe as set forth in section 21.3-1.

21.3-3. *Personal Jurisdiction*. This Ordinance shall govern:

- (a) the Tribe;
- (b) tribal members; and
- (c) individuals and businesses leasing, occupying, or otherwise using Tribal ~~f~~Fee ~~L~~Land on the Reservation and all Tribal Trust Lands.

#### 21.4. Definitions

21.4-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized through-out this document refer to the defined words and phrases in this section. All words or phrases not defined ~~in this section~~herein shall be ~~interpreted based on~~used in their ~~plain~~-ordinary and everyday ~~meanings~~sense.

21.4-2. *Applicant* means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

21.4-3. *Background Investigation* means a standard and thorough investigation conducted by the Oneida Tribe in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

21.4-4. *Class I Gaming* means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

21.4-5. *Class II Gaming* means:

- (a) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:

- (1) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.
- (2) The holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.
- (3) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

- (b) Card games that:

- (1) Are explicitly authorized by the laws of the State; or
  - (2) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

21.4-6. *Class III Gaming* means all forms of Gaming that are not Class I or Class II.

21.4-7. *Commission* means the Oneida Gaming Commission as established by this Ordinance.

21.4-8. *Commissioner* means a duly elected member of the Oneida Gaming Commission.

21.4-9. *Compact* means the 1991 Tribe-State Gaming Compact between the Tribe and the State of Wisconsin as amended and any future amendments or successor compact entered into by the Tribe and State and approved by the Secretary of the United States Department of Interior.

21.4-10. *Compliance Certificate* means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

21.4-11. *Environmental Assessment* means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 et seq., and all related Federal regulations.

21.4-12. *Fraud* means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

21.4-13. *Games, Gaming, or Gaming Activity* means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

21.4-14. *Gaming Employee* means any person employed by a Gaming Operation.

21.4-15. *Gaming Facility* or *Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar occasion.

21.4-16. *Gaming Operation* means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

21.4-17. *Gaming Operator* means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

21.4-18. *Gaming Services* means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

21.4-19. *Indian Gaming Regulatory Act* or *IGRA* means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, et seq., as amended.

21.4-20. *Judiciary* means the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

21.4-21. *License* means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A ~~License~~ License ~~shall~~ must be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.

21.4-22. *Licensee* means a person or entity issued a valid License.

21.4-23. *NIGC* means the National Indian Gaming Commission.

21.4-24. *Oneida Business Committee* means the elected governing body of the Tribe exercising authority delegated from the Oneida General Tribal Council of the Oneida Tribe of Indians of Wisconsin under Article IV of the Constitution and By-laws for the Oneida Tribe of Indians of Wisconsin, approved December 21, 1936, as thereafter amended.

21.4-25. *Oneida General Tribal Council* means the governing body of the Oneida Tribe of Indians of Wisconsin as determined by the Tribe's Constitution.

21.4-26. *Ordinance or ONGO* means the Oneida Nation Gaming Ordinance as it may from time

to time be amended.

21.4-27. *Regulatory Incident* means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

21.4-28. *Remediation* means efforts taken to reduce the source and migration of environmental contaminants at a site.

21.4-29. *Reservation* means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

21.4-30. *Senior Gaming Management* means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

21.4-31. *State* means the State of Wisconsin, its authorized officials, agents and representatives.

21.4-32. *Tribe* means the Oneida Tribe of Indians of Wisconsin.

21.4-33. *Tribal Fee Land* means all land to which the Tribe holds title in fee simple.

21.4-34. *Tribal Trust Land* means all land to which the United States holds title for the benefit of the Tribe pursuant to federal law.

## **21.5. Oneida Business Committee: Powers and Duties**

21.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

21.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

21.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Tribe, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67, Real Property Law.

21.5-4. The Oneida Business Committee delegates to the Commission, as set out in section 21.6-14, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and enforcement of laws and regulations, as identified in this Ordinance.

21.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

21.5-6. The Chairperson of the Tribe shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

## **21.6. Oneida Gaming Commission**

21.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

21.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

21.6-3. *Duration and Attributes.* The Commission shall have perpetual existence and succession in its own name, unless dissolved by Tribal law. Operations of the Commission shall be conducted on behalf of the Tribe for the sole benefit of the Tribe and its members. The Tribe reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe, or on behalf of the Commission, whenever the Tribe considers it necessary to protect the sovereignty, rights, and interests of the Tribe or the Commission.

21.6-4. *Sovereign Immunity of the Tribe.*

(a) All inherent sovereign rights of the Tribe with regard to the existence and activities of the Commission are hereby expressly reserved.

(b) The Tribe confers upon the Commission sovereign immunity from suit as set forth in the Tribe's Sovereign Immunity Ordinance.

(c) Nothing in this Ordinance nor any action of the Commission shall be construed to be a waiver of its sovereign immunity or that of the Tribe, or consent by the Commission or the Tribe to the jurisdiction of the Judiciary, the United States, any state, or any other tribe, or consent by the Tribe to any suit, cause of action, case or controversy, or the levy of any judgment, lien, or attachment upon any property of the Commission or the Tribe.

21.6-5. *Requirements of Commission Membership.*

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. In addition, candidates for election to the Commission shall meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 21.6-13:

(1) Be an enrolled member of the Tribe;

(2) Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

(3) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person shall be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined by the Oneida Conflict of Interest Policy.

(c) *Background Investigation.* No person shall be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

(d) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 21.6-5 and 21.6-6 upon being elected or appointed to office.

21.6-6. Unless pardoned for activities under subsection (a) and/or (d) by the Tribe, or pardoned for an activity under subsection (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsection (a) and/or (d) by the State or Federal government, no individual

shall be eligible for election or appointment to, or to continue to serve on, the Commission, who:  
(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:<sup>1</sup>

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the Tribe to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the Tribe;

(e) Has been removed from any office pursuant to the Oneida Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

21.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. Terms of office shall be staggered.

21.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office. Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

21.6-9. *Full-time Status.* The Commission shall identify the appropriate work schedule for its members. Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and ~~will~~shall devote his or her entire work and professional time, attention and energies to Commission business, and ~~will~~shall not, during his or her tenure in office, be engaged in any other profession or business activity that may impede the Commissioner's ability to perform duties on behalf of the Commission or that competes with the Tribe's interests.

21.6-10. *By-laws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

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<sup>1</sup> This section taken substantially from Section IX of the Tribe-State Gaming Compact.

21.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget. The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other Tribal budgets. Compensation of Commissioners shall not be subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but shall be established by the Commission in a manner consistent with the Commission's internal rules and by-laws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.

21.6-12. *Removal.* Removal of Commissioners shall be pursuant to the Oneida Removal Law.

21.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, shall be filled by appointment by the Oneida Business Committee of a person qualified pursuant to sections 21.6-5 and 21.6-6.

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact. Unless otherwise indicated in this Ordinance or Commission regulation, or authorized by majority vote of the Commission, no Commissioner shall act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) To draft, and approve, subject to review and adoption by the Oneida Business Committee, regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for enforcement of such regulations consistent with Tribal law.

(d) To draft, and approve, ~~subject to review and adoption by the Oneida Business Committee,~~ the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by ~~the Gaming Operation~~ Senior Gaming Management prior to approval by the Commission, ~~and those comments shall be included in any submission~~ are subject to review and ratification by the Oneida Business Committee. ~~Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and approved industry standards for Gaming Operations.~~

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the Tribe to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct

of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto, provided that, all photocopies of documents shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with Tribal law and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section 21.5-6.

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

21.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

(a) A true, complete and accurate record of all proceedings of the Commission shall be kept and maintained;

(b) Complete and accurate minutes of all Commission meetings shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses

and any other matters to which the parties may agree, shall be submitted to the Oneida Business Committee.

21.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire an Executive Director who shall be responsible for hiring and managing the personnel of the Commission. The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all regulations including the Oneida Gaming Minimum Internal Controls. The Executive Director and personnel of the Commission shall be hired through the Tribe's regular personnel procedure and shall be subject to its personnel policies and salary schedules. The Executive Director and personnel shall be required to meet the requirements set forth in section 21.12-3 at hiring and during employment.

#### **21.7. Gaming Surveillance: Powers, Duties and Limitations**

21.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance. Gaming Surveillance is a department within the Commission's administrative structure and supervision shall be identified within the organizational chart adopted by the Commission, provided that nothing in the designation of supervisory responsibility shall be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 21.7-3.

21.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

21.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

21.7-4. Gaming Surveillance shall:

- (a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.
- (b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.
- (c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.
- (d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

#### **21.8. [Reserved for future use.]**

#### **21.9. Gaming Security Department**

21.9-1. *Purpose.* The Gaming Security Department is a department within the Oneida Police Department. The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees and report these

activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department shall be copied to the Commission.

21.9-2. *Reporting.* The Oneida Police Department, Gaming General Manager and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, which describes their responsibilities and reporting requirements under this ~~law~~Ordinance.

21.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

21.9-4. *Investigations.* This ~~S~~section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

## **21.10. Background Investigations**

21.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this ~~law~~Ordinance.

21.10-2. Background Investigations shall be conducted on all persons or entities as specified under this ~~law~~Ordinance. All Background Investigations shall be conducted to ensure that the Tribe in its Gaming Operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of ~~g~~GGaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such ~~g~~GGaming. The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

## **21.11. Licenses, Generally**

21.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License. All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity. All Gaming Facilities ~~must~~shall be licensed by the Oneida Business Committee.

21.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. Such temporary license, as defined in this section, shall permit the Licensee to engage in such activities and pursuant to any terms and conditions imposed and specified by the Commission. The temporary license shall be valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

21.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance. A Licensee shall have only those rights and protections regarding a License granted in this Ordinance.

21.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Tribe and are subject to all applicable Tribal, Federal, and State laws, regulations, and policies.

21.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

21.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

21.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance. Authority to place conditions on a License may be exercised only upon promulgation of regulations.

21.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions. Such regulations shall include procedures for appeal of such notices. Regulations may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

**21.12. Gaming Employee License**

21.12-1. *Scope of Section.* This Section applies only to Gaming Employee Licenses and licensing actions.

21.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who were acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not

such licenses or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) Fraud and False Statements Act; and

(3) Fair Credit Reporting Act.

21.12-3. *License Qualifications.* No License shall be granted if the Applicant:

(a) Is under the age of eighteen (18).

(b) Unless pardoned for activities under this subsection by the Tribe, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(c) Is determined to be a person whose prior activities, criminal record, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.

(d) Possesses a financial interest in or management responsibility for any Gaming

Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Conflict of Interest Policy.

(e) Each person ~~L~~icensed as a Gaming Employee shall have a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee. Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

21.12-4. *Initial Eligibility Determination.*

(a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

(1) Grant a temporary license, with or without conditions, to the Applicant; or

(2) Deny the ~~L~~icense application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.

(b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant. The Commission shall set forth regulations for an Applicant to review any information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 21.12-~~9~~10. The suspension or revocation hearing provisions set forth at section 21.12-~~89~~ do not apply to Initial Eligibility Determinations.

21.12-5. *~~Eligibility Determination and Notification to NIGC~~ Review.* When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) ~~Forward~~Require the Gaming Employee to the NIGC submit a completed application for employment that contains the notices and information listed in section 21.12-2-~~and any other necessary reports.~~

(b) Review the Background Investigation of the ~~Applicant.~~ Based Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation, the Commission shall determine the eligibility of the Applicant to receive a License.

~~(c) Determine eligibility for a License within sixty (60) days after an Applicant begins work at a Gaming Facility under a temporary license.~~

~~(d) Forward, after determination of eligibility, a report to the NIGC~~ (c) Create an investigative report based on each Background Investigation performed. The investigative report shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Applicant Gaming Employee begins employment at a Gaming Facility.

~~(1) During a thirty (30) day period, beginning when the NIGC receives a report submitted pursuant to subsection (d) above, the Chairman, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System. The notice of the NIGC may request results shall include the following, provided that any additional or alternate information from the Commission concerning the Applicant. Such a request shall suspend the thirty (30) day period until the Chairman~~

~~receives the additional information.~~

~~(2) If, within the thirty (30) day period described in subsection (1) above, the NIGC notifies the Commission that it has no objection to the issuance of a License, the Commission may grant the License to the Applicant.~~

~~(3) If, within the thirty (30) day period described in subsection (1) above, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a License to the Applicant.~~

~~(4) shall be forwarded as directed in regulations or rules adopted by NIGC:~~

~~(1) The Gaming Employee's name, date of birth and social security number.~~

~~(2) The date on which the Gaming Employee began employment.~~

~~(3) A summary of the information presented in the investigative report, including:~~

~~(A) License(s) that have previously been denied;~~

~~(B) Gaming licenses that have been revoked, even if subsequently reinstated;~~

~~(C) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application;~~

~~(D) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.~~

~~(4) a copy of the eligibility determination made under section 21.12-5(b).~~

~~(e) All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission shall be retained in the Commission's files for a period of at least seven (7) years~~three (3) years from the date the Gaming Employee's employment is terminated.

~~21.12-6. License Issuance.~~21.12-6. License Issuance. The Commission may issue a License to a Gaming Employee at any time after providing NIGC with a notice of results as required under section 21.12-5(d); however, a Gaming Employee who does not have a License ninety (90) days after the start of employment shall have his or her employment terminated. The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

(a) Any Gaming Employee License issued under this section shall be effective from the date of issuance and shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective. If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License. The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

21.12-7. Requirement to Wear License. During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

21.12-8. NIGC Review.

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 21.12-5(d) above, the Chairman of the NIGC may request

additional information from the Commission concerning the Gaming Employee. Such a request shall suspend the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 21.12-9.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 21.12-9.

21.12-9. Suspension or Revocation of Licenses. Except as provided in section 21.12-8(d) or 21.12-9(c), no License ~~can~~may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 21.12-3 or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension;

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any gaming activity operated in violation of the Compact, Tribal or federal law, and this Ordinance;

(C) Has bribed or attempted to bribe, or has received a bribe from, a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of Gaming Activity;

(E) Has refused to comply with any lawful directive of the Tribe, the Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission's notice of suspension shall be in writing and shall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable Regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee, the Commission may immediately suspend a License prior to the conduct of a hearing on the matter. Such an immediate suspension may take effect upon service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension shall set forth the times and dates for when the Licensee may review ~~their~~his or her file ~~review~~ and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License. If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 21.12-8(d) or 21.12-9(a)(1), the Commission shall forward a copy of its decision to NIGC within forty-five (45) days of receiving NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right shall be deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Oneida Administrative Procedures Act~~Tribe's administrative procedures law shall apply.

21.12-~~9~~10. *Original Hearing Body.* Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission. The Licensee ~~must~~shall file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision. The Commission shall certify the record, developed in section 21.12-4 or 21.12-~~89~~90(a), within thirty (30) days of the date of the filing of the request for an original hearing. The Commissioners serving on the original hearing body shall not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled. The Commission may determine to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration. The Commission may also, in its sole discretion, grant oral argument. The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing. The Commission's decision shall be considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

21.12-~~10~~11. *Notice to Oneida Business Committee.* Prior to any suspension or revocation of a

License of the gaming general manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation. 21.12-~~11~~12. *Record of Proceedings*. The Commission shall maintain a complete and accurate record of all ~~L~~Licensure proceedings.

21.12-~~12~~13. Revocation of a License is solely limited to the licensing matter. Employment related processes resulting from revocation of a ~~L~~License are determined solely through the personnel processes and procedures of the Tribe and are not licensing matters governed by this Ordinance.

### **21.13. Gaming Services Licensing and Non-Gaming Services Permitting**

21.13-1. *Scope of Section*. This section applies to all individuals and entities providing Gaming Services. The requirements of this Section are in addition to, and do not alter or amend any requirements imposed by the Oneida Vendor Licensing Law.<sup>2</sup>

21.13-2. *Gaming Services License or Non-Gaming Services Permit Required*.

(a) *Gaming Services License*. Any Gaming Services vendor providing ~~g~~Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation ~~must~~shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit*. Any vendor providing non-gaming related goods or services to the Gaming Operation ~~must~~shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

21.13-3. *Approved Gaming Services Vendor List*. The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which shall be known as the Approved License and Permit List. Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

21.13-4. *Gaming Services License/Permit Application*. Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified which shall provide and certify the following. Provided that, ~~n~~Non-~~g~~Gaming ~~s~~Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year shall only be required to file a notice of doing business with the Commission.

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and by-laws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in

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<sup>2</sup> See also Appendix 1. Vendor Licensing/Permit.

the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the state of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the state of New Jersey, Nevada, or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such ~~IL~~ license;

(j) Whether the Applicant has been denied a ~~IL~~ license by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any ~~IL~~ license held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the Tribe to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the Tribe or any business or personal relationship with any of the Tribe's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

21.13-5. *Signature on Application.* Applications for Licenses or permits ~~must~~shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation, or another person to whom the authority to execute the Application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

21.13-6. *Incomplete Applications.* Applications that do not contain all information requested,

including proper signatures, will be considered incomplete. Incomplete applications will not be considered by the Commission. The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application. If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

21.13-7. *Supplemental Information.* The Commission may, in its discretion, request supplemental information from the Applicant. Supplemental information requested by the Commission shall be promptly submitted by the Applicant. An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

21.13-8. *Continuing Duty to Provide Information.* Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction. An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to the Applicant may constitute grounds to deny, suspend or revoke a License or permit.

21.13-9. *Background Investigations.* Background Investigations for Gaming Services vendors shall be conducted as follows.

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation, and shall conduct any necessary additional Background Investigation to ensure that the state background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications. The random selection process shall be identified by regulation of the Commission.

21.13-10. *Licensing Action in a Foreign Jurisdiction.* If the states of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction refuses to renew a license or permit or conditions, suspends, or revokes the license or permit of an Applicant, permittee, or Licensee, such action may constitute grounds for similar action by the Commission.

21.13-11. *Claim of Privilege.* At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law. An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a license or permit.

21.13-12. *Withdrawal of an Application.* An Applicant may request to withdraw an application by submitting a written request to the Commission. The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal. An Applicant who withdraws an

application shall be precluded from reapplying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

21.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* Except as provided in section 21.13-13(c), no License or permit ~~can~~may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

(1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(2) Knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, or any Tribal or other applicable law;

(3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(4) Falsified any books or records relating to any transaction connected with operation of Gaming Activity;

(5) Refused to comply with a lawful directive of the Tribe, the federal government, or any court of competent jurisdiction; or

(6) Been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission shall provide a Licensee or permittee with written notice of suspension, which shall, at a minimum, notify the Licensee or permittee of the following:

(1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;

(2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;

(3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest, and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter. Such an immediate suspension shall take effect upon service of the notice of immediate suspension.

(d) *File Review and Hearing.* Any notice of suspension or notice of immediate suspension shall set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) *Final Written Decision.* Within fifteen (15) business days after a hearing, the

Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) *Default.* If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right shall be deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Oneida Administrative Procedures Act shall apply.

21.13-14. *Original Hearing Body.* Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission. The Applicant, Licensee or permittee ~~must~~shall file such request with the Commission in writing on or before the fifteenth (15<sup>th</sup>) day following the receipt of the Commission's decision. The Commission shall certify the record, developed in section 21.13-9 or 21. 13 -13(a), within thirty (30) days of the date of the filing on the request for an original hearing. The Commissioners participating in the initial licensing or permitting decision shall not participate in the original hearing. The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration. The Commission may also, in its sole discretion, grant oral argument. The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing. The Commission's decision shall be considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

#### **21.14. Gaming Facility License**

21.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

21.14-2. The Oneida Business Committee shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable Federal and Tribal health and safety standards.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof ~~must~~shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable federal and Tribal environmental standards.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof ~~must~~shall be submitted by Gaming Operator that ~~R~~Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the

applicable standards.

21.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant. The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

21.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility. The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 21.14-2.

### **21.15. Gaming Operator License**

21.15-1. *Consent to Jurisdiction.* The application for License and the conduct of Gaming within the jurisdiction of the Tribe shall be considered consent to the jurisdiction of the Tribe in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other Tribal laws.

21.15-2. *License Required.* No Gaming Operator shall conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.

21.15-3. *Types of Licenses.* The Commission may issue each of the following types of Gaming Operator Licenses:

(a) *Tribally-Owned or Tribally-Operated Class II.* This License shall be required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.

(b) *Tribally-Owned or Tribally-Operated Class III.* This License shall be required for all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.

21.15-4. *Gaming Operator License Qualifications.* The Commission shall issue a Gaming Operator License to any Gaming Operation if:

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

21.15-5. *Provisions of General Applicability to All Gaming Operators.*

(a) *Site and Gaming Operator Specified.* Each Gaming Operator License shall be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

(b) *License Not Assignable.* No Gaming Operator License shall be sold, lent, assigned or otherwise transferred.

(c) *Regulations Posted or Available.* Each Gaming Operator shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

(d) *Display of License.* Each Gaming Operator shall prominently display its License at each Gaming Facility.

21.15-6. *Grandfathered Gaming Facilities.* All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

21.15-7. *License Application Fees and License Taxes.* No application fees or License taxes shall be required by the Tribe for a Gaming Operator License.

21.15-8. *Closure of a Gaming Operation.* If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee. The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

## **21.16. Games**

21.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

21.16-2. *Gaming Procedures.* Games operated under this Ordinance shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

21.16-3. *Who May Not Play.* It is the policy of the Tribe that particular Gaming Employees, employees of the ~~Gaming~~ Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations. At a minimum, members of the Oneida Business Committee, the Commission, the gaming general manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

(a) The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities. Such resolution shall be on file with the Commission.

(b) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities. The standard operating procedure and the list of positions shall be on file with the Commission.

## **21.17. Allocation of Gaming Funds**

21.17-1. Net Gaming revenues may only be used for the following purposes:

(a) To fund Tribal government operations, programs, or services.

(b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.

(c) To promote Tribal economic development.

(d) To contribute to charitable organizations.

(e) To assist in funding operations of other local governments.

(f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.

(g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.

**21.18. Audits**

21.18-1. *Annual Audit.* An annual audit of each Gaming Operation shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles. Copies of the annual audit ~~will~~shall be provided to the Oneida Business Committee, the Oneida Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(a) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section. Contracts for legal services and accounting services are exempt from this requirement.

21.18-2. *Other Audits.* All audits, other than the annual audit under section 21.18-1, shall be conducted pursuant to the Oneida Audit Law or any other applicable law of the Tribe, and other audits authorized under the Compact.

21.18-3. *Request for Audits.* Any audit, except the annual audit which is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Oneida Audit Committee.

**21.19. Enforcement and Penalties**

21.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

21.19-2. *Violations/Prosecutions.* Violators of this Ordinance may be subject to disciplinary action and civil and/or criminal prosecutions.

21.19-3. *Remedies.* The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

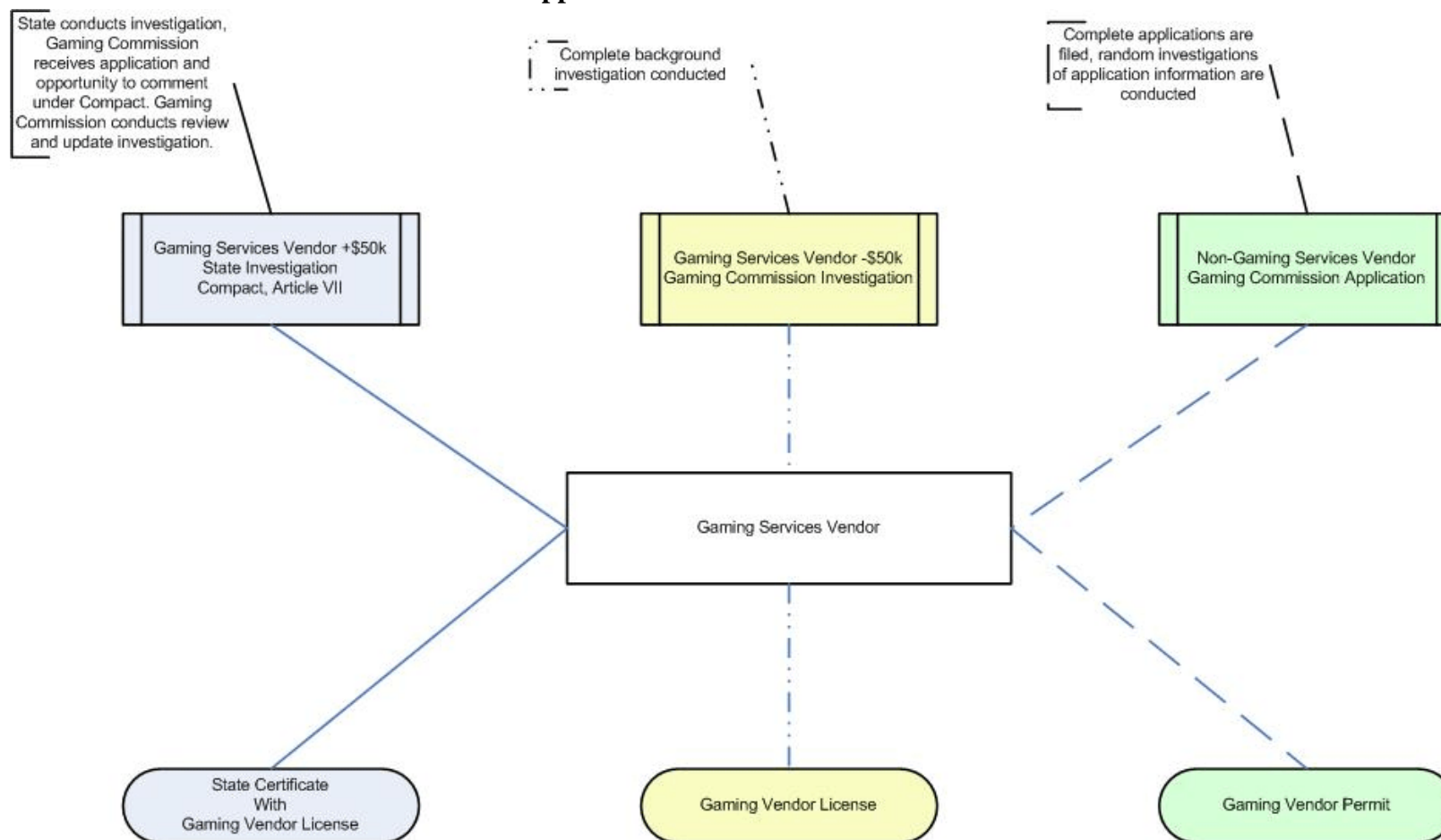
*End.*

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Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D
Amended	BC-06-25-14- <del>C</del> <u>B</u> (effective 11 01 2014)
Emergency Amended	BC-10-08-14-C (effective 11 01 2014)

Draft 4 redline to current  
06/25/15

## Appendix 1. Vendor License/Permit



**Chapter 21**  
**Oneida Nation Gaming Ordinance**  
**Thatiwi⇒Stunya=tha Olihwa=ke**  
**Matters of interest to where they make the money**

21.1. Purpose and Policy	21.11. Licenses, Generally
21.2. Adoption, Amendment, Repeal	21.12. Gaming Employee License
21.3. Jurisdiction	21.13. Gaming Services Licensing and Non-Gaming Services Permitting
21.4. Definitions	21.14. Gaming Facility License
21.5. Oneida Business Committee: Powers and Duties	21.15. Gaming Operator License
21.6. Oneida Gaming Commission	21.16. Games
21.7. Gaming Surveillance: Powers, Duties and Limitations	21.17. Allocation of Gaming Funds
21.8. [Reserved for future use.]	21.18. Audits
21.9. Gaming Security Department	21.19. Enforcement and Penalties
21.10. Background Investigations	

**21.1. Purpose and Policy**

21.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Tribe of Indians of Wisconsin regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

21.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Tribe is the primary beneficiary of its Gaming Operations and has the sole proprietary interest, and that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly, and that all internal departments, enterprises, officials and employees of the Oneida Tribe work cooperatively to advance the best interests of the Oneida Tribe to protect the Tribe's gaming resources, protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance and to ensure fairness of all games offered to the Tribe's gaming patrons.

**21.2. Adoption, Amendment, Repeal**

21.2-1. *Adoption.* This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B and \_\_\_\_\_.

21.2-2. *Amendment.* This Ordinance may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

21.2-3 *Severability.* Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

21.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control. Provided that, this Ordinance repeals the following:

- (a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);

- (c) GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-03-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

21.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

21.2-6. *Name*. This Ordinance shall be known as the Oneida Nation Gaming Ordinance or ONGO.

21.2-7. *Preemptive Authority*. The Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

### **21.3. Jurisdiction**

21.3-1. *Territorial Jurisdiction*. This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

21.3-2. *Subject Matter Jurisdiction*. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Oneida Tribe as set forth in section 21.3-1.

21.3-3. *Personal Jurisdiction*. This Ordinance shall govern:

- (a) the Tribe;
- (b) tribal members; and
- (c) individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.

### **21.4. Definitions**

21.4-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. All words or phrases not defined herein shall be used in their ordinary and everyday sense.

21.4-2. *Applicant* means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

21.4-3. *Background Investigation* means a standard and thorough investigation conducted by the Oneida Tribe in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

21.4-4. *Class I Gaming* means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

21.4-5. *Class II Gaming* means:

- (a) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:
  - (1) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.
  - (2) The holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.
  - (3) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the

same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(b) Card games that:

(1) Are explicitly authorized by the laws of the State; or

(2) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

21.4-6. *Class III Gaming* means all forms of Gaming that are not Class I or Class II.

21.4-7. *Commission* means the Oneida Gaming Commission as established by this Ordinance.

21.4-8. *Commissioner* means a duly elected member of the Oneida Gaming Commission.

21.4-9. *Compact* means the 1991 Tribe-State Gaming Compact between the Tribe and the State of Wisconsin as amended and any future amendments or successor compact entered into by the Tribe and State and approved by the Secretary of the United States Department of Interior.

21.4-10. *Compliance Certificate* means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

21.4-11. *Environmental Assessment* means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 et seq., and all related Federal regulations.

21.4-12. *Fraud* means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

21.4-13. *Games, Gaming, or Gaming Activity* means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

21.4-14. *Gaming Employee* means any person employed by a Gaming Operation.

21.4-15. *Gaming Facility* or *Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar occasion.

21.4-16. *Gaming Operation* means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

21.4-17. *Gaming Operator* means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

21.4-18. *Gaming Services* means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

21.4-19. *Indian Gaming Regulatory Act* or *IGRA* means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, et seq., as amended.

21.4-20. *Judiciary* means the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

21.4-21. *License* means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A License shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.

21.4-22. *Licensee* means a person or entity issued a valid License.

21.4-23. *NIGC* means the National Indian Gaming Commission.

21.4-24. *Oneida Business Committee* means the elected governing body of the Tribe exercising authority delegated from the Oneida General Tribal Council of the Oneida Tribe of Indians of Wisconsin under Article IV of the Constitution and By-laws for the Oneida Tribe of Indians of Wisconsin, approved December 21, 1936, as thereafter amended.

21.4-25. *Oneida General Tribal Council* means the governing body of the Oneida Tribe of Indians of Wisconsin as determined by the Tribe's Constitution.

21.4-26. *Ordinance or ONGO* means the Oneida Nation Gaming Ordinance as it may from time to time be amended.

21.4-27. *Regulatory Incident* means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

21.4-28. *Remediation* means efforts taken to reduce the source and migration of environmental contaminants at a site.

21.4-29. *Reservation* means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

21.4-30. *Senior Gaming Management* means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

21.4-31. *State* means the State of Wisconsin, its authorized officials, agents and representatives.

21.4-32. *Tribe* means the Oneida Tribe of Indians of Wisconsin.

21.4-33. *Tribal Fee Land* means all land to which the Tribe holds title in fee simple.

21.4-34. *Tribal Trust Land* means all land to which the United States holds title for the benefit of the Tribe pursuant to federal law.

## **21.5. Oneida Business Committee: Powers and Duties**

21.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

21.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

21.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Tribe, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67, Real Property Law.

21.5-4. The Oneida Business Committee delegates to the Commission, as set out in section 21.6-14, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and enforcement of laws and regulations, as identified in this Ordinance.

21.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not

delegated by a specific provision of this Ordinance.

21.5-6. The Chairperson of the Tribe shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

## **21.6. Oneida Gaming Commission**

21.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

21.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

21.6-3. *Duration and Attributes.* The Commission shall have perpetual existence and succession in its own name, unless dissolved by Tribal law. Operations of the Commission shall be conducted on behalf of the Tribe for the sole benefit of the Tribe and its members. The Tribe reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe, or on behalf of the Commission, whenever the Tribe considers it necessary to protect the sovereignty, rights, and interests of the Tribe or the Commission.

21.6-4. *Sovereign Immunity of the Tribe.*

(a) All inherent sovereign rights of the Tribe with regard to the existence and activities of the Commission are hereby expressly reserved.

(b) The Tribe confers upon the Commission sovereign immunity from suit as set forth in the Tribe's Sovereign Immunity Ordinance.

(c) Nothing in this Ordinance nor any action of the Commission shall be construed to be a waiver of its sovereign immunity or that of the Tribe, or consent by the Commission or the Tribe to the jurisdiction of the Judiciary, the United States, any state, or any other tribe, or consent by the Tribe to any suit, cause of action, case or controversy, or the levy of any judgment, lien, or attachment upon any property of the Commission or the Tribe.

21.6-5. *Requirements of Commission Membership.*

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. In addition, candidates for election to the Commission shall meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 21.6-13:

(1) Be an enrolled member of the Tribe;

(2) Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

(3) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person shall be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined by the Oneida Conflict of Interest Policy.

(c) *Background Investigation.* No person shall be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

(d) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 21.6-5 and 21.6-6 upon being elected or appointed to office.

21.6-6. Unless pardoned for activities under subsection (a) and/or (d) by the Tribe, or pardoned for an activity under subsection (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsection (a) and/or (d) by the State or Federal government, no individual shall be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:<sup>1</sup>

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the Tribe to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the Tribe;

(e) Has been removed from any office pursuant to the Oneida Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

21.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. Terms of office shall be staggered.

21.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office. Upon being administered the oath

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<sup>1</sup> This section taken substantially from Section IX of the Tribe-State Gaming Compact.

of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

21.6-9. *Full-time Status.* The Commission shall identify the appropriate work schedule for its members. Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business, and shall not, during his or her tenure in office, be engaged in any other profession or business activity that may impede the Commissioner's ability to perform duties on behalf of the Commission or that competes with the Tribe's interests.

21.6-10. *Bylaws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

21.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget. The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other Tribal budgets. Compensation of Commissioners shall not be subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.

21.6-12. *Removal.* Removal of Commissioners shall be pursuant to the Oneida Removal Law.

21.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, shall be filled by appointment by the Oneida Business Committee of a person qualified pursuant to sections 21.6-5 and 21.6-6.

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact. Unless otherwise indicated in this Ordinance or Commission regulation, or authorized by majority vote of the Commission, no Commissioner shall act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) To draft, and approve, subject to review and adoption by the Oneida Business Committee, regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for enforcement of such regulations consistent with Tribal law.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review and ratification by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be

- effective upon adoption by the Commission.
- (e) To prepare proposals, including budgetary and monetary proposals, which might enable the Tribe to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.
  - (f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.
  - (g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.
  - (h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto, provided that, all photocopies of documents shall be maintained in a confidential manner or in the same manner as the original.
  - (i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.
  - (j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.
  - (k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.
  - (l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with Tribal law and practices.
  - (m) To arbitrate, negotiate, or settle any dispute to which it is a party and which relates to its authorized activities.
  - (n) To act as the designated agent to receive all regulatory notices not included in section 21.5-6.
  - (o) To investigate all Regulatory Incidents.
  - (p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.
  - (q) To make determinations regarding suitability for licensing.
  - (r) To establish an administrative structure by regulation to carry out its authority and responsibilities.
  - (s) To establish, where needed, additional processes for conducting licensing hearings by regulation.
  - (t) To establish and collect fees for processing License applications by regulation.
  - (u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.
  - (v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.
  - (w) To approve procedures that provide for the fair and impartial resolution of patron complaints.
- 21.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

- (a) A true, complete and accurate record of all proceedings of the Commission shall be kept and maintained;
- (b) Complete and accurate minutes of all Commission meetings shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;
- (c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, shall be submitted to the Oneida Business Committee.

21.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire an Executive Director who shall be responsible for hiring and managing the personnel of the Commission. The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all regulations including the Oneida Gaming Minimum Internal Controls. The Executive Director and personnel of the Commission shall be hired through the Tribe's regular personnel procedure and shall be subject to its personnel policies and salary schedules. The Executive Director and personnel shall be required to meet the requirements set forth in section 21.12-3 at hiring and during employment.

#### **21.7. Gaming Surveillance: Powers, Duties and Limitations**

21.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance. Gaming Surveillance is a department within the Commission's administrative structure and supervision shall be identified within the organizational chart adopted by the Commission, provided that nothing in the designation of supervisory responsibility shall be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 21.7-3.

21.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

21.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

21.7-4. Gaming Surveillance shall:

- (a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.
- (b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.
- (c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.
- (d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

**21.8. [Reserved for future use.]**

**21.9. Gaming Security Department**

21.9-1. *Purpose.* The Gaming Security Department is a department within the Oneida Police Department. The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees and report these activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department shall be copied to the Commission.

21.9-2. *Reporting.* The Oneida Police Department, Gaming General Manager and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, which describes their responsibilities and reporting requirements under this Ordinance.

21.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

21.9-4. *Investigations.* This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

**21.10. Background Investigations**

21.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

21.10-2. Background Investigations shall be conducted on all persons or entities as specified under this Ordinance. All Background Investigations shall be conducted to ensure that the Tribe in its Gaming Operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming. The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

**21.11. Licenses, Generally**

21.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License. All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity. All Gaming Facilities shall be licensed by the Oneida Business Committee.

21.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. Such temporary license, as

defined in this section, shall permit the Licensee to engage in such activities and pursuant to any terms and conditions imposed and specified by the Commission. The temporary license shall be valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

21.11-3. *Revocable*. A License is revocable only in accordance with the procedures set forth in this Ordinance. A Licensee shall have only those rights and protections regarding a License granted in this Ordinance.

21.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Tribe and are subject to all applicable Tribal, Federal, and State laws, regulations, and policies.

21.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

21.11-6. *Status of Licenses*. The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

21.11-7. *Commission Licensing Actions*. The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance. Authority to place conditions on a License may be exercised only upon promulgation of regulations.

21.11-8. *Noncompliance*. The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions. Such regulations shall include procedures for appeal of such notices. Regulations may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

## **21.12. Gaming Employee License**

21.12-1. *Scope of Section*. This section applies only to Gaming Employee Licenses and licensing actions.

21.12-2. *License Application*. Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who were acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) Fraud and False Statements Act; and

(3) Fair Credit Reporting Act.

21.12-3. *License Qualifications.* No License shall be granted if the Applicant:

(a) Is under the age of eighteen (18).

(b) Unless pardoned for activities under this subsection by the Tribe, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant

thereto.

(c) Is determined to be a person whose prior activities, criminal record, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.

(d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Conflict of Interest Policy.

(e) Each person licensed as a Gaming Employee shall have a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee. Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

21.12-4. *Initial Eligibility Determination.*

(a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

- (1) Grant a temporary license, with or without conditions, to the Applicant; or
- (2) Deny the License application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.

(b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant. The Commission shall set forth regulations for an Applicant to review any information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 21.12-10. The suspension or revocation hearing provisions set forth at section 21.12-9 do not apply to Initial Eligibility Determinations.

21.12-5. *Eligibility Determination and Notification to NIGC.* When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 21.12-2;

(b) Review the Background Investigation of the Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) Create an investigative report based on each Background Investigation performed. The investigative report shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System. The notice of results shall include the following, provided that any additional or alternate information shall be forwarded as directed in regulations or rules adopted by NIGC:

- 583 (1) The Gaming Employee's name, date of birth and social security number.  
584 (2) The date on which the Gaming Employee began employment.  
585 (3) A summary of the information presented in the investigative report,  
586 including:  
587 (A) License(s) that have previously been denied;  
588 (B) Gaming licenses that have been revoked, even if subsequently  
589 reinstated;  
590 (C) Every known criminal charge brought against the Gaming Employee  
591 within the last ten (10) years of the date of the application;  
592 (D) Every felony of which the Gaming Employee has been convicted or  
593 any ongoing prosecution.  
594 (4) a copy of the eligibility determination made under section 21.12-5(b).  
595 (e) All applications, Background Investigations, investigative reports, suitability  
596 determinations, findings and decisions of the Commission shall be retained in the  
597 Commission's files for a period of at least three (3) years from the date the Gaming  
598 Employee's employment is terminated.

599 21.12-6. *License Issuance.* The Commission may issue a License to a Gaming Employee at any  
600 time after providing NIGC with a notice of results as required under section 21.12-5(d);  
601 however, a Gaming Employee who does not have a License ninety (90) days after the start of  
602 employment shall have his or her employment terminated. The Commission shall notify the  
603 NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after  
604 the License is issued or denied.

- 605 (a) Any Gaming Employee License issued under this section shall be effective from the  
606 date of issuance and shall contain the Gaming Employee's photograph, the Gaming  
607 Employee's name, and the date that the License became effective. If a Gaming  
608 Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming  
609 Employee shall notify in writing the Commission, and the Commission shall review the  
610 Gaming Employee's License. The Commission retains the right to grant, deny, revoke,  
611 condition, suspend, or reinstate Licenses subject to the right to appeal the decision under  
612 the processes set forth in this Ordinance.

613 21.12-7. *Requirement to Wear License.* During working hours, all Licensees shall wear their  
614 License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming  
615 patrons and surveillance.

616 21.12-8. *NIGC Review.*

- 617 (a) During a thirty (30) day period, beginning when the NIGC receives a notice of results  
618 submitted pursuant to section 21.12-5(d) above, the Chairman of the NIGC may request  
619 additional information from the Commission concerning the Gaming Employee. Such a  
620 request shall suspend the thirty (30) day period until the Chairman receives the additional  
621 information.  
622 (b) If, within the thirty (30) day period after NIGC receives the notice of results, the  
623 NIGC notifies the Commission that it has no objection to the issuance of a License, and  
624 the Commission has not yet issued a License to the Gaming Employee, the Commission  
625 may grant the License to the Gaming Employee.  
626 (c) If, within the thirty (30) day period after NIGC receives the notice of results, the  
627 NIGC provides the Commission with a statement itemizing objections to the issuance of  
628 a License, the Commission shall reconsider the application, taking into account the

objections itemized by the NIGC. The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 21.12-9.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 21.12-9.

21.12-9. *Suspension or Revocation of Licenses.* Except as provided in section 21.12-8(d) or 21.12-9(c), no License may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 21.12-3 or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension;

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any gaming activity operated in violation of the Compact, Tribal or federal law, and this Ordinance;

(C) Has bribed or attempted to bribe, or has received a bribe from, a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of Gaming Activity;

(E) Has refused to comply with any lawful directive of the Tribe, the Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission's notice of suspension shall be in writing and shall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable Regulations and/or the Compact; and

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: June 22, 2015
- 2) Contact Person(s): Laura Manthe Dept: ERB  
Phone Number: 496-5360 Email: lmanthe@oneidanation.org
- 3) Agenda Title: Emergency Amendment to the Public Use of Land Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Request the additional section to the law to designate the ERB the authority when appropriate to prescribe permissible and/or prohibited uses for  
property it designates as Oneida Community Access, Oneida tribal Member Access, or  
Open. Examples of activities that are not covered by any law, no drugs or alcohol, no pets,  
no fireworks, no camping, no open fires.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Hunting, Fishing and Trapping Law
- 2) Lake Pamphlet
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
none
- 6) Please List all other departments or person(s) you have brought your concern to:  
OPD, EH&S, Conservation, Planning,
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
If yes, please indicate why: Currently people are drinking at the On'yote?a.ka Lake. We have no enforcement mechanism.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: Laura Manthe

*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

# Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Krystal L. John, Staff Attorney  
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<https://oneida-nsn.gov/Laws>

## Memorandum

**TO:** Oneida Business Committee  
**FROM:** Brandon Stevens, LOC Chairperson *BS*  
**DATE:** July 1, 2015  
**RE:** Public Use of Tribal Land Emergency Amendments

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Please find the following attached backup documentation for your consideration of the Public Use of Tribal Land Emergency Amendments:

1. Resolution: Public Use of Tribal Land Emergency Amendments
2. Statement of Effect: Public Use of Tribal Land Emergency Amendments
3. Public Use of Tribal Land Emergency Amendments (redline)
4. Public Use of Tribal Land Emergency Amendments (clean)

### *Overview*

The attached Resolution will adopt emergency amendments to the Public Use of Tribal Land Law (Law). Amendments to the Law were requested by the Environmental Resource Board (ERB) to include authority for ERB to prescribe permissible and prohibited uses for tribal lands that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access. The original intent of the law was to provide access restrictions based on different tribal land designations. However, in order to preserve the lands for the use and enjoyment of all authorized individuals, emergency amendments are being requested to enable the ERB to prescribe permissible and/or prohibited uses for these lands. For example, there is not currently any enforcement tool for enforcing the rules of use for Oneida Lake and as a result there has been drinking and camping at Oneida Lake. In order to allow ERB to prescribe permissible and prohibited uses for tribal lands, the following emergency amendments were made:

- Require ERB to prescribe permissible and prohibited uses for tribal lands that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance.
- Require ERB to report the prescribed permissible and prohibited uses for tribal land to the Oneida Business Committee and to post notice of such uses on the affect tribal land.

Emergency amendments do not require a public meeting or fiscal impact statement. If adopted, these amendments will become effective immediately and will remain in effect for six months, unless extended or permanently adopted [*See Legislative Procedures Act 16.9-5*].

### **Requested Action**

Approve the Resolution: Public Use of Tribal Land Emergency Amendments

**BC Resolution \_\_\_\_\_***Public Use of Tribal Land Law Emergency Amendments*

**WHEREAS,** the Oneida General Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin; and

**WHEREAS,** the Oneida General Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution; and

**WHEREAS,** the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council; and

**WHEREAS,** the Oneida Business Committee adopted the Public Use of Tribal Land Law (Law) through resolution BC-05-15-14-D and amended it through resolution BC-12-10-14-A.

**WHEREAS,** the Land Access Map, required under the Law, has been adopted by the Environmental Resource Board and designates the Tribe's land as Limited Access, Oneida Community Access, Oneida Tribal Member Access, and Open; and

**WHEREAS,** the land designations prohibit certain individuals from accessing Tribal land if the land is designated as Limited Access, Oneida Community Access, or Oneida Tribal Member Access; and

**WHEREAS,** the Law does not specify any permissible and/or prohibited uses for these lands and does not designate any entity the authority to implement permissible and/or prohibited uses on these lands; and

**WHEREAS,** in order to preserve the lands for the use and enjoyment of all authorized individuals, emergency amendments are being requested to enable the Environmental Resource Board to prescribe permissible and/or prohibited uses for these lands; and

**WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and

**WHEREAS,** emergency amendments to the Public Use of Tribal Land Law are necessary for the preservation of the public health, safety, or general welfare of the reservation population, and observance of the adoption requirements under the Legislative Procedures Act for passage of laws and policies would be contrary to public interest.

36 **NOW THEREFORE BE IT RESOLVED**, that the following amendments to section 38.4-1 of  
37 the Public Use of Tribal Land Law are hereby adopted on an emergency basis for six (6) months,  
38 and shall take effect immediately:

39 (g) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land  
40 that it designates as Oneida Community Access, Oneida Tribal Member Access or Open  
41 Access; provided that such permissible and/or prohibited uses may not contradict with the  
42 Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or  
43 prohibited uses, the Environmental Resource Board shall notify the Oneida Business  
44 Committee of the permissible and/or prohibited uses and shall post notice of such uses on  
45 the affected Tribal land.

46  
47

# Oneida Tribe of Indians of Wisconsin

## Legislative Reference Office

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## Committee Members

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

David P. Jordan, Councilmember

Jennifer Webster, Councilmember

## Statement of Effect

### *Public Use of Tribal Land Law Emergency Amendments*

### *Summary*

This Resolution adopts emergency amendments to the Public Use of Tribal Land Law to allow the Environmental Resource Board (ERB) to prescribe permissible and/or prohibited uses for tribal land that has been designated as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such uses do not contradict with the Zoning and Shoreland Protection Ordinance. The emergency amendments also require ERB to report the prescribed permissible and/or prohibited uses to the Oneida Business Committee and to post the uses on the affected tribal lands.

*Submitted by Krystal L. John, Staff Attorney, Legislative Reference Office*

### *Analysis from Legislative Reference Office*

This Resolution adopts emergency amendments to the Public Use Tribal Land Law (Law), which was adopted through resolution BC-05-15-14-D and thereafter amended through resolution BC-12-10-14-A. This Law enables the Tribe to fine individuals who improperly access, use and/or trespass on Tribal lands. ERB has created a Land Access Map which has designated Tribal lands as Limited Access, Oneida Community Access, Oneida Tribal Member Access and Open Access. While the Law currently gives ERB the authority to restrict access based on the land's designation, it does not grant ERB the authority to regulate the use of such land, regardless of designation, and thereby prevents enforcement of rules intended to regulate the use of public spaces, an example of which is Oneida Lake.

The proposed emergency amendments to this Law would specifically allow ERB to prescribe permissible and/or prohibited uses for tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such uses do not contradict the Zoning and Shoreland Protection Ordinance. The emergency amendments also require ERB to report the prescribed permissible and/or prohibited uses to the Oneida Business Committee and to post the uses on the affected tribal lands.

This Law, in Section 38.7-1(a) already authorizes the Oneida Business Committee to adopt a citation schedule with the recommendation of ERB. Accordingly, ERB has brought forward a revised citation schedule in tandem with these emergency amendments to include citations based

on Section 38.4-1(g), which contains the authority to prescribe permissible or prohibited uses for tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access. Therefore, upon adoption of these emergency amendments and revised citation schedule, ERB will have both the authority to prescribe permissible and prohibited uses and the tools required to enforce such prescriptions, provided that notice has been provided to the public by posting such permissible and prohibited uses on the affected tribal lands.

Section 16.9-5 of 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” LPA. Through the Resolution, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Law.

### ***Conclusion***

Adoption of this Resolution would not conflict with Tribal law.

## CHAPTER 38 PUBLIC USE OF TRIBAL LAND

38.1. Purpose and Policy  
38.2. Adoption, Amendment, Repeal  
38.3. Definitions  
38.4. Environmental Resource Board

38.5. Land Access Map  
38.6. Trespass  
38.7. Violations and Appeals

Analysis by the Legislative Reference Office					
Title	Public Use of Tribal Land				
Requester	ERB	Drafter	Krystal John	Analyst	Candice E. Skenandore
Reason for Request	Give the Environmental Resource Board the authority to determine what actions are allowed or not allowed on designated Tribal properties.				
Purpose	The purpose of this Law is to prevent improper access, use and trespass to Tribal lands				
Authorized/ Affected Entities	Environmental Resource Board or its designated staff				

### Overview & Proposed Emergency Amendment

According to the Environmental Health and Safety Division and the Environmental Resource Board, people have been camping and/or consuming alcohol at the Oneida Lake. It is because of these actions that the Environmental Resource Board (ERB) has requested emergency amendments to the Public Use of Tribal Land Law (Law) in order to gain the authority to determine what actions are permissible and/or prohibited on Tribal properties. Language has been added to the Law that requires ERB or its designated staff to prescribe permissible and/or prohibited uses, as it deems necessary, for property that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that the permissible and/or prohibited uses do not contradict with the Zoning and Shoreland Protection Ordinance. In addition, ERB must inform the Oneida Business Committee of permissible and/or prohibited actions and post notice on the designated properties, informing the public of what actions are allowed and/or not allowed [See 38.4-1 (g)].

This emergency amendment does not allow the ERB or its designated staff to prescribe permissible and/or prohibited uses, as it deems necessary on Tribal property that is designated as Limited Access. Limited Access lands are open to anyone who is granted permission by the Tribe through a permit or lease for specific purposes [See 38.5-1 (a)]. Furthermore, this emergency amendment requires the Oneida Business Committee to be informed of the permissible and/or prohibited actions; however, ERB is not required to inform the Oneida Business Committee prior to 1) determining the permissible and/or prohibited actions or 2) posting the notices informing the public of permissible and/or prohibited actions.

### Miscellaneous

A public meeting or fiscal impact statement are not required prior to consideration of emergency amendments. If adopted, these amendments will become effective immediately and will remain in effect for six months, unless extended or permanently adopted [See Legislative Procedures Act 16.9-5].

### 38.1. Purpose and Policy

38.1-1. *Purpose.* The purpose of this Law is to prevent improper access, use and trespass to Tribal lands.

32 38.1-2. *Policy.* It is the policy of the Tribe to limit access to Tribal land to protect and preserve  
33 the environment and natural resources including forests, wildlife, air and waters, through  
34 appropriate uses of the land.  
35

### 36 **38.2. Adoption, Amendment, Repeal**

37 38.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C  
38 and amended by BC-12-10-14-A.

39 38.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to  
40 the procedures set out in the Legislative Procedures Act.

41 38.2-3. Should a provision of this Law or the application thereof to any person or circumstances  
42 be held as invalid, such invalidity shall not affect other provisions of this Law which are  
43 considered to have legal force without the invalid portions.

44 38.2-4. In the event of a conflict between a provision of this Law and a provision of another law,  
45 the provisions of this Law shall control.

46 38.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians  
47 of Wisconsin.

48 38.2-6. This Law shall not be construed to preclude the Tribe from pursuing relief for criminal  
49 trespass under applicable law.  
50

### 51 **38.3. Definitions**

52 38.3-1. This section shall govern the definitions of words and phrases used within this Law. All  
53 words not defined herein shall be used in their ordinary and everyday sense.

54 (a) “Designation” means the term used to describe the type of access granted to certain  
55 Tribal lands.

56 (b) “Lease” means any lease or agreement, including business site leases, entered into by  
57 the Tribe and any person to allow the use of Tribal lands.

58 (c) “Person” means any individual, group of individuals, corporation, partnership,  
59 limited liability company, or any other form of business organization.

60 (d) “Reservation” means all the lands and waters within the exterior boundaries of the  
61 Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838  
62 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

63 (e) “Trespass” means the unauthorized use or entry on Tribal lands, including  
64 unauthorized uses under a Tribal law, permit or lease.

65 (f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

66 (g) “Tribal land” means all Tribal trust lands, and any land or interest in land held by the  
67 Oneida Tribe in fee or in any other form on the Reservation.  
68

### 69 **38.4. Environmental Resource Board**

70 38.4-1. The Environmental Resource Board shall have the duty and power to carry out the intent  
71 and purposes of this Law and enforce the provisions of this Law. The Environmental Resource  
72 Board, or its designated staff, shall:

73 (a) Develop, approve and maintain the Land Access Map.

74 (b) Hold public hearings on proposed amendments to the Land Access Map.

75 (c) Hear and decide, as the original hearing body, contested cases that may arise under  
76 this Law.

77 (d) Impose hearing costs and restitution against the person for damages caused by a  
78 violation of this Law.

(e) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

(f) Implement and interpret the provisions of this Law.

(g) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal land.

### **38.5. Land Access Map**

38.5-1. *Designation of Tribal Lands.* A Land Access Map shall be created which designates Tribal land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” shall be open to all persons who are granted land access permission by the Tribe through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” shall be open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Tribe; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Tribe.

(1) A Conservation Warden or Oneida Police Officer may require a person to demonstrate proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Land designated as “Oneida Tribal Member Access” shall be open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” shall be generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Tribe and where such designation does not pose significant risk of damage to the policies of the Tribe and/or the land’s cultural or environmental preservation.

38.5-2. Notwithstanding the restrictions of 38.5-1, nothing in this Law shall be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

(a) Employees of the Tribe who are performing their job duties;

(b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Tribe;

(c) Emergency personnel who are providing, or attempting to provide, services; and

(d) Those persons who have been granted access to the land by the Environmental Resource Board.

38.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety

Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Tribe. The Environmental Resource Board shall adopt the initial Land Access Map.

38.5-4. *General Land Designation.* Unless otherwise designated, Tribal Land shall be designated as Limited Access.

38.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration shall be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, shall be:

(i) published in the Tribal newspaper; and

(ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board shall not amend the Land Access Map unless it finds that adopting such amendment is in the Tribe's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments shall require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

### **38.6. Trespass**

38.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

(a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Tribal website and/or in the Tribal newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

(1) A sign at least eleven (11) inches square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word “owner” if the person is the holder of legal title to the land or by the word “occupant” if the person is a lawful occupant of the land, but not the holder of legal title.

(2) Markings at least one (1) foot long and, in a contrasting color, the phrase “private land” and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:<sup>1</sup>

(1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.

(2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.

(3) Engages in any act, or attempted act of hunting, trapping or fishing.

(4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.

(5) Erects, puts up, fastens, prints, or paints upon another’s property, notices, advertisements, signs or other writing designed to communicate to the general public.

(6) Parks or drives any vehicle on the land.

(7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.

(8) Uses or possesses leased or subleased lands beyond the possessory rights granted by such lease or sublease.

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<sup>1</sup> Current Tribal laws that authorize conduct described in 38.6-1(c): Chapter 12, Protection and Management of Archeological and Historical Resources; Chapter 34, Oneida Tribal Regulation of Domestic Animals Ordinance; Chapter 40, Tribal Environmental Response Law; Chapter 42, Wood Cutting Ordinance; Chapter 44, Recycling and Solid Waste Disposal; Chapter 45, Hunting, Fishing and Trapping Law; Chapter 49: All-Terrain Vehicle Law; Chapter 69, Zoning and Shoreland Protection Law.

(9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

### **38.7. Violations and Appeals**

38.7-1. *Issuance of a Citation.* Any person who violates any provision of this Law shall be guilty of a civil infraction, and shall be issued a citation, in writing, by a Conservation Warden or Oneida Police Officer. The issuance of a citation or fine under any other law relating to the same or any other matter shall not preclude the issuance of a citation under this Law.

(a) The Oneida Business Committee, upon recommendation of the Environmental Resource Board, shall adopt a citation schedule.

(b) The citation shall specify the date, time and place of the hearing to contest the citation. The hearing shall take place at least five (5) business days after the citation is issued.

(c) The citation shall also state that the Environmental Resource Board may, in addition to the citation, impose hearing costs and restitution against the person for damages caused by a violation of this Law.

38.7-2. *Citation Hearing.* Any person issued a citation under this Law may contest the citation by attending a hearing before the Environmental Resource Board. The person may appear in person, or be represented by an agent, advocate or attorney.

(a) If the person does not wish to contest the citation, he or she shall pay the citation by the hearing date specified on the citation.

(b) After the hearing, the Environmental Resource Board shall:

(1) determine whether the person is responsible for the citation, as was issued;

(2) determine whether to impose hearing costs and/or restitution against the person for the value of any damage caused by a violation of this Law; and

(3) set a new date for when the citation, hearing costs and/or restitution shall be paid, if necessary.

(c) Any restitution funds received shall be used to repair the damages caused by a violation of this Law.

38.7-3. *Appeals from the Environmental Resource Board Decision.* Any party of interest may appeal a decision of the Environmental Resource Board to the Tribe's judicial system.

*End.*

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Adopted – BC-05-15-14-C

Emergency Amended – BC-07-23-14-C

Amended – BC-12-10-14-A

Emergency Amended – BC

## CHAPTER 38 PUBLIC USE OF TRIBAL LAND

38.1. Purpose and Policy  
38.2. Adoption, Amendment, Repeal  
38.3. Definitions  
38.4. Environmental Resource Board

38.5. Land Access Map  
38.6. Trespass  
38.7. Violations and Appeals

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### 38.1. Purpose and Policy

38.1-1. *Purpose.* The purpose of this Law is to prevent improper access, use and trespass to Tribal lands.

38.1-2. *Policy.* It is the policy of the Tribe to limit access to Tribal land to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

### 38.2. Adoption, Amendment, Repeal

38.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A.

38.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

38.2-3. 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.

38.2-4. 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.

38.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

38.2-6. This Law shall not be construed to preclude the Tribe from pursuing relief for criminal trespass under applicable law.

### 38.3. Definitions

38.3-1. 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) “Designation” means the term used to describe the type of access granted to certain Tribal lands.

(b) “Lease” means any lease or agreement, including business site leases, entered into by the Tribe and any person to allow the use of Tribal lands.

(c) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

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

(e) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under a Tribal law, permit or lease.

(f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(g) “Tribal land” means all Tribal trust lands, and any land or interest in land held by the Oneida Tribe in fee or in any other form on the Reservation.

**38.4. Environmental Resource Board**

38.4-1. The Environmental Resource Board shall have the duty and power to carry out the intent and purposes of this Law and enforce the provisions of this Law. The Environmental Resource Board, or its designated staff, shall:

- (a) Develop, approve and maintain the Land Access Map.
- (b) Hold public hearings on proposed amendments to the Land Access Map.
- (c) Hear and decide, as the original hearing body, contested cases that may arise under this Law.
- (d) Impose hearing costs and restitution against the person for damages caused by a violation of this Law.
- (e) Determine which Tribal land will be posted and ensure the appropriate signs are posted.
- (f) Implement and interpret the provisions of this Law.
- (g) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal land.

**38.5. Land Access Map**

38.5-1. *Designation of Tribal Lands.* A Land Access Map shall be created which designates Tribal land as one (1) of the following:

- (a) Limited Access: Lands designated as “Limited Access” shall be open to all persons who are granted land access permission by the Tribe through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.
- (b) Oneida Community Access: Lands designated as “Oneida Community Access” shall be open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Tribe; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Tribe.
  - (1) A Conservation Warden or Oneida Police Officer may require a person to demonstrate proof of eligibility to use Oneida Community Access lands.
  - (2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.
- (c) Oneida Tribal Member Access: Land designated as “Oneida Tribal Member Access” shall be open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.
- (d) Open: Lands designated as “Open Access” shall be generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Tribe and where such designation does not pose significant risk of damage to the policies of the Tribe and/or the land’s cultural or environmental preservation.

38.5-2. Notwithstanding the restrictions of 38.5-1, nothing in this Law shall be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

- (a) Employees of the Tribe who are performing their job duties;
- (b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Tribe;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those persons who have been granted access to the land by the Environmental Resource Board.

38.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Tribe. The Environmental Resource Board shall adopt the initial Land Access Map.

38.5-4. *General Land Designation.* Unless otherwise designated, Tribal Land shall be designated as Limited Access.

38.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration shall be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, shall be:

- (i) published in the Tribal newspaper; and
- (ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

- (A) Existing uses of the land and buildings within the general area of the land in question.
- (B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board shall not amend the Land Access Map unless it finds that adopting such amendment is in the Tribe's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments shall require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

### **38.6. Trespass**

38.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

(a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Tribal website and/or in the Tribal newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

(1) A sign at least eleven (11) inches square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.

(2) Markings at least one (1) foot long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:<sup>1</sup>

(1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.

(2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.

(3) Engages in any act, or attempted act of hunting, trapping or fishing.

(4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.

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<sup>1</sup> Current Tribal laws that authorize conduct described in 38.6-1(c): Chapter 12, Protection and Management of Archeological and Historical Resources; Chapter 34, Oneida Tribal Regulation of Domestic Animals Ordinance; Chapter 40, Tribal Environmental Response Law; Chapter 42, Wood Cutting Ordinance; Chapter 44, Recycling and Solid Waste Disposal; Chapter 45, Hunting, Fishing and Trapping Law; Chapter 49: All-Terrain Vehicle Law; Chapter 69, Zoning and Shoreland Protection Law.

- (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
- (6) Parks or drives any vehicle on the land.
- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or subleased lands beyond the possessory rights granted by such lease or sublease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

### **38.7. Violations and Appeals**

38.7-1. *Issuance of a Citation.* Any person who violates any provision of this Law shall be guilty of a civil infraction, and shall be issued a citation, in writing, by a Conservation Warden or Oneida Police Officer. The issuance of a citation or fine under any other law relating to the same or any other matter shall not preclude the issuance of a citation under this Law.

(a) The Oneida Business Committee, upon recommendation of the Environmental Resource Board, shall adopt a citation schedule.

(b) The citation shall specify the date, time and place of the hearing to contest the citation. The hearing shall take place at least five (5) business days after the citation is issued.

(c) The citation shall also state that the Environmental Resource Board may, in addition to the citation, impose hearing costs and restitution against the person for damages caused by a violation of this Law.

38.7-2. *Citation Hearing.* Any person issued a citation under this Law may contest the citation by attending a hearing before the Environmental Resource Board. The person may appear in person, or be represented by an agent, advocate or attorney.

(a) If the person does not wish to contest the citation, he or she shall pay the citation by the hearing date specified on the citation.

(b) After the hearing, the Environmental Resource Board shall:

(1) determine whether the person is responsible for the citation, as was issued;

(2) determine whether to impose hearing costs and/or restitution against the person for the value of any damage caused by a violation of this Law; and

(3) set a new date for when the citation, hearing costs and/or restitution shall be paid, if necessary.

(c) Any restitution funds received shall be used to repair the damages caused by a violation of this Law.

38.7-3. *Appeals from the Environmental Resource Board Decision.* Any party of interest may appeal a decision of the Environmental Resource Board to the Tribe's judicial system.

*End.*

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Adopted – BC-05-15-14-C

Emergency Amended – BC-07-23-14-C

Amended – BC-12-10-14-A

Emergency Amended – BC \_\_\_\_\_

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 6/25/2015
- 2) Contact Person(s): Brandon Stevens Dept: LOC  
Phone Number: 869-4378 Email: BSTEVEN@oneidanation.org
- 3) Agenda Title: Community Support Fund Policy Amendment
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Request to add language found in BC Resolution 12-11-13-D into the the policy  
"someone who receives assistance from the Fund program does not have to cost share  
if they are at or below the federal Poverty Guidelines"

List any supporting materials included and submitted with the Agenda Request Form

- 1) Resolution 12-11-13-D
- 2) Community Support Fund Policy
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
Community Support Fund Policy
- 6) Please List all other departments or person(s) you have brought your concern to:  
Brad Graham, 538-3042
- 7) Do you consider this request urgent? ☐ Yes ☒ No  
If yes, please indicate why: \_\_\_\_\_

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@oneidanation.org**

*or*

**Legislative Operating Committee (LOC)**

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376



Onedias 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 12-11-13-D  
Amendments to the Community Support Fund Policy**

- 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 Oneida Business Committee originally adopted the Community Support Fund Policy (Policy) on May 15, 1996, and made amendments on January 8, 1997, and
- WHEREAS,** amendments to the Policy were sought in order to provide clarity and consistency in implementation of the program that administers the Community Support Fund, and
- WHEREAS,** the amendments to the Policy clarify the prioritization of assistance given by adding definitions for catastrophic event, illness or injury, and requiring that requests for assistance be made within thirty (30) business days from the catastrophic event, illness or injury, and
- **WHEREAS,** *missing in policy* the amendments to the Policy also clarify the eligibility requirements and specifically states that someone who receives assistance from the Fund program does not have to cost share if they are at or below the Federal Poverty Guidelines, and
- WHEREAS,** the amendments to the Policy clarify provisions for assistance with security deposits and payment of utilities, and
- WHEREAS,** additional amendments were made to add specific provisions for funeral travel reimbursement, and
- WHEREAS,** amendments require the Social Services Area to prepare Standard Operating Procedures that set caps on the amount each person or each household may receive per event, and
- WHEREAS,** amendments require the Social Services Area to ensure that the community is aware of the types of assistance available, who is eligible for assistance, and how to apply for assistance, and
- WHEREAS,** amendments also require the Social Services Area to report to the Oneida Business Committee semi-annually, which report shall include how much of the Funds are paid out to each of the categories it creates in its SOP's, and
- WHEREAS,** minor other amendments are being made to update the format to comply with the Legislative Procedures Act and make it more efficient, and
- WHEREAS,** a public meeting on these amendments was held on May 16, 2013 and on June 13, 2013, in accordance with the Legislative Procedures Act.

**NOW THEREFORE BE IT RESOLVED**, that the attached amendments to the Community Support Policy are hereby adopted and shall go into effect ninety (90) days from the date of adoption of this Resolution.

#### **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; 5 members were present at a meeting duly called, noticed and held on the 11<sup>th</sup> day of December, 2013; that the forgoing resolution was duly adopted at such meeting by a vote of 4 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

A handwritten signature in black ink, appearing to read "Patricia Hoefft", written over a horizontal line.

Patricia Hoefft, Tribal Secretary  
Oneida Business Committee

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

## Community Support Fund Policy

Article I. Purpose and Policy

Article II. Adoption, Amendment, Repeal

Article III. Definitions

Article IV. Social Service Responsibilities;  
Eligibility and Qualifications

Article V. Priorities for Consideration

Article VI. Items Covered by the Fund

Article VII. Items not covered by the Fund

Article VIII. Application Requirements

Article IX. Appeal

### Article I. Purpose and Policy

1.1. The purpose of this Policy is to assist the greatest number of Tribal members of the Oneida Tribe of Indians of Wisconsin who apply for assistance to the Community Support Services Fund in times of a catastrophic event, illness or injury when no other resources for assistance exist.

1.2. It is the policy of the Oneida Tribe of Indians of Wisconsin to assist their people in a time of need after a catastrophic event, illness or injury, when there is no other assistance available or all other assistance has been exhausted.

### Article II. Adoption, Amendment, Repeal

2-1. This Policy is adopted by the Oneida Business Committee by resolution # BC-5-15-96-A, amended by resolution # BC-01-08-97-G, and amended by resolution # BC-12-11-13-D.

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

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

2-4. In the event of a conflict between a provision of this Policy and a provision of another policy, the provisions of this Policy shall control.

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

### Article III. Definitions

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

(a) "Applicant" shall mean the person applying for assistance for themselves or on behalf of another person who is otherwise unable to do so due to age or incapacity.

(b) "Business Days" shall mean Monday through Friday 8:00 a.m. to 4:30 p.m., except for recognized holidays as listed on the official calendar of the Tribe.

(c) "Case Manager" shall mean the employee of the Social Services Area responsible for administering Community Support Services Fund benefits according to the established guidelines set forth below.

(d) "Catastrophic event" shall mean a natural or man-made incident, which results in substantial damage or loss requiring major financial resources to repair or recover (i.e. house fire, tornado, flood, or other disaster).

(e) "Catastrophic illness or injury" shall mean a serious debilitating illness, injury, impairment, or physical or mental condition that involves:

(1) in-patient care; or

(2) a period of continuing treatment due to a chronic serious health condition

- (asthma, diabetes, epilepsy, etc.); or
- (3) a period of illness or injury that is long-term due to a condition for which treatment may be ineffective (stroke, terminal disease, etc.); or
- (4) receipt of multiple treatments either for restorative surgery after an accident or other injury, or for a chronic condition. (i.e. cancer or kidney disease)
- (f) "Cost share" shall mean the request to have the applicant agree to contribute to the cost of the assistance given.
- (g) "Emergency" shall mean a situation that poses an immediate risk to health, life, safety, property or environment. Emergencies require urgent intervention to prevent further illness, injury, death, or other worsening of the situation.
- (h) "Emergency medical travel" shall mean an unexpected serious health situation or occurrence, requiring the immediate presence of immediate family. (i.e., end of life situation, life support, etc.)
- (i) "Fund" shall mean the Community Support Services Fund.
- (j) "Immediate family" shall mean that group of persons who make up a family unit normally defined as husband, wife, children, sister, brother, in-laws, step family, grandparents and grandchildren, and/or a person who has legal responsibility for a member of their immediate family.
- (k) "Legal guardian" shall mean a person who has the legal authority to care for the personal and property interests of another person granted through Court order.
- (l) "Legal Responsibility" shall mean specific duties imposed upon a person to care or provide for another including liability for personal obligations as granted through a Power of Attorney or Court order.
- (m) "Major medical surgery" shall mean a surgical procedure that carries a degree of risk to the patient's life, or the potential for severe disability if something goes wrong during surgery. It is a surgical procedure that usually requires a patient to be put under general anesthesia and given respiratory assistance because he or she cannot breathe independently.
- (n) "Reservation" shall mean all the lands and waters within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (o) "Severity" shall mean the verified rate or level of need.
- (p) "Shelter" shall mean mortgage payments or rent payments.
- (q) "Tribal or Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.
- (r) "Verification" shall mean the evidence or proof that confirms the accuracy or truth of the alleged catastrophic event, illness or injury and of Tribal membership (i.e., estimates, photographs, doctor statements/report, check stubs, tribal identification card/letter, etc.).

#### **Article IV. Social Service Responsibilities; Eligibility and Qualifications**

4-1. The Social Services Area of the Governmental Services Division shall create and administer the Fund.

- (a) The Social Services Area shall create standard operating procedures for the administration of the Fund. The standard operating procedures shall include the list of categories the Fund covers and a cap that set the amount of assistance per event/ per

household, except for funeral expenses which shall be set per event/ per person.

(b) The Governmental Services Division Director shall report semi-annually to the Oneida Business Committee. The report shall include, the amount of Funds paid out under each category. (c) The Social Services area shall ensure that the Tribal membership is informed of what assistance is available through the Fund, how to apply for assistance, and specify who is eligible for assistance.

4-2. Eligibility for assistance provided under the Fund is reserved for Tribal members. Applications may be made by a non-Tribal parent or legal guardian on behalf of a Tribal member, or minor eligible for enrollment, provided Funds will benefit the Tribal member or child of the applicant.

4-3. Residency within the State of Wisconsin is not a prerequisite for assistance, except for requests for a security deposit in Section 6-2.

4-4. The Fund provides assistance when there is no other financial assistance available.

(a) Applicants will be asked to contribute a percentage of the assistance being requested.

(b) Applicants shall first seek out other resources that can meet the needs of their request. Proof of requesting assistance from other sources shall be provided with the application.

4-5. The following types of catastrophic events, illnesses or injuries qualify an applicant for assistance:

(a) Terminally ill

(b) Physically challenged or incapacitated

(c) Major medical surgery

(d) Life threatening (i.e. Cancer, AIDS, Stroke, disabling injuries due to motor vehicle accident, etc.)

(e) Natural disaster (i.e. Tornado, fire, flood, etc.)

(f) Death in immediate family

4-6. A Case Manager reserves the right to deny applicants who have elected not to be covered by employer benefits such as disability or health insurance.

4-7. All payments shall be provided directly to the service provider. However, funeral travel shall be reimbursed to the applicant.

4-8. Assistance available under the Fund is subject to change according to fiscal year funding levels.

4-9. Tribal Programs and Enterprises are not eligible for these funds.

## **Article V. Priorities for Consideration**

5-1. The Case Managers shall determine the level of assistance to be provided based on:

(a) Severity of event, illness or injury

(b) Ability of applicant to cost share

(c) Cost (usual and customary fees)

(d) Amount of time elapsed since catastrophic event, illness or injury occurred

5-2. The Case Manager shall assess each individual case, prioritize and assist with immediate needs. Priorities are as follows:

(a) Life-threatening emergency requests

(b) Emergency medical travel

(c) Other needs

## **Article VI. Items Covered by the Fund**

6-1. Requests for assistance from the Fund must be tied to or be a result of a catastrophic event, illness or injury. Upon verification of a catastrophic event, illness or injury, the Fund may be used for the following:

- (a) Health insurance, including COBRA
- (b) Prescriptions not available through an IHS Clinic
- (c) Medical transportation/emergency medical travel (including vehicle repairs)
- (d) Rental of medical equipment
- (e) Medical bills (dental, optical, hospital) not covered by insurance
- (f) Shelter and utilities where no other resources exist (including security deposits)

6-2. Requests for assistance for a security deposit shall be tied to or be a result of, a catastrophic event, illness or injury and are limited to Tribal members who are Wisconsin residents only.

- (a) The Tribal member shall demonstrate the ability to fulfill the terms of the rental lease. The Fund does not co-sign any lease.
- (b) Security deposits are non-transferable and the amount paid for a security deposit shall be paid back to the Fund Program before another security deposit is issued at any time in the future.
- (c) Only one request per household will be considered.
- (d) Security deposits shall be issued on an emergency basis which shall include, but is not limited to, pending eviction and homelessness.

6-3. Requests for assistance for the payment of utilities shall only be allowed once every three (3) years by the person listed as responsible to pay with the utility company. Those who receive assistance in paying their utilities shall cost share those expenses by paying back fifty percent (50%) of the funds received within four (4) months. If those funds are not reimbursed to the fund by the required date, the Community Support Program may garnish the individual's per capita payments.

6-4. Travel expenses to arrange or attend a funeral for immediate family members outside the State of where an applicant resides shall be paid by the applicant first, and the Fund shall reimburse those applicants for mileage or airfare expenses up to a maximum amount of five hundred dollars (\$500).

## **Article VII. Items not covered by the Fund**

7-1. The Fund does not cover payments that are not for a catastrophic event, illness or injury as defined above. The following is a list of items not covered by the Fund; however, this is not an exhaustive list:

- (a) Car payments
- (b) Taxes
- (c) Credit card or Charge accounts
- (d) Commercial loans
- (e) Defaults/fines/bankruptcy charges
- (f) Expenses not tied to basic needs (Cable, internet, memberships, etc.)
- (g) Legal fees/court costs/judgments

7-2. The Fund reserves the right to deny or limit benefits if evidence is found regarding the applicant as to the following:

(a) The catastrophic event, illness or injury is the result of a violation of the law as proven by a citation or criminal conviction.

(b) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of other tribal programs, policies or laws (i.e. Zoning, etc.)

(c) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of the Fund.

If the Fund chooses to approve, deny, or limit benefits under this section, an explanation of the decision shall be in writing and provided to the applicant with a copy placed in the Fund's file.

### **Article VIII. Application Requirements**

8-1. To be considered for assistance and before receiving assistance the applicant must complete the full application process. All applicants shall cooperate with the Case Manager to assist the Case Manager in comprehensively addressing the needs of the applicant.

8-2. Supporting documentation shall be required in all cases. The applicant is responsible to provide all documentation requested by the Case Manager.

(a) No assistance shall be provided without sufficient documentation of the catastrophic event or illness or injury as requested by the Case Manager.

(b) No assistance shall be provided without sufficient documentation that the applicant sought assistance from other agencies with an explanation of benefits received or refusal of assistance by the other agencies.

8-3. Documentation includes, but is not limited to:

- (a) Medical reports
- (b) Bills or statements
- (c) Estimates
- (d) Letters
- (e) Police or fire reports
- (f) Obituary or formal notice of death
- (g) Check stubs
- (h) Pictures or photographs
- (i) Applications for assistance from other agencies
- (j) Approval of assistance or denial of assistance letters from other agencies

8-4. Verification of status of employment is required and includes the following documentation:

- (a) Leave of absence paperwork
- (b) Balance of personal and vacation time accumulation
- (c) Disability insurance or workmen's compensation coverage
- (d) Check stubs

8-5. Requests submitted without supporting documentation shall be kept on file for thirty (30) business days.

(a) A request for additional information by a Case Manager shall be made when an application contains insufficient information to make an informed decision.

(b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.

(c) Failure to submit the requested information within the thirty (30) business days will result in closing the application file, with no further action taken in regard to that application.

(d) Applicant shall be sent a notice that the file has been closed and reason(s) for the file being closed.

(e) After the file is closed, the applicant shall start the application process over again in order to be considered for assistance from the Fund. However, no applicant may re-apply for the same catastrophic event, illness or injury more than twice.

8-6. Application for assistance shall be made within a reasonable time period, not to exceed thirty (30) business days of a catastrophic event or illness or injury. Applications made after thirty (30) business days shall not be considered.

#### **Article IX. Appeal**

9-1. An appeal of the Case Manager's decision shall be made to the Case Manager's supervisor. If the supervisor upholds the decision, it may then be appealed to the Area Manager of the Social Services Division. If the decision is upheld by the Area Manager, the decision may be appealed as a final decision to the Judiciary.

*End.*

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Adopted - BC-5-15-96-A  
Amended - BC-1-8-97-G  
Amended- BC-12-11-13-D



# Legislative Operating Committee AGENDA REFERRAL FORM



1) Today's Date: 6 / 26 / 2015 Date of Referral Action: 6 / 25 / 2015

2) Entity that referred this item to LOC: Oneida Business Committee

3) Individuals or Entities to contact regarding this item: Lisa Summers, Tribal Secretary

4) Item referred: Petition: John E. Powless Per capita payments

5) Background information, including applicable actions and dates: The following motion was made at the 6/25/2015 OBC meeting: Motion by David Jordan to acknowledge receipt of the verified petition submitted by John E. Powless, Jr.; to send the verified petition to the Law, Finance, Legislative Reference and Direct Report Offices for the legal, financial, legislative and administrative analyses to be completed; to direct the Law, Finance and Legislative Reference Offices to submit the analyses to the Tribal Secretary's office within 60 days

6) Due date: Analysis due 8/19/2015

*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

## Oneida Business Committee Agenda Request

**1. Meeting Date Requested:** 07 / 08 / 15

**2. General Information:**

Session: ☒ Open ☐ Executive - See instructions for the applicable laws, then choose one:

Agenda Header:

☐ Accept as Information only

☒ Action - please describe:

1) To acknowledge receipt of the petition submitted by John E. Powless, Jr. 2) Send the verified petition to the Law, Finance, Legislative Reference and Direct Report Offices for legal, financial, legislative and administrative analyses to be completed 3) Direct the Law, Finance and Legislative Offices to submit the analyses to the Tribal Secretary within 60 days and that a progress report is submitted in 45 days 4) Direct the Direct Report Offices to submit the appropriate analyses to the Tribal Secretary within 30 days.

**3. Supporting Materials**

☐ Report ☐ Resolution ☐ Contract

☒ Other:

1.

3.

2.

4.

☐ Business Committee signature required

**4. Budget Information**

☐ Budgeted - Tribal Contribution ☐ Budgeted - Grant Funded ☐ Unbudgeted

**5. Submission**

Authorized Sponsor / Liaison:

Primary Requestor:

Additional Requestor:

Additional Requestor:

## Oneida Business Committee Agenda Request

### 6. Cover Memo:

Describe the purpose, background/history, and action requested:

This serves as a request for the Oneida Business Committee (OBC) to formally acknowledge receipt of a verified petition, and to send this petition to the Law, Finance, Legislative Reference and Direct Report Office for analyses.

On June 17, 2015, the Tribal Secretary's office received a petition which states the following:

"Petition for a per capita payment of \$3,000 for everyone over 18 years of age and \$5,000 for those over 62 years of age. Per capita payment goes directly to the tribal member and is exempt from child support payments. Per capita to be paid out by December 1, 2015."

The petition was submitted to the Enrollment Department for verification, Article III, Section 4 of Oneida's Constitution requirement for requesting a Special General Tribal Council (GTC) meeting were met. The Enrollment Department completed and submitted the required verification.

The next step is for the OBC to acknowledge receipt of the verified petition and then send the petition to the Law, Finance, Legislative Reference and Direct Report Offices for all appropriate analyses to be completed.

Once the analyses are complete, they will be submitted to the OBC agenda for acceptance. The final step will be for the OBC to determine an available GTC meeting date where the identified petition issues can be addressed.

Requested OBC Action:

1. Accept the verified petition submitted by John E. Powless, Jr.
2. Send the verified petition to the Law, Finance, Legislative Reference and Direct Report Offices for the legal, financial, legislative and administrative analyses to be completed.
3. Direct the Law, Finance and Legislative Reference Offices to submit the analyses to the Tribal Secretary's office within 60 days, and that a progress report be submitted in 45 days.
4. Direct the Direct Report Offices to submit the appropriate administrative analyses to the Tribal Secretary's office within 30 days.

1) Save a copy of this form for your records.

2) Print this form as a \*.pdf OR print and scan this form in as \*.pdf.

3) E-mail this form and all supporting materials in a **SINGLE** \*.pdf file to: BC\_Agenda\_Requests@oneidanation.org

**Oneida Tribe of Indians of Wisconsin****ENROLLMENT DEPARTMENT**

P.O. BOX 365, ONEIDA, WI 54155-0365

PHONE: (920) 869-6200 \* 1-800-571-9902 FAX: (920) 869-2995

[www.oneidanation.org/enrollment](http://www.oneidanation.org/enrollment)

TO: Oneida Business Committee

FROM: Cheryl Skolaski, Enrollment Director *Cheryl Skolaski*

DATE: June 17, 2015

SUBJECT: GTC Petition Verification

Received GTC Petition from John E Powless Jr re: Per Capita Payment of \$3,000 for 18 & over & \$5,000 for 62 & over to be paid 12/1/2015 (No child support withholding).

Verified signatures on petition.

53 signatures were submitted,

51 signature were verified as valid,

2 signatures – member was not 21,

Verified by:

*Cheryl Skolaski*  
Signature/Title

*6/17/15*  
Date

If you have any questions, please feel free to contact me.

PETITION FORM

Page 144 of 201

Page 145 of 155

NAME OF PETITIONER: John E. Powless Jr.

PURPOSE: Petition for a per capita payment of \$3,000 for everyone over 18 years of age and \$5,000 for those over 62 years of age. Per capita payment goes directly to the tribal member and is exempt from child support payments. Per capita to be paid out by Dec. 1, 2015

DATE SUBMITTED TO THE ONEIDA TRIBAL SECRETARY:

Please Print Clearly - Use Full Given Name

RECEIVED

JUN 17 2015

Printed Name	Address	D.O.B.	Enrollment #	Signature	Oneida Enrollment Dept.
			<del>15960</del> ✓		
			10031 ✓		
			5024 ✓		
			<del>5076</del> ✓		
			12569 ✓		
			3850 ✓		
			3879 ✓		
			3705 ✓		
			3754 ✓		
			3692 ✓		
			3788 ✓		
			10153 ✓		
			5131 ✓		
			10254 ✓		
			5074 ✓		

(15) Verified *cp*

51/53 signatures  
Verified  
② Not 21  
Cheryl Holash  
6/17/15  
①

**LOC Active Files List – Sponsor Breakdown**

	<b>Brandon Stevens</b>	<b>Tehassi Hill</b>	<b>Jennifer Webster</b>	<b>Fawn Billie</b>	<b>David Jordan</b>	<b>No Sponsor</b>	<b>LOC Total</b>
<b>Total Active Items</b>	<b>7</b>	<b>9</b>	<b>12</b>	<b>8</b>	<b>1</b>	<b>2</b>	<b>39</b>
<b>New Laws/Policies</b>	<b>3</b>	<b>5</b>	<b>8</b>	<b>5</b>			<b>21</b>
<b>Amendments</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>12</b>
<b>Bylaws</b>	<b>1</b>		<b>2</b>	<b>2</b>			<b>5</b>
<b>Other</b>						<b>1</b>	<b>1</b>

**Completed Items - Overall**

	<b>Brandon Stevens</b>	<b>Tehassi Hill</b>	<b>Jennifer Webster</b>	<b>Fawn Billie</b>	<b>David Jordan</b>	<b>No Sponsor</b>	<b>LOC Total</b>
<b>Total Completed Items</b>	<b>3</b>	<b>5</b>	<b>2</b>	<b>2</b>		<b>1</b>	<b>13</b>
<b>New Laws/Policies</b>		<b>1</b>					<b>1</b>
<b>Amendments</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>1</b>		<b>1</b>	<b>11</b>
<b>Bylaws</b>				<b>1</b>			<b>1</b>
<b>Other</b>							

**Petitions**

	<b>Brandon Stevens</b>	<b>Tehassi Hill</b>	<b>Jennifer Webster</b>	<b>Fawn Billie</b>	<b>David Jordan</b>	<b>No Sponsor</b>	<b>LOC Total</b>
<b>Total Petitions</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>14</b>
<b>Petitions added to the AFL or deferred to LOC for legislative analysis:</b>					<b>1</b>	<b>1</b>	<b>2</b>
<b>Petitions where the OBC has accepted the LRO's analyses but the item has not yet been presented at GTC</b>	<b>1</b>	<b>1</b>	<b>1</b>		<b>1</b>		<b>4</b>
<b>Completed Petitions (presented to GTC or otherwise resolved)</b>	<b>5</b>	<b>1</b>				<b>2</b>	<b>8</b>

**Current Active Items**  
(Note: “Days on AFL” is effective as of July 1, 2015)

Item	Type	Added to AFL	Days on AFL
<b>Brandon Stevens</b>			
Budget Management and Control Law	New	9/17/14	288
Employment Law	New	9/17/14	288
Family Court Amendments: Bench Warrants	Amendments	9/17/14	288
Membership Ordinance	Amendments	9/17/14	288
ONGO Amendments (Permanent)	Amendments	9/17/14	288
Sanctions and Penalties Law	New	10/15/14	260
Election Board Bylaws Amendments	Bylaws	3/18/15	106
<b>Tehassi Hill</b>			
Rulemaking Law	New	9/17/14	288
Workplace Violence Policy	New	9/17/14	288
Code of Ethics Law Amendments	Amendments	9/17/14	288
Election Law Amendments	Amendments	9/17/14	288
Law Enforcement Ordinance – Conservation Officers	Amendments	9/17/14	288
Agricultural Law	New	10/1/14	274
Environmental, Health and Safety Law	New	12/17/14	197
Hunting, Fishing, Trapping Law Amendments	Amendments	1/21/15	162
Industrial Hemp Law	New	3/18/15	106
<b>Jenny Webster</b>			
Capping Damages and Awards from the Judicial System	New	9/17/14	288
Employee Advocacy Law	New	9/17/14	288
Fitness for Duty Policy	New	9/17/14	288
Tribally-Owned Business Organization Code	New	9/17/14	288
Vehicle Driver Certification and Fleet Management	New	9/17/14	288
Whistleblower Law	New	9/17/14	288
Audit Law Amendments	Amendments	9/17/14	288
Comprehensive Policy Governing BCCs Amendments	Amendments	9/17/14	288
Petition: Child Care Dep’t Consumer Complaint Policy	Other	9/17/14	288
Tribal Hearing Bodies	Other	9/17/14	288
Violence Against Women Act (VAWA)	New	3/18/15	106
Flag Code	New	5/6/15	57
<b>Fawn Billie</b>			
Children’s Code	New	9/17/14	288
GTC Meetings Law	New	9/17/14	288
Guardianship Law	New	9/17/14	288
Audit Committee Bylaws	Bylaws	9/17/14	288
Furlough Policy	New	10/15/14	260
Higher Education	New	10/15/14	260
Removal Law Amendments	Amendments	12/17/14	197
Personnel Commission Bylaws	Bylaws	3/18/15	106

<b>David Jordan</b>			
<b>Back Pay Policy Amendments</b>	Amendments	6/17/15	<b>15</b>
<b>No Sponsor</b>			
<b>APA Emergency Amendments</b>	Amendments	2/18/15	<b>134</b>
<b>Personnel Commission Complaint</b>	Other	2/25/15	<b>127</b>

### Items Completed This Term

Item	Type	Added to AFL	Date Completed	# of Days
<b>Brandon Stevens</b>				
Administrative Procedures Act Repeal	Amendments	9/17/14	9/24/14	7
Judiciary/Transition Plan Emerg. Amendments	Amendments	9/17/14	9/25/14	7
ONGO Emergency Amendments	Amendments	9/17/14	10/1/14	14
<b>Tehassi Hill</b>				
Personnel Policies: Job Duties/Work Assignments (Emergency Amendments)	Amendments	9/17/14	9/24/14	7
<b>Real Property Law Amendments</b>	Amendments	3/4/15	5/6/15	64
Public Use of Tribal Land Amendments	Amendments	9/17/14	12/3/14	78
<b>Motor Vehicle Registration Law Amendments</b>	Amendments	11/5/14	4/3/15	150
<b>Leasing Law</b>	New	9/17/14	5/6/15	232
<b>Jennifer Webster</b>				
Rules of Appellate Procedure Amendments	Amendments	9/17/14	3/4/15	169
<b>Investigative Leave Policy Amendments</b>	Amendments	12/17/14	6/17/15	183
<b>Fawn Billie</b>				
<b>Pow-wow Committee Bylaws</b>	Bylaws	10/1/14	4/3/15	185
<b>Marriage Law Amendments</b>	Amendments	11/5/14	5/20/15	187
<b>David Jordan</b>				
<b>No Sponsor</b>				
<b>Oneida Appeals Commission References Removal</b>	Amendments	2/18/15	2/18/15	1

### Petitions

Petitions are calculated/processed differently from all other items, for various reasons. For the purposes of this report, petitions are only treated as an active/completed item if the petition resulted in additional processing beyond the typical legislative analysis. All other petitions are below.

	<b>Petitions added to the AFL or deferred to LOC for legislative analysis:</b>	<b>Petitions where the OBC has accepted the LRO's analyses but the item has not yet been presented at GTC</b>	<b>Completed Petitions (presented to GTC or otherwise resolved)</b>
<b>Brandon Stevens</b>		<ul style="list-style-type: none"> <li>Budget Cuts, Swimming Lessons, GTC Directives &amp; Home Repairs for Elders</li> </ul>	<ul style="list-style-type: none"> <li>Publishing Names/ Addresses of Petition Signers in GTC Mailouts</li> <li>Real Estate Taxes for all Tribe Owned Property Paid by Tribe</li> <li>Responding to Questions/ Comments from Floor at GTC</li> <li>Directing a "Stall Mall" be Created</li> <li>Develop a Dialysis Center</li> </ul>
<b>Tehassi Hill</b>		<ul style="list-style-type: none"> <li>Judiciary Support System</li> </ul>	<ul style="list-style-type: none"> <li>GTC Meeting to Address Tribal Election Issues</li> </ul>
<b>Jennifer Webster</b>		<ul style="list-style-type: none"> <li>Genskow – GTC Meeting for 6 Resolutions</li> </ul>	
<b>Fawn Billie</b>			
<b>David Jordan</b>	<ul style="list-style-type: none"> <li>Petition: Frank Cornelius – Special GTC Meeting to address 4 resolutions</li> </ul>	<ul style="list-style-type: none"> <li>Genskow-3 resolutions – OBC Accountability, Repeal Judiciary, Open Records Law</li> </ul>	
<b>No Sponsor</b>	<ul style="list-style-type: none"> <li>Petition: Per Capita Payments – John Powless, Jr.</li> </ul>		<ul style="list-style-type: none"> <li>Petition: Constitution Amendments re: Membership</li> <li>Petition: Raise Employee Salaries 99 cents</li> </ul>

# July 2015

July 2015							August 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4							1
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30	31					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 28 - Jul 4	<b>Jun 28</b>	<b>29</b>	<b>30</b>	<b>Jul 1</b>	<b>2</b>	<b>3</b>	<b>4</b>
				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar		8:00am 4:30pm 4th of July Holiday	
Jul 5 - 11	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
		6:00pm 10:00pm GTC Semi-Annual (Radisson)		BC Meeting (BCCR)	10:00am 12:00pm FW: Tribal Hearing Bodies/Administrative Court Work Meeting (ECR) - Candice E. Skenando		
Jul 12 - 18	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>
				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar		2:00pm 4:30pm Vehicle Driver PM Comment Review (ECR) - LOC_Calendar	
Jul 19 - 25	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
				BC Meeting (BCCR)			
Jul 26 - Aug 1	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>Aug 1</b>

# August 2015

August 2015							September 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	1	6	7	1	2	3	4	5
9	10	11	12	13	14	8	13	14	15	16	17	18	19
16	17	18	19	20	21	15	20	21	22	23	24	25	26
23	24	25	26	27	28	22	27	28	29	30			
30	31					29							

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	<b>Jul 26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>Aug 1</b>
7/26 - 31							
	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
8/2 - 7				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>
8/9 - 14				BC Meeting (BCCR)			
	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>
8/16 - 21				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>
8/23 - 28				BC Meeting (BCCR)			
	<b>30</b>	<b>31</b>	<b>Sep 1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
8/30 - 9/4							