

**Oneida Nation  
Legislative Reference Office**

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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Krystal L. John, Staff Attorney *KLJ*  
**DATE:** August 19, 2015  
**RE:** ONGO Amendments: Public Meeting Comment Review

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On July 30, 2015, a public meeting was held regarding proposed amendments to the Oneida Nation Gaming Ordinance (Law). Amendments to the Law include:

- Updates to 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 (45) 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
- Clarification as to how the Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and when they become effective.

This memorandum is submitted as a review of the oral comments received during the public meeting process and written comments received within the public comment period. The public meeting draft with comments and the written comments received are attached for your review.

**Comment 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.

**Michele M. Doxtator:** My only... Hello, I'm Michele Doxtator, the Retail Profit Manager. My only comment or concern would be that the ONGO be loose enough or that be a provision that would allow retail to sell lottery tickets, scratch off, and possibly pull tabs at the Oneida One Stops, Smoke shops and the Oneida Casino Tribal Center. Um, we have been working with the LRO and Law Office to clear the path for that to happen. So I am just asking that the – that be consideration.

*Response*

This type of amendment requires extensive research; the Oneida Law Office is currently looking into the legal feasibility and potential legal impacts of pursuing state lottery sales through Oneida Retail. With the ONGO Emergency Amendments expiring November 1, 2015 and with no further extensions available, there is not sufficient time to make the commenter's requested revisions.

There are no recommended changes based on this comment.

**Comment 2. Oneida Gaming Commission – Requirements of Commission Membership.**

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, ~~C~~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 ~~b~~Background ~~i~~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.

**Racquel Hill:** *written* – The main concern I have with the amendments to the ONGO and the current ONGO is that it does not state anywhere within the content, and I do not believe it is currently a requirement that the elected Gaming Commissioners are licensed. It would seem that those individuals who serve in a regulatory capacity and are responsible to develop licensing procedures for all employees of the Oneida gaming operation, who have the authority to request background investigations, and who are also authorized to issue, suspend, revoke and renew those licenses should be held to the same of even higher standards and be required to be licensed themselves.

It is my understanding that many Tribes have implemented this requirement and adopted gaming ordinances with specific language addressing this issue and those can be found on the website of the National Indian Gaming Commission.

*Response*

The law as it is currently written complies with the requirements of the Comprehensive Tribal/State Gaming Compact (as amended 2003). Further, Gaming Commissioners are required to meet the same requirements as those seeking licensure in order to assume office. In addition, requiring Gaming Commissioners to both be licensed and to hear gaming license matters may present a conflict of interest. Commissioners, unlike Gaming Employees are subject removal, which is the remedy available should any conduct or eligibility issues arise throughout a Commissioner's term.

There are no recommended changes based on this comment.

**Comment 3. Oneida Gaming Commission – Authority and Responsibilities**

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:

(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.

**Cathy Buchhuber:** *written* - 21.6-14 (d) states Rules of Play and OGMIC are approved by the Commission (and become immediately effective) and are to be reviewed and ratified by the OBC. As written, the sequence of approvals which are needed may be unclear; however, the analysis does state the intent is that the Commission first adopts the Rules of Play and OGMIC and *then* they are sent to the OBC for review and ratification. In which case the amendments do not state what would occur if the OBC does not agree with the changes already approved and made immediately effective by the Commission.

Draft

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:

(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 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.

*Response*

The commenter correctly notes that current draft of the law does not state what would occur if the OBC does not agree with the changes to the Rules of Play and Oneida Gaming Minimum Internal Controls which would have already been adopted and made effective by the Gaming Commission prior to the OBC's ratification of the same.

Accordingly, I would recommend including of the following in 21.6-14(d)(3):

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission, Immediately after the Commission adopts the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission must provide notice of adoption to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting. If the Oneida Business Committee has any concerns or requested revisions upon review of the Rules of Play

and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address any concerns.

(A) Unless the Oneida Business Committee repeals the Rules of Play and Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and Oneida Gaming Minimum Internal Controls will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the existing Rules of Play and Oneida Gaming Minimum Internal Controls.

(i) Should the Oneida Business Committee pursue amendments to the Rules of Play and Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments must be completed within six (6) months from the date the amendments are initiated by the Oneida Business Committee.

#### **Comment 4. Gaming Employee License – License Application**

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:

(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.

**Cathy Buchhuber:** *written* - Does the Commission qualify as a “law enforcement agency” as reference in 25 CFR 522.2? NIGA doesn’t appear to be limiting fingerprinting to only being done by a Gaming Commission type entity; NIGA states that a law enforcement agency needs to be identified:

25 CFR 522.2. A Tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution.

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

NIGA has a broader scope of who can take fingerprints: “an appropriate federal, state or tribal law enforcement authority”.

25 CFR 537.1 Applications for approval. (b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

...  
(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, (provided by the

Commission), for each person for whom background information is provided under this section.

Is the intent to authorize *only* the Commission to take fingerprints? Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card?

Draft

1.12-2 (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.

*Response.*

In response the first question, “Does the Commission qualify as a “law enforcement agency” as reference in 25 CFR 522.2,” yes, the Commission qualifies as a “law enforcement agency” as referenced in 25 C.F.R. 522.2 because it is the agency responsible for enforcing ONGO.

In response to the commenter’s second question, “Is the intent to authorize *only* the Commission to take fingerprints,” yes, that is the intent. It is also my understanding that the Commission is only agency currently taking fingerprints for gaming licenses due to tight time frames and special NIGC requirements which they are specifically trained for.

In response to the commenter’s third question, “Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card,” the answer is yes.

There are no recommended changes based on this comment.

**Comment 5. Gaming Employee License – Eligibility Determination and Notification to NIGC**

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

(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.

**Cathy Buchhuber:** *written* - Are there any tribal employees, other than Gaming employees, not employed at a location that is defined as a gaming facility who are required to obtain a gaming license?

Draft

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 location.

Are gaming licenses ever issued to someone not employed directly at a gaming facility? For example, based on the definition of a gaming facility, Gaming Commissioners and their staff (at the W. Mason location) would not fall under this provision.

Draft

21.12-5(b) Review of Background Investigation of 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.

*Response*

In response to the first question, “are there any tribal employees, other than Gaming employees, not employed at a location that is defined as a gaming facility who are required to obtain a gaming license,” the answer is yes. The commission’s employees do not work at a location that is defined as a “Gaming Facility” and are required by the Commission, not ONGO, to have a gaming license. The answer to commenter’s second question, “are gaming licenses ever issued to someone not employed directly at a gaming facility,” is also yes.

There are no recommended changes based on this comment.

**Comment 6. Allocation of Gaming Funds**

**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.

**Cathy Buchhuber:** *written* - In accordance with the more recent FY 2014 Revenue Allocation Plan (RAP), the RAP governs “the allocation of available net revenues from tribally owned gaming enterprises including per capita distributions to qualified members of the Oneida Tribe.”

Therefore, the Tribe’s RAP includes a plan of how net gaming revenues should be allocated for

21.17-1(a)-(f), not only for the general welfare.

Draft

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.

The additional language added to 21.17-1(b) is placing a requirement for the distribution of per capita payments in the Gaming Ordinance which seems misplaced and would seem to be a better fit in a law governing per capita payments. This is likely already covered assuming the “Tribal Allocation Plan” referenced in the Tribe’s Per Capita Law is meant to refer to a Revenue Allocation Plan:

9.4-5. Oneida Business Committee. The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Action reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

- (a) Identification of funds for allocation of per capita payments.
- (b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.
- (c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable timeframe.

*Response*

The additional language does not place a “requirement for the distribution of per capita payments in the Gaming Ordinance” as the commenter asserts; rather, it provides that gaming revenues *may be used* to pay per capita payments in accordance with an approved revenue allocation plan. The commenter is correct that the Per Capita distribution requirements are contained in the Tribe’s Per Capita Law.

There are no recommended changes based on this comment.

**Comment 7. Public Meeting Packet**

**Cathy Buchhuber:** *written* – The Public hearing packet made available online was not complete. It did not contain the legislative analysis:

<https://www.oneida->

[nsn.gov/uploadedFiles/wwwroot/Government/Laws\\_Policies\\_Resolutions/Oneida\\_Register/Public\\_Meetings/Public%20Meeting%20Packet.pdf](http://nsn.gov/uploadedFiles/wwwroot/Government/Laws_Policies_Resolutions/Oneida_Register/Public_Meetings/Public%20Meeting%20Packet.pdf)

*Response*

The LRO apologizes for this error. It was corrected in the packet handed out at the public meeting held on July 30, 2015.

There are no recommended changes based on this comment.

**Conclusion**

Public comment period for this law has produced helpful comments. Specifically, it is recommended that revisions be made to section 21.6-14 based on comments received. The next action for the LOC is to decide whether to incorporate the suggested revisions and whether such revisions would necessitate an additional public comment period.

