

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD  
**THURSDAY, March 30 at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: CEMETERY LAW  
AMENDMENTS**

**This is a proposal to amend the existing Cemetery Law which would:**

- ◆ Designate Land Management with administrative and maintenance oversight.
- ◆ Designate the Community Public Health Officer with authority over situations involving decedents who have died of communicable diseases.
- ◆ Grant rulemaking authority to Land Management, the Environmental Resource Board and the Community Public Health Officer.
- ◆ Update the complaint process regarding the implementation and enforcement of this law.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
OPEN UNTIL April 6, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidanation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**



# Cemetery Law Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: Oneida Law Office/ OBC	SPONSOR: David P. Jordan	DRAFTER: Kelly McAndrews	ANALYST: Maureen Perkins
<b>Intent of the Amendments</b>	Current amendments were brought forward to recognize the name of the Sacred Burial Grounds (Tsi? Tyeya?Tat'alih) and establish maintenance responsibilities.		
<b>Purpose</b>	Establish administrative authority for Oneida Nation cemeteries, establish maintenance responsibilities, govern the sale, transfer and recordkeeping of plots, establish eligibility criteria, establish a process for disinterment, and delegate authority pursuant to Oneida laws.		
<b>Affected Entities</b>	Trust Enrollment Department, Land Management, Oneida Land Commission, Environmental Resource Board, Community Public Health Officer, Oneida Police Department, Oneida Conservation Department, enrolled Tribal members, their families (including step children) and descendants who are or may be interred at an Oneida Nation cemetery		
<b>Affected Legislation</b>	Administrative Rulemaking, Public Use of Tribal Land, Emergency Management and Homeland Security		
<b>Enforcement/Due Process</b>	<p>The Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds [see 127.8-2]. The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law [see 127.8-2(a)]. Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law [see 127.8-2(b)].</p> <p>Any Individual may file a complaint with Land Management regarding the implementation and enforcement of this law [see 127.9-1]. Land Management shall respond to the complaint with a remedy within 5 business days of the receipt of the complaint to the individual filing the complaint, the Oneida Land Commission and the Environmental Resource Board [see 127.9-2].</p>		
<b>Public Meeting</b>	No public meeting held yet.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Legislative Operating Committee is considering the proposed amendments to establish
- 3 maintenance responsibilities with the appropriate department and also to recognize the Oneida name
- 4 of the existing cemetery. Additional amendments have evolved through the consultation process with
- 5 affected entities.
- 6 **B.** The Oneida Nation Cemetery is non-denominational and benefits the Oneida community by
- 7 providing a resting place for Oneida members and their families.
- 8

## SECTION 3. CONSULTATION

- 9
- 10 **A.** The Oneida Law Office staff consulted with the Community Public Health Officer and area coroner's
- 11 offices to include applicable sections of the amendments. Additionally, Land Management and the

12 Trust Enrollment Department were consulted to identify the appropriate entity to manage the Nation’s  
13 cemetery.  
14

## 15 **SECTION 4. PROCESS**

- 16 **A.** The appropriate legislative process has been followed to create the amendments.  
17 **B.** The current amendments were added to the Active Files List on August 15, 2015. Since that time  
18 multiple work meetings have occurred.  
19

## 20 **SECTION 5. CONTENTS OF THE AMENDMENTS**

- 21 **A.** The law has been amended as follows:
- 22 • The purpose section was updated to include administrative authority, maintenance responsibility  
23 and delegate authority pursuant to Oneida laws [see 127.1-1].
  - 24 • Several definitions were added [see 127.3-1]:
    - 25 ○ Decedent means a person who has died.
    - 26 ○ Disinterment permit means the form established by Land Management to authorize  
27 removal of a human corpse from a grave or tomb.
    - 28 ○ Judiciary means the judicial system that was established by Oneida General Tribal  
29 Council to administer the judicial authorities and responsibilities of the Oneida Nation.
    - 30 ○ Remains means the body of a deceased person, regardless of its state, and includes  
31 cremated remains. “Remains” is synonymous and may be used interchangeably with  
32 “decedent” and “corpse”.
    - 33 ○ Reservation means all the lands and waters within the exterior boundaries of the  
34 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida  
35 7 Stat. 566, and any lands added thereto pursuant to federal law.
    - 36 ○ Rule means a set of requirements, including citation fees and penalty schedules, in  
37 accordance with the Administrative Rulemaking law based on authority delegated in this  
38 law in order to implement, interpret and/or enforce this law.
  - 39 • The definition for family was expanded to include additional relationships beyond an Oneida  
40 Nation member’s parent, spouse and children:
    - 41 ○ Family means husband, wife, mother, father, son, daughter, brother, sister, grandparent,  
42 grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law,  
43 son-in-law, brother-in-law, sister-in-law, step-parent and step-children as established  
44 through a certified copy of the original marriage license, foster children, adopted  
45 children, kinship and fictive kinship relationships and/or a person who accepts legal  
46 responsibility for the decedent [see 127.3-1(d)].
  - 47 • The following definitions were removed:
    - 48 ○ Days was removed because the standard definition was used in the current law and it is  
49 not necessary to define a word used in the everyday sense [see 127.3-1(a) of current  
50 law].
    - 51 ○ Tribe or Tribal was removed and replaced with Nation to refer to the Oneida Nation in  
52 alignment with the Oneida Nation Constitution [see 127.3-1(g) of current law].
  - 53 • Oneida Sacred Burials Grounds, also known as Tsi’ Tyeya’Tat’alih, was recognized [see 127.4-  
54 1].

- 55 • Administrative authority changed from the Trust Enrollment Department to Land Management  
56 *[see 127.4-3]*. Additional administrative duties include:
- 57 ○ Issuing disinterment permits *[see 127.4-3(a)]*.
  - 58 ○ Requesting additional portions of land to be designated for use as an Oneida Nation  
59 cemetery *[see 127.4-3(f)]*.
  - 60 ○ Maintaining records concerning all plots *[see 127.4-3(e)]*.
- 61 • Land Management has been designated to maintain Oneida Nation cemeteries *[see 127.4-4]*.  
62 Additional maintenance responsibilities include:
- 63 ○ ensuring appearance is kept in accordance with established rules *[see 127.4-4(b)]* which  
64 they shall create *[see 127.8-1]*,
  - 65 ○ entering into agreements to meet maintenance responsibilities *[see 127.4-4(c)]*, and  
66 ○ oversight of any position created to care for the cemeteries *[see 127.4-4(d)]*.
- 67 • A public health emergency and communicable diseases section was added to the law which gives  
68 the Community Public Health Officer authority over situations that arise involving decedents who  
69 have died of communicable diseases *[see 127.4-5]*.
- 70 ○ The Community Public Health Officer shall determine conditions of disposal of a  
71 decedent with a communicable disease dangerous to public health *[see 127.4-5(a)]*. A  
72 corresponding list of communicable diseases shall be maintained and provided to affected  
73 departments *[see 127.4-5(a)(1)]*.
  - 74 ○ Require labeling of remains of a decedent with a communicable disease *[see 127.4-5(b)]*.
  - 75 ○ Maintain or require the maintenance of a written or electronic record of all remains and if  
76 unknown may request a local coroner or medical examiner to obtain any fingerprints,  
77 photographs, or identifying dental information and / or collect a DNA sample from the  
78 remains and transmit this information to any interested public health authority *[see 127.4-*  
79 *5(c)]*.
- 80 • Repatriated remains were added to the list of eligibility for interment in an Oneida Nation  
81 cemetery *[see 127.5-1(b)(2)]*.
- 82 • The requirement that the Enrollment Department is present at each disinterment and reinterment  
83 and restrictions for who may be present during disinterment or reinterment have been removed  
84 *[see 127.6-7(g) of current law]*.
- 85 • Vendors performing opening and closing are now required to have the qualifications and  
86 experience to perform openings for the burial of caskets *[see 127.6-3(c)(1)]*.
- 87 • Land Management is now responsible to provide information concerning the potential effects if a  
88 burial container is not used *[see 127.6-4]*.
- 89 • The requirements for disinterment have been amended and disinterment no longer requires an  
90 order from the Judiciary. Disinterment can now take place with an order from the Judiciary, the  
91 issuance of a disinterment permit, or reburial by Land Management to resolve a recordkeeping  
92 error *[see 127.7-1(a) to (c)]*.
- 93 ○ The list of person's who can request a disinterment has expanded to include:  
94 An individual, as designated in writing by the decedent as listed in the Authorization for  
95 Final Disposition *[see 127.7-3(b)(1)]*.
  - 96 ○ Any other person authorized, under obligation, or agreeing to dispose of the decedent's  
97 corpse *[see 127.7-3(b)(7)]*.

- 98 • Complaints regarding the implementation or enforcement of this law are now filed with Land  
99 Management rather than the Oneida Trust Enrollment Committee [see 127.9-1]. Land  
100 Management shall respond to complaints in writing to the individual filing the complaint, Land  
101 Management and to the Environmental Resource Board within 5 days [see 127.9-2].

102 **Rulemaking Authority**

103 The following entities have been granted rulemaking authority under this law in accordance with the  
104 Administrative Rulemaking law.

- 105 • Land Management shall create rules in order to carry out their responsibilities under this law [see  
106 127.4-3(j)].
- 107 • Land Management may establish rules related to the appearance and maintenance of an Oneida  
108 Nation cemetery [see 127.4-4(b) and 127.8-1].
- 109 • Land Management shall establish rules regarding maximum height, width and thickness  
110 requirements for monuments or flush markers placed at a plot [see 127.6-6].
- 111 • Land Management shall create rules regarding plot and marking fees [see 127.6-3].
- 112 • The Environmental Resource Board has been granted rulemaking authority regarding provisions  
113 related to the Public Use of Tribal Lands law [see *Public Use of Tribal Land*, 6 O.C. 609.4(g)]  
114 authorizing the Environmental Resource Board to promulgate rules related to prohibited uses of  
115 Oneida Nation cemetery grounds [see 127.8-2].
- 116 • Provisions related to the Emergency Management and Homeland Security law [see *Emergency  
117 Management and Homeland Security*, 3 O.C. 302.7] have been added authorizing the Community  
118 Public Health Officer to promulgate rules related to public health emergencies and communicable  
119 diseases [see 127.4-5].

120 **B.** The law has been significantly redrafted.

121

122 **SECTION 6. INTENT**

- 123 **A.** The purpose of the law has been updated to clearly state the intent is to establish administrative  
124 authority for the Oneida cemetery, establish cemetery maintenance responsibility, govern the sale,  
125 transfer and recordkeeping of plots, establish eligibility for interment, establish a process for  
126 disinterment, and delegate rulemaking authority.
- 127 **B.** It is clear that the law applies to those eligible for interment, those who visit the Oneida cemetery, the  
128 Trust Enrollment Department, Land Management, Oneida law enforcement, Oneida Conservation  
129 Department, the Environmental Resource Board, Oneida Land Commission and the Community Public  
130 Health Officer.

131

132 **SECTION 7. EFFECT ON EXISTING LEGISLATION**

- 133 **A.** No Oneida laws will be impacted by this legislation and there are no conflicts with existing legislation.

134

135 **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR**  
136 **OBLIGATIONS**

- 137 **A.** The proposed legislation will not affect existing rights of members of the Nation.

138 **B.** Due process was addressed in the law:

- 139           ○ The Environmental Resource Board shall promulgate rules concerning prohibited uses of  
140           Oneida Nation cemetery grounds *[see 127.8-2]*.  
141           ○ The Oneida Police Department or Oneida Conservation Department may issue citations  
142           for violation of this law or the cemetery rules in accordance with applicable Oneida law  
143           *[see 127.8-2(a)]*.  
144           ○ Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be  
145           handled in accordance with applicable law *[see 127.8-2(b)]*.  
146           ○ Any Individual may file a complaint with Land Management regarding the  
147           implementation and enforcement of this law *[see 127.9-1]*. Land Management shall  
148           respond to the complaint with a remedy within 5 business days of the receipt of the  
149           complaint to the individual filing the complaint, the Oneida Land Commission and the  
150           Environmental Resource Board *[see 127.9-2]*.  
151   **D.** Land Management will now be responsible to enter into contracts with the appropriate vendor to  
152   carry out applicable provisions in the law *[see 127.4-3(j) and 127.4-4(c)]*.  
153   **E.** Land Management will now be responsible for setting fees and rules in accordance with the  
154   Administrative Rulemaking law *[see 127.6-3]*.  
155

## 156   **SECTION 9. ENFORCEMENT**

- 157   **A.** The Oneida Police Department or Oneida Conservation may issue citations for violation of this law or  
158   the cemetery rules in accordance with applicable Oneida law *[see 127.8-2(a)]*. Criminal or any other  
159   unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with  
160   applicable law *[see 127.8-2(b)]*.  
161   **B.** There are existing human resources available for enforcement.  
162

## 163   **SECTION 10. ACCOUNTABILITY**

- 164   **A.** Land Management is responsible for administration *[see 127.4-3]* and maintenance *[127.4-4]* of the  
165   Oneida Cemetery. The Community Public Health Officer is responsible for issuing and enforcing the  
166   law including the power to take possession or control of any remains and make orders specific to  
167   embalming, interment, cremation, disinterment, transportation, or other disposal *[see 127.4-5]*.  
168   **B.** The Community Public Health Officer shall provide and maintain a list of communicable diseases  
169   and other notifiable conditions to affected departments *[see 127.4-5(a)(1)]*.  
170   **C.** The list will be available to affected departments and the public by request *[see 127.4-5(a)(1)]*.  
171  
172

**Title 1. Government and Finances– Chapter 127**  
**CEMETERY LAW**  
**Tsi? Lotiya?tata Olihwa'ke**  
*The matters concerning when they bury the body*

6	127.1. Purpose and Policy	11	127.6. Interment and Plots
7	127.2. Adoption, Amendment, Repeal	12	127.7. Disinterment
8	127.3. Definitions	13	127.8. Prohibited Items and Behavior on Cemetery Grounds
9	127.4. Administration and Authority	14	127.9. Reporting.
10	127.5. Eligibility and Ownership	15	

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16

17 **127.1. Purpose and Policy**

18 127.1-1. *Purpose.* The purpose of this law is to establish administrative authority for Oneida  
19 Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility,  
20 govern the sale, transfer and recordkeeping of plots, establish who is eligible for interment,  
21 establish a process for disinterment, and delegate authority pursuant to Oneida laws.

22 127.1-2. *Policy.* It is the policy of the Nation that all enrolled Oneida Nation members, their  
23 families and descendants may be interred in an Oneida Nation cemetery.

24

25 **127.2. Adoption, Amendment, Repeal**

26 127.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E  
27 and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, BC-07-23-14-B and BC-\_\_\_\_\_.

28 127.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to  
29 the procedures set out in the Legislative Procedures Act.

30 127.2-3. Should a provision of this law or the application thereof to any person or circumstances  
31 be held as invalid, such invalidity shall not affect other provisions of this law which are  
32 considered to have legal force without the invalid portions.

33 127.2-4. In the event of a conflict between a provision of this law and a provision of another  
34 law, the provisions of this law shall control.

35 127.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

36

37 **127.3. Definitions**

38 127.3-1. This section shall govern the definitions of words and phrases used within this law. All  
39 words not defined herein shall be used in their ordinary and everyday sense.

40 (a) “Decedent” means a person who has died.

41 (b) “Descendant” means a person who is not enrolled in the Nation, but is a blood  
42 relative in the direct line of descent of an Oneida Nation member.

43 (c) “Disinterment” means to exhume interred human remains or cremated human  
44 remains.

45 (d) “Disinterment permit” means the form established by Land Management to authorize  
46 removal of a human corpse from a grave or tomb.

47 (e) “Family” means husband, wife, mother, father, son, daughter, brother, sister,  
48 grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law,  
49 daughter-in-law, son-in-law, brother-in-law, sister-in-law, step-parent and step-children  
50 as established through a certified copy of the original marriage license, foster children,  
51 adopted children, kinship and fictive kinship relationships and/or a person who accepts  
52 legal responsibility for the decedent.

53 (f) “Interment” means to bury remains.

54 (g) “Judiciary” means the judicial system that was established by Oneida General Tribal  
55 Council to administer the judicial authorities and responsibilities of the Oneida Nation.

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

57 (i) “Reinterment” means to rebury remains.

58 (j) “Remains” means the body of a deceased person, regardless of its state, and includes  
59 cremated remains. “Remains” is synonymous and may be used interchangeably with  
60 “decedent” and “corpse”.

61 (k) “Reservation” means all the lands and waters within the exterior boundaries of the  
62 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida  
63 7 Stat. 566, and any lands added thereto pursuant to federal law.

64 (l) “Rule” means a set of requirements, including citation fees and penalty schedules, in  
65 accordance with the Administrative Rulemaking law based on authority delegated in this  
66 law in order to implement, interpret and/or enforce this law.

67  
68 **127.4. Administration and Authority**

69 127.4-1. The land designation, administrative duties and maintenance responsibilities for the  
70 Oneida Sacred Burials Grounds, also known as Tsi? Tyeya?Tat’alih and any other cemetery  
71 owned by the Nation shall be as provided within this section.

72 127.4-2. *Land Designation Responsibilities.* The Oneida Land Commission shall designate  
73 parcel(s) of land to be used for one (1) or more Oneida Nation cemeteries.

74 127.4-3. *Administrative Responsibilities.* Land Management shall be responsible for the  
75 administrative duties for all Oneida Nation cemeteries. These duties include:

76 (a) Issuance of disinterment permits, where appropriate. An approved disinterment  
77 permit constitutes authorization to transport the remains and reinter the disinterred  
78 remains at an approved location within the boundaries of the Oneida Reservation. If the  
79 remains are being transported outside the boundaries of the Oneida Reservation and/or  
80 reinterment is occurring at a location outside the boundaries of the Oneida Reservation,  
81 other laws may apply and the parties involved are responsible for compliance. Permits  
82 shall include:

83 (1) Information that is necessary to identify the decedent;

84 (2) The date and place of death;

85 (3) The current place of interment;

86 (4) The intended place of interment, the name of the person requesting the  
87 disinterment; and

88 (5) The name of the person in charge of the disinterment.

89 (b) Maintaining vital statistics of decedents interred, disinterred, and/or reinterred in an  
90 Oneida Nation cemetery including data derived from certificates death, fetal death reports  
91 or related reports, a report for final disposition, authorization for disinterment or  
92 reinterment or related judicial order or any other data as determined by Land  
93 Management.

94 (c) Creating long-term strategic plans for Oneida Nation cemeteries and reporting such  
95 information as may be required by the Oneida Business Committee or General Tribal  
96 Council.

97 (d) Causing portions of land designed to be used for an Oneida Nation cemetery to be  
98 surveyed and mapped into plots, drives and walks.

99 (e) Maintain records concerning all plots.

- 100 (f) Requesting additional portions of land to be designated for use as an Oneida Nation
- 101 cemetery, if needed.
- 102 (g) Selling and transferring plots and restricting the use of plots.
- 103 (h) Administering accounting activities related to the sale or transfer of a plot.
- 104 (i) Determining how to utilize gifts to an Oneida Nation cemetery.
- 105 (j) Establishing rules, entering into agreements with person(s) or entities, where needed,
- 106 in order to carry out their responsibilities under this law.

107 127.4-4. *Maintenance Responsibilities.* Land Management shall be responsible for cemetery

108 maintenance duties including:

- 109 (a) Maintaining Oneida Nation cemetery grounds.
- 110 (b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any
- 111 established rules.
- 112 (c) Entering into agreements and communication with person(s) or entities, where
- 113 needed, in order to meet the maintenance responsibilities.
- 114 (d) Oversight of any position created to care for the cemetery.

115 127.4-5. *Public Health Emergency and Communicable Diseases.* The Community Public

116 Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue

117 and enforce orders that are reasonable and necessary to provide for the safe disposal of remains

118 in an Oneida Nation cemetery. This includes the power to take possession or control of any

119 remains and make orders specific to embalming, interment, cremation, disinterment,

120 transportation, or other disposal. Additionally, the Community Public Health Officer may:

121 (a) Determine conditions and order a specific method of disposal of remains in an Oneida

122 Nation cemetery of a decedent who has died of a communicable disease that is dangerous

123 to public health, within a reasonable or necessary timeframe, as determined by the

124 Community Public Health Officer.

125 (1) The Community Public Health Officer shall provide and maintain a list of

126 communicable diseases and other notifiable conditions to affected departments

127 and the public by request.

128 (b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with

129 all available identifying information and information concerning the circumstances of

130 death and, in addition, require the remains of a decedent with a communicable disease be

131 clearly tagged to indicate that remains contain a communicable disease and, if known, the

132 specific communicable disease.

133 (c) Maintain or require the maintenance of a written or electronic record of all remains

134 that are disposed of in an Oneida Nation cemetery, including all available identifying

135 information and information concerning the circumstances of death and disposal. If it is

136 impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public

137 Health Office or designee may request that the local coroner or medical examiner obtain

138 any fingerprints, photographs, or identifying dental information, and/ or collect a

139 specimen of deoxyribonucleic acid from the remains and transmit this information to any

140 interested public health authority.

141 127.4-6. *Other requirements.* Neither this section nor any other section of this law relieves any

142 person from all applicable legal, professional, or other requirements.

143

#### 144 **127.5. Eligibility and Ownership**

145 127.5-1. *Eligibility.* The following persons may be interred in an Oneida Nation cemetery:

- 146 (a) An Oneida Nation member, his or her family, or descendants.

- 147 (b) Remains that are:  
148 (1) Returned to the Nation;  
149 (2) Repatriated; or  
150 (3) Discovered on the Reservation if Oneida’s Cultural Heritage Department,  
151 along with any other appropriate Oneida entity has determined that the most  
152 suitable place for interment of the remains is an Oneida Nation cemetery.

153 127.5-2. *Ownership of Plots.* Plots in an Oneida Nation cemetery may be purchased by anyone  
154 for individuals eligible to be interred in an Oneida Nation cemetery, as defined in section 127.5-  
155 1, but the owner of the plot shall be the individual for whom the plot was purchased, if living,  
156 and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in  
157 the plot itself, but grants an individual the right to be interred in the plot or determine who will  
158 be interred in the plot, subject to the eligibility requirements of this law.

159 (a) In the event the owner of a plot becomes ineligible to be interred in an Oneida Nation  
160 cemetery, the plot shall be resold to the Nation in accordance with section 127.5-2(c).

161 (b) A plot is not inheritable, but may be transferred from the owner to an individual  
162 eligible to be interred in an Oneida Nation cemetery. The transfer of a plot from one  
163 owner to another shall be processed through Land Management.

164 (c) A plot may only be resold by the owner of the plot to the Nation through Land  
165 Management. Plots resold to the Nation shall be bought for the original purchase price.  
166 The following owners of plots may resell a plot to the Nation:

- 167 (1) Competent individuals who are at least eighteen (18) years of age;  
168 (2) Individuals who are less than eighteen (18) years of age, with the written  
169 permission of the original purchaser of the plot; and  
170 (3) Incompetent individuals who are at least eighteen (18) years of age, with the  
171 permission of their guardian or appropriate power of attorney.

172  
173 **127.6. Interment and Plots**

174 127.6-1. All interments shall be approved by Land Management prior to interment to ensure the  
175 health and safety of the public will not be endangered, that the plot is properly marked, and to  
176 provide information to any company or contractor providing services for the interment.

177 (a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land  
178 Management shall report any known situations involving communicable diseases to  
179 Oneida’s Community Public Health Officer for investigation. The Community Public  
180 Health Officer may determine conditions for disposal of the remains in accordance with  
181 section 127.4-5.

182 127.6-2. No interments will be scheduled on the observance of any Holiday recognized by the  
183 Nation.

184 127.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment, or disinterment or  
185 re-interment, including all the below listed fees, are the responsibility of the decedent’s estate,  
186 if any, family assuming responsibility, or other individual assuming legal responsibility for the  
187 remains, unless otherwise stated. Land Management shall create rules regarding plot and  
188 marking fees.

- 189 (a) Plot fees shall be paid prior to interment.  
190 (b) Marking fees for the plot or monument location shall be assessed and required each  
191 time an interment occurs, regardless of container use or method of disposition.  
192 (c) Opening and closing fees shall be determined by the vendor chosen.

193 (1) Any such vendor is required to have the qualifications and experience to  
194 perform opening and closings. Family members or private persons lacking  
195 qualifications or experience to perform burial related openings may not perform  
196 openings for the burial of caskets.

197 (d) There shall be no plot fees or marking fees assessed for remains interred in  
198 accordance with section 127.7-4. If the Nation or its contracted vendor opens or closes a  
199 plot for the interment of human remains in accordance with section 127.7-4, no fees shall  
200 be assessed for the opening or closing of the plot.

201 127.6-4. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while  
202 recommended, are not required for interment. Land Management shall provide information  
203 concerning the potential effects if a burial container is not used.

204 127.6-5. *Division of Plots.* Each plot may only be used for the interment of:

205 (a) one (1) human corpse;

206 (b) one (1) human corpse along with the cremated remains of one (1) other decedent; or

207 (c) the cremated remains of up to four (4) decedents.

208 127.6-6. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers  
209 shall be allowed per plot. If a plot is designated for more than two (2) decedents, only flush  
210 markers can be installed outside of the designated headstone area. Land Management shall  
211 establish rules regarding maximum height, width and thickness requirements for monuments or  
212 flush markers placed at a plot. In addition, Land Management may establish the types of  
213 materials that may be used for monuments or flush markers.

214 (a) No monuments/markers will be installed from November 1st through May 1st.

215

## 216 **127.7. Disinterment**

217 127.7-1. Disinterment from an Oneida Nation cemetery may occur pursuant to any of the  
218 following; requirements for each are listed below:

219 (a) Issuance of an Order for Authorization of Disinterment and/or Reinterment by the  
220 Oneida Judiciary;

221 (b) Land Management's issuance of a disinterment permit; or

222 (c) Reburial required by Land Management in accordance with section 127.7-4. .

223 127.7-2 Issuance of an Order for Authorization of Disinterment and/or Reinterment by the  
224 Oneida Judiciary. The Oneida Judiciary may issue an Order for Authorization for Disinterment  
225 and/or Reinterment as follows:

226 (a) When a petition for an Order for Authorization for Disinterment and/or Reinterment is  
227 filed with the Oneida Judiciary, unless a hearing is held determining circumstances exist  
228 that would reasonably justify dispensing of the notice requirement, the petitioner shall  
229 serve a copy of the Petition for an Order for Authorization for Disinterment and/or  
230 Reinterment upon Land Management and all members of the same or a prior class as  
231 listed in section 127.7-3(b). A Petition for an Order for Authorization for Disinterment  
232 and/ or Reinterment shall include all of the following:

233 (1) The decedent's name, date of death, and burial location;

234 (2) The requester's name, address, telephone number, and relationship with the  
235 decedent;

236 (3) The requester's intent to obtain an order of disinterment/reinterment;

237 (4) The reason for the disinterment;

238 (5) The location of reinterment and/or certification that the petitioner will have  
239 the remains cremated;

240 (6) Individual or entity responsible for the disinterment/reinterment; and  
241 (7) That any objections shall be filed with the Judiciary within five (5) business  
242 days of the notification, or may be presented at the hearing.

243 (b) Unless the Judiciary has found that grounds exist to dispense with Notice  
244 requirements, the Judiciary shall set a hearing date on the Petition for Order for  
245 Authorization for Disinterment and/or Reinterment at the earliest possible time after the  
246 deadline for filing objections has passed and shall issue an Order on the matter within ten  
247 (10) days after the hearing. The Judiciary may, for good cause, extend the time for  
248 issuance of an Order for an additional ten (10) days. When entering its decision, the  
249 Judiciary may also take into consideration:

250 (1) The cause and manner of the decedent's death, including whether the  
251 Petitioner was convicted for a murder or homicide related offense in connection  
252 with the decedent's death;

253 (2) Whether disinterment would create a known public health risk;

254 (3) The decedent's will or other evidence of the decedent's wishes concerning  
255 final disposition, if known;

256 (4) Any objections filed with the Judiciary or presented at the hearing;

257 (5) Whether an order of disinterment or similar order from a court other than the  
258 Judiciary has been issued;

259 (6) Whether any required permits regarding re-interment have been obtained; or

260 (7) Any other factor requiring consideration.

261 (c) The Judiciary may deny the Petition for Order for Authorization for Disinterment  
262 and/or Reinterment based solely on an objection to the disinterment either filed or  
263 presented by an individual with the same or a higher priority than the requester.

264 (d) *Appeals.* An appeal of an Order issued under this section shall be filed with the  
265 Judiciary within five (5) business days after the order is issued. The Judiciary may  
266 modify the appeal time frame if it is determined exigent circumstances exist requiring  
267 more immediate disinterment. If no appeal is filed, disinterment shall take place within  
268 sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a  
269 stay of the disinterment may be ordered, but only after inquiry into the facts and a finding  
270 that based on the facts it is reasonable to stay disinterment pending appeal.

271 127.7-3. *Land Management's issuance of a disinterment permit.* Land Management shall issue  
272 a Permit for Disinterment when all of the following occur:

273 (a) The person in charge of the disinterment submits a complete Application for  
274 Disinterment Permit to Land Management.

275 (b) The person in charge of the disinterment submits a complete Land Management  
276 Consent Form, signed by any of the following persons, in the order of priority stated  
277 below, when persons in prior classes are not available at the time of application, and in  
278 the absence of actual notice of contrary indications by the decedent or actual notice of  
279 opposition by a member of the same or a prior class:

280 (1) An individual, as designated in writing by the decedent as listed in the  
281 Authorization for Final Disposition;

282 (2) The decedent's spouse;

283 (3) An adult son or daughter of the decedent;

284 (4) Either parent of the decedent;

285 (5) An adult brother or sister of the decedent;

286 (6) A guardian of the person of the decedent at the time of the decedent's death;

287 (7) Any other person authorized, under obligation, or agreeing to dispose of the  
288 decedent’s corpse.

289 (c) Land Management shall deny the request for a Disinterment Permit when an  
290 objection to the disinterment is either filed or presented by an individual with the same or  
291 a higher priority than the requester. In such cases, Land Management shall refer the  
292 requester to the Judiciary.

293 127.7-4. *Reinterment by Land Management.* Land Management may reinter or disinter human  
294 remains that are interred in an Oneida cemetery in another plot in the same cemetery under the  
295 following circumstances:

296 (a) Reinterment is necessary to correct a recordkeeping error made by the Nation or its  
297 designee when the human remains were first buried; and

298 (b) Notification concerning the need for reinterment is made to one of the following, in  
299 descending order, by registered mail:

300 (1) The decedent’s spouse;

301 (2) An adult son or daughter of the decedent;

302 (3) Either parent of the decedent; or

303 (4) An adult brother or sister of the decedent.

304 (c) Land Management shall maintain a record of its attempt to provide notification under  
305 this section as part of Land Management’s permanent records.

306 127.7-5. The Nation shall be responsible for making all arrangements and incurring all costs  
307 associated with disinterment and reinterment due to a recordkeeping error on the Nation’s behalf.  
308

### 309 **127.8. Prohibited Items and Behavior on Cemetery Grounds**

310 127.8-1. Land Management shall promulgate rules concerning the maintenance and appearance  
311 of Oneida Nation cemetery grounds which shall be publically posted, including on Oneida  
312 Nation cemetery grounds. Land Management shall notify the Environmental Resource Board of  
313 the current rules and any changes to such rules.

314 (a) Land Management or its designee may remove and dispose of any non-conforming  
315 objects from plots and/or cemetery grounds.

316 127.8-2. In accordance with applicable Oneida law, the Environmental Resource Board shall  
317 promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds.

318 (a) The Oneida Police Department or Oneida Conservation Department may issue  
319 citations for violation of this law or the cemetery rules in accordance with applicable  
320 Oneida law.

321 (b) Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall  
322 be handled in accordance with applicable law.  
323

### 324 **127.9. Reporting**

325 127.9-1. Any individual may file a complaint with Land Management regarding the  
326 implementation and enforcement of this law.

327 127.9-2. Within five (5) business days of the receipt of a complaint, Land Management shall  
328 respond in writing indicating any action taken or planned action to remedy the complaint to the  
329 individual that filed the complaint, if the address is known, to the Oneida Land Commission, and  
330 to the Environmental Resource Board.  
331

332 *End.*  
333

- 335 BC-05-19-89-E (Adoption of Burial Ordinance)
- 336 BC-02-23-05-F (Emergency Adoption of Amendments)
- 337 BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
- 338 BC-1-14-09-E (Adoption of Cemetery Law)
- 339 BC-10-09-13-B (Adoption of Emergency Amendments)
- 340 BC-03-26-14-C (Extension of Emergency Amendments)
- 341 BC-07-23-14-B (Adoption of Amendments)