

Chapter 75
CEMETERY LAW
Tsi> Lotiya>tata Olihwa@ke
The matters concerning when they bury the body

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75.1. Purpose and Policy

75.1-1. *Purpose.* The purpose of this Law is to govern the sale of plots and establish who is eligible for interment in a Tribal cemetery on the Oneida Reservation.

75.1-2. *Policy.* It is the policy of the Tribe that all enrolled Tribal members, their families and descendants may be interred in a Tribal cemetery.

75.2. Adoption, Amendment, Repeal

75.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E and BC-07-23-14-B.

75.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

75.2-3. 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.

75.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

- (a) BC-03-11-98-N (Resolution regarding Opposition to Disturbance/Removal of Human Burials)
- (b) BC-2-18-98-A (Repatriated Human Remains)

75.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

75.3. Definitions

75.3-1. 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) “Days” shall mean calendar days, unless otherwise specifically stated.
- (b) “Descendant” shall mean a person who is not enrolled in the Tribe, but is a blood relative in the direct line of descent of a Tribal member.
- (c) “Disinterment” shall mean to exhume buried human remains or cremated remains.
- (d) “Family” shall mean a Tribal member’s parent, spouse and children.
- (e) “Interment” shall mean the act or ceremony of burying human remains or cremated remains.
- (f) “Re-interment” shall mean to rebury human remains or cremated remains.
- (g) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.

75.4. Administration and Authority

75.4-1. *Administrative Responsibilities.* The Enrollment Department shall be responsible for:

- (a) Maintaining vital statistics of those interred in a Tribal cemetery, creating long-term strategic plans for Tribal cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.
- (b) Causing portions of land designed to be used for a Tribal cemetery to be surveyed and mapped into plots, drives and walks.
- (c) Selling and transferring plots and restricting the use of plots.
- (d) Administering all payment activities related to the sale of a plot.
- (e) Determining how to utilize gifts to a Tribal cemetery.
- (f) Maintaining Tribal cemeteries.
- (g) Establishing regulations or entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this Law.

75.5. Tribal Cemeteries

75.5-1. The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Tribal cemeteries.

75.5-2. *Eligibility.* The following may be interred in a Tribal cemetery:

- (a) A Tribal member, his or her family and descendants.
- (b) Human remains that are:
 - (1) Returned to the Tribe; or
 - (2) Discovered on the Reservation and the Enrollment Department, Cultural Heritage Department and any other interested parties have determined that the most suitable place for interment of the remains is a Tribal cemetery.

75.5-3. *Ownership of Plots.* Plots in a Tribal cemetery may be purchased by anyone for individuals eligible to be interred in a Tribal cemetery, as defined in 75.5-2. The owner of the plot shall be the individual for whom the plot was purchased. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this Law.

- (a) In the event the owner of a plot becomes ineligible to be interred in a Tribal cemetery, he or she shall resell the plot to the Tribe in accordance with 75.5-3(c).
- (b) A plot is not inheritable, and may only be transferred from one owner to an individual eligible to be interred in a Tribal cemetery, as defined in 75.5-2. The transfer of a plot from one owner to another shall be processed through the Enrollment Department.
- (c) A plot may only be re-sold by the owner of the plot to the Tribe through the Enrollment Department. Plots re-sold to the Tribe shall be bought for the original purchase price. The following owners of plots may resell a plot to the Tribe:
 - (1) Competent individuals who are at least eighteen (18) years of age;
 - (2) Individuals who are less than eighteen (18) years of age, with the permission of the original purchaser of the plot; and
 - (3) Incompetent individuals who are at least eighteen (18) years of age, with the permission of their guardian.

75.6. Interment and Plots

75.6-1. All interments shall be approved by the Enrollment Department prior to interment to ensure the health and safety of the public will not be endangered, the plot is marked and to provide information to any company or contractor providing services for the interment.

75.6-2. *Cost of Interment.* All fees for the cost of a plot and/or an interment are the responsibility of the deceased person's estate or family.

(a) Plot fees shall be paid prior to interment. The Oneida Business Committee, upon recommendation of the Enrollment Department, shall set plot fees through resolution.

(b) Marking fees shall be assessed each time an interment occurs, whether the interment is of human remains, with or without a casket, or cremated remains.

(c) Opening and closing fees shall be assessed by the vendor chosen by the deceased's family or estate.

(d) There shall be no plot fees or marking fees assessed for human remains re-buried in accordance with 75.5-2(b). If the Tribe opens or closes a plot for the re-burial of human remains in accordance with 75.5-2(b), no fees shall be assessed for the opening or closing of the plot. Any fees for opening and closing a plot assessed by an outside vendor shall be the responsibility of the Tribe.

75.6-3. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment, however if an outer burial container is purchased, the company shall notify the Enrollment Department before delivering and installing it in the designated plot in order to ensure the plot is properly prepared.

75.6-4. *Division of Plots.* Each plot may be used for the interment of one (1) or more human remains, with or without a casket(s) and/or the cremated remains of an individual(s) as determined by the Enrollment Department.

75.6-5. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers per plot shall be allowed. The Enrollment Department shall establish maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, the Enrollment Department may establish the types of materials that may be used for monuments or flush markers.

75.6-6. *Decorations.* The Enrollment Department shall remove all inappropriate and deteriorated items left at a plot.

75.6-7. *Disinterment.* Disinterment from a Tribal cemetery shall only occur upon order of the Tribe's judicial system. Disinterment is an extraordinary remedy that shall only be ordered when all other reasonable means for obtaining the requester's objective have been exhausted and when the Tribe's judicial system determines that substantial cause exists to order disinterment.

(a) A request to the Tribe's judicial system to issue an order for disinterment from a Tribal cemetery may be made by the following persons, in the following order of priority:

(1) The surviving spouse of the deceased.

(2) An adult child of the deceased.

(3) A parent of the deceased.

(4) An adult sibling of the deceased.

(5) A guardian of the person of the deceased at the time of the deceased's death.

(b) A requester shall notify the Enrollment Department and all individuals of the same or a higher priority of his or her intent to request the Tribe's judicial system to issue an order of disinterment. If any member of the same or a higher priority cannot be located, this, along with the efforts taken to locate the individual, shall be reported to the Tribe's judicial system. Notification shall specifically state:

(1) the requester's intent to obtain an order of disinterment;

(2) the reason for the disinterment;

(3) the place of re-interment or intent of the requestor to have human remains cremated; and

(4) that any objections shall be filed with the Tribe's judicial system within five (5) business days of the notification or may be presented at the hearing.

(c) *Disinterment Process.*

(1) The Tribe's judicial system shall set a hearing date on the disinterment request at the earliest possible time after the deadline for filing objections has passed and shall issue an order on the matter within ten (10) days after the hearing, taking into consideration:

(A) the manner in which the deceased died;

(B) whether disinterment would create a public health risk;

(C) the decedent's wishes, if known;

(D) any objections filed with the Tribe's judicial system or presented at the hearing;

(E) whether an order of disinterment from a court other than the Tribe's judicial system has been issued; and

(F) whether any required permits regarding re-interment have been obtained.

(2) All of the factors listed in 75.6-7(c) shall be considered when determining whether to allow disinterment, although the Tribe's judicial system may deny the request for disinterment based solely on any objections to the disinterment filed or presented by an individual with the same or a higher priority than the requester.

(3) The Tribe's judicial system may, for good cause, extend the time for an order to be issued for an additional ten (10) days.

(4) The Tribe's judicial system may issue an additional order(s) to assist the requester in obtaining his or her objective for disinterment, including testing, inspection and/or transportation of the remains.

(d) *Appeals.* An appeal of an order issued under this section shall be filed with the Tribe's judicial system within five (5) business days after the order is issued. All appeals shall be heard in accordance with the Tribe's Rules of Appellate Procedure.

(e) *Time lines for Disinterment.*

(1) If no appeal of an order issued under this section is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed.

(2) If an appeal is filed, disinterment shall take place within sixty (60) days after the final judgment has been issued.

(f) Following disinterment, the remains of the deceased person shall be reinterred or cremated within forty-eight (48) hours of disinterment.

(g) The Enrollment Department shall be present at each disinterment and re-interment that occurs in the Tribal cemetery and shall have the authority to restrict who may be present during a disinterment or re-interment.

(h) The requester shall be responsible for making all arrangements and incurring all costs associated with disinterment and re-interment.

75.7. Prohibited Items and Behavior on Cemetery Grounds

75.7-1. The Enrollment Department shall establish cemetery rules which shall be posted on Tribal cemetery grounds. The Enrollment Department shall notify the Oneida Trust/Enrollment Committee of the current rules and changes to any rules.

75.7-2. The Enrollment Department, or its designee, may remove any non-conforming objects from plots, prohibit individuals who violate this Law or the cemetery rules from accessing a

Tribal cemetery and/or contact the Oneida Police Department for assistance with individuals who violate this Law or the cemetery rules.

(a) The Oneida Police Department may issue citations for violation of this Law or the cemetery rules in accordance with the Public Use of Tribal Lands Schedule of Citations adopted by the Oneida Business Committee.

(b) Criminal activity conducted at a Tribal cemetery shall be handled in accordance with applicable law.

75.7-3. *Appeals.* Enrollment Department decisions regarding the implementation and enforcement of this Law and the creation and enforcement of any cemetery rules may be appealed to the Trust/Enrollment Committee.

End.

BC-09-02-88-A (Adoption of the Burial Ordinance)
BC-05-19-89-E (Adoption of Burial Ordinance)
BC-02-23-05-F (Emergency Adoption of Amendments)
BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
BC-1-14-09-E (Adoption of Cemetery Law)
BC-10-09-13-B (Adoption of Emergency Amendments)
BC-03-26-14-C (Extension of Emergency Amendments)
BC-07-23-14-B (Adoption of Amendments)