

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

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214

<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre, Staff Attorney
DATE: November 4, 2015
RE: Oneida Flag Policy: Public Meeting Comment Review

On October 1, 2015, a public meeting was held regarding a new proposed policy: the Oneida Flag Policy. This Policy would:

- Create a Flag Policy to set forth the proper rules concerning the display and customs of the flag of the Oneida Nation, the flag of the United State of America and of other Sovereigns displayed by the Nation's entities and employees. This Policy:
 - Requires all current and future Oneida Tribal entities and Tribally-owned buildings on the Reservation that fly the Flag to do so pursuant to this Policy;
 - Identifies who is responsible for Flag duties and if an employee violates this Policy, he/she can be disciplined;
 - Lists the requirements for how the Flag is to be displayed;
 - Explains how the Flag is to be respected;
 - Identifies how the Flag is to be displayed outside of the Reservation.

This memorandum is submitted as a review of the comments received at a presentation of the Flag Code Policy on September 17, 2015 before a gathering of various veterans groups, comments received during the public meeting process, and written comments received before the comment period ended on October 8, 2015. The public meeting draft with comments, as well as the transcripts and written comments received, have been attached for your review.

Comments 1. Purpose.

Ted Clymer: I just need to give you a little bit of background and so on, I'm not from Wisconsin. I've been here since 2000. I picked up a job with a Congressionally Chartered Veteran's Organization called the Military Order of the Purple Heart where my job is the Sargent-at-Arms, responsible for flying the flags, what they call the colors and so I started looking around. We meet over at the Oneida VFW, inside the boundaries of the Reservation. In looking at how flags were displayed, once I took this job I started noticing that there were flags being flown in different manners as I would drive in through 172 to get to the VFW hall. So that's what started the whole thing and my interest in this was that I want to make sure I do my job as a guest as I enter into the Reservation that I would honor the sovereignty of that nation who I've just come into to make sure that I'm going to flying the flags that I fly with my everyday duties along the flags of the sovereign nation whose borders I've just crossed so that I will be doing so in a manner that is honorable and in accordance with international flag protocol.

That is what started me on this thing. When I first came in here it looked and I notice that there were flags being flown at different heights. And this raised a question at first about a year or so ago because I saw the United States flag, the flag of the United States, the Nation, being flown at one height and then lower than that I saw the flag of the Oneida Nation being flown on a staff that is lower as I was driving through 172 over at the bingo hall and then at the health care center and the daycare center and so on. I saw the same thing at the VFW and then later on as I went to the Oneida Veteran's Memorial I saw the same thing again, the United States flag was higher and the flag of the sovereign Oneida Nation of Wisconsin was lower, not of the same height. So my first question to the Veterans who I was dealing with was is the sovereign, is the Oneida Nation a real nation? You know, and I thought was a valid question simply because of the manner in which the flags were displayed. And I was assured that the Oneida Nation is in fact a sovereign nation so therefore I said well ok the way that the flags are being flown, nations recognize other nations by the manner in which their flags are flown at the same height. Non-nation entities can be, flags of non-nation entities can be flown equal to the flags of nation entities or lower but nations always fly their flags at the same height as other nations fly their flags. In the United States Flag Code, Title IV, United States Code, Part VII, paragraph (g), it very simply says for my purposes as a purple heart flying the United States flag, it says flags of two or more nations shall be flown on staffs, on separate staffs, of the same height. And it's considered to be dishonorable to fly flags of nations at any height other than being of the same. And by height, I'm talking about the top of the flag pole themselves because flags are always driven all the way up to the top of a pole unless they're ordered down at half-mast for you know, presenting honors for whatever, someone who has died or something like that. So they're always flown at the top and the flag poles themselves, the tops of the poles or the flag staffs are always supposed to be of equal of the same height. The difference between a flag pole and a flag staff is roughly that a pole is buried into the ground and fixed and a flag staff would be something like what you have right here next to you on stage where you have something that can be picked up, moved, used in a parade and then put on a pedestal and that kind of stuff. So I started asking questions of the Nation and was assured from various locations from both the Veterans I talked to and the people in your administration office that you are a sovereign nation so based upon that, I found out that you did not have a Flag Code and so the way that it works for me in my job as the Sargent-at-Arms is that when I take the United States flag into another nation and fly the United States flag along with my duties for the Military Order of the Purple Heart, I honor the nation, the host nation by flying the flag of that host nation in first place of honor, in first place of prominence followed by the United States flag because I'm in someone else's house. And it's the honorable thing to do. So that's the background for why I'm even here and concerned and so on. I started looking at, and I did send some emails about some of the things you put into the Flag Code or the proposed Flag Code and do I address those by reading them or was it sufficient to send them into you?

Response

The commenter describes his backroom and explains that significance of the height of Flags in other Nations. There are no recommended changes based on this comment.

Comment 2. Analysis Lines 31, 32, and 33.

Ted Clymer: *written*-Subject: LINES 31, 32, and 33 contain a FALSE STATEMENT.

LINES 31, 32, and 33 contain a FALSE STATEMENT.

"This Policy is only requiring the US flag be flown at the same height as the Flag and DOES NOT ALLOW FLAGS OF OTHER NATIONS TO BE FLOWN AT THE SAME HEIGHT as the Flag."

Reference: Title 4 U.S.C. §7. Position and manner of display

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

Response

The commenter points out a line in the analysis that reads:

30 When a nation's flag is displayed, Federal Flag Code requires that flag to be
31 flown at the same height as the US flag. This Policy is only requiring the US flag
32 be flown at the same height as the Flag and does not allow flags of other nations
33 to be flown at the same height as the Flag [See 6-3 (a) and CRS Report
34 for Congress: The United States Flag § 7 (g)].

This point of the analysis is discussing that the Oneida Flag Policy currently does not allow flags of other Nations aside from the United States flag to be flown at the same height as the Oneida flag. There are no recommended changes based on this comment, however further changes to the body of the Policy concerning this are specified in comments 9, 10 & 11.

Comment 3. Haudenosaunee Flag.

Veteran's Meeting: #4. Where does the Haudenosaunee flag fall into this Policy?

Response.

As written, the Haudenosaunee flag is not accounted for in the Policy. It is a policy decision for the LOC if the Haudenosaunee flag should be included and where it would fall into the hierarchy of positions.

Comment 4. Sovereigns definition.

Ted Clymer: Subject: PROBLEM in LINE 85: "Sovereigns" means any other Indian Nation, State or LOCALITIES.

See LINE 85: "Sovereigns" means any other Indian Nation, State or LOCALITIES. The word LOCALITIES should be removed from LINE 85. The Sovereign STATE of Wisconsin is NOT a Sovereign NATION. The Sovereign STATE of Wisconsin is a SUB-Element of a Sovereign NATION, the United States of America. The Village of Hobart is a LOCALITY that is NOT a Sovereign NATION. The Village of Hobart is a LOCALITY that is SUB-SUB-Element of the Sovereign STATE of Wisconsin. Since the Village of Hobart is a LOCALITY, LINE 85 may be read to mean the Oneida Nation recognizes the Village of Hobart to be a Sovereign entity. To avoid misconception, the word LOCALITIES should be removed from LINE 85.

Response

The commenter is referring to the definition of sovereigns which reads “means any other Indian Nation, State or localities.” One of the definitions of sovereign is “having independent authority and the right to govern itself.” However, to avoid confusion it is recommended that “sovereigns” be removed as a definition and the Policy edited at 6-3(e) and 7-1 to read:

6-3 (e) When flags of States, localities ~~other Sovereigns~~ or pennants of societies are flown on the same halyard with the Oneida Flag, the Oneida Flag shall always be at the top.

7-1. No disrespect shall be shown to the flag of the Oneida Nation, the United States flag or the flags of any other Indian Nation, State or locality ~~other Sovereigns~~.

Comment 5. Properly Illuminated definition.

Veteran’s Meeting: #3. What is considered “properly illuminated”?

Response.

The comment indicates that “properly illuminated” should be defined to avoid confusion. It is suggested that the following definition be added:

(d) “Proper illumination” means a light specifically placed to illuminate the flag or having a light source sufficient to illuminate the flag so it is recognizable as such by the casual observer.

Comment 6. Location of Display.

Ted Clymer: *written*-Please consider this suggested LOCATION OF DISPLAY for the Oneida Flag Policy.

Location of Display. The Haudenosaunee Flag, Oneida Nation Flag, United States Flag, and the State of Wisconsin Flag shall be displayed within the boundary of the Reservation of the Oneida Nation:

- a. in the Office of the Chairperson of the Oneida Nation;
- b. in Oneida Nation courtrooms while court is in session;
- c. at the Annual meeting, and the Semi-Annual meeting;
- d. at Oneida General Tribal Council (GTC) meeting;
- e. at Oneida Nation School Board meeting;
- f. at polling places when citizens vote;
- g. at the Oneida Veterans Memorial;
- h. at a Pow Wow;
- i. at a public meeting;
- j. outside the Norbert Hill Center;
- k. outside the Oneida Nation Police Department;
- l. outside Oneida Nation Schools;

- m. outside the Oneida Casino and the Oneida Bingo hall;
- n. at Austin Straubel International Airport;
- o. as directed by the Chairperson of the Oneida Nation or the Oneida General Tribal Council (GTC)

Response

The commenter suggests incorporating additional locations in the Policy where 1) the Haudenosaunee Flag, 2) the Oneida Nation Flag, 3) the United States Flag, and 4) the State of Wisconsin Flag should be displayed.

Currently, section 4-2 only requires “Oneida Nation entities and Oneida owned buildings within the Reservation that currently possess flagpoles, stationary flagstaffs or other means to display a flag and those entities and Oneida owned buildings that later establish the means to display a flag” to follow the policy and the Policy only requires the Oneida Flag to be displayed. Additionally, the Policy does provide in 6-1 (d) and (e) for the Oneida Flag inside each classroom and in and near every polling place on Tribal election days.

Some of the locations the commenter listed already displays one or more of the flags in the suggestion.

	Haudenosaunee Flag	Oneida Nation Flag	United States Flag	Wisconsin Flag
Y = Yes N = No U = Unknown = Required to have under the policy				
a. in the Office of the Chairperson of the Oneida Nation;	U	U	U	U
b. in Oneida Nation courtrooms while court is in session;	U	Y	Y	Y
c. at the Annual meeting, and the Semi-Annual meeting;	N	Y	Y	Y
d. at Oneida General Tribal Council (GTC) meetings;	N	Y	Y	Y
e. at Oneida Nation School Board meeting;	N	N	N	N
f. at polling places when citizens vote (outside Health Center);	N	Y	Y	Y
g. at the Oneida Veterans Memorial;	N	Y	Y	Y
h. at a Pow Wow;	U	Y	Y	Y

i. at a public meeting (LOC/OBC meetings in the BCCR);	N	Y	Y	N
j. outside the Norbert Hill Center;	N	Y	Y	N
k. outside the Oneida Nation Police Department;	N	Y	Y	Y
l. outside Oneida Nation Schools (high school is located at Norbert Hill Center so this applies to Turtle School);	Y	Y	Y	N
m. outside the (main) Oneida Casino	N	Y	Y	Y
and the Oneida Bingo hall;	N	N	Y	N
n. at Austin Straubel International Airport;	U	U	U	U
o. as directed by the Chairperson of the Oneida Nation or the Oneida General Tribal Council (GTC)	Not currently provided for in the Policy			

Comment [DAM1]: By resolution, the OBC can choose to incorporate

In the work meetings, the issue on mandating certain locations fly flags was discussed and it was decided to use the language in section 4-2 to make it a requirement for only those currently equipped to do so and those who become later become equipped. The main reason was to avoid additional costs that would come from requiring specific locations to display the Oneida flag that could hamper the passage of the Policy.

This is a policy decision for the LOC if it wishes to require the Haudenosaunee Flag, the Oneida Flag, the United States Flag, or the State of Wisconsin Flag to be displayed at any of the locations in the chart above.

Comment 7 & 8. Position and Manner of Display.

Comment 7. Ted Clymer: *written-Subject:* Please consider this suggested POSITION OF DISPLAY for the Oneida Flag Policy.

Position and manner of display.

1. Eagle Staffs shall be displayed in the first place of superior prominence and honor in front of all Flags.
2. The Haudenosaunee Flag shall be displayed to the furthest right (the viewer's left) of the Oneida Nation Flag.
3. The Oneida Nation Flag shall be displayed at the same height and to the flags immediate left (the viewer's immediate right) of the Haudenosaunee Flag.
4. The United States Flag shall be displayed at the same height and to the flags immediate left (the viewer's immediate right) of the Oneida Nation Flag.
5. Flags of other Nations shall be displayed at the same height and to the flags immediate left (the viewer's immediate right) of the United States Flag.
6. The State of Wisconsin Flag shall be displayed at the same height or at a lower height and to the flags left (the viewer's right) of flags of other Nations or the United States Flag.

7. All other flags shall be displayed at the same height and to the flags left (the viewer's right) of the State of Wisconsin Flag

Comment 8. Ted Clymer: *written*-Where the Eagle Staff was the only symbol of Sovereignty before Indian Nations used flags, the Oneida Nation Flag is used as a symbol of Sovereignty today; but the Eagle Staff always leads the way.

The Haudenosaunee Flag recognizes a confederation of Indian Nations much like the United States Flag recognizes a confederation of the original 13 colonies into the Nation that is the United States of America.

The Haudenosaunee Flag, Oneida Nation Flag, United States Flag, and the State of Wisconsin Flag should be displayed as a minimum group of flags because, together, they tell the history of Sovereignty of the Oneida Nation.

When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

State flags and all other flags may be displayed at the same height as flags of Nations or at a lower height.

Response

The commenter provides a suggested hierarchy including the Eagle Staff, the Haudenosaunee flag, flags of other Nations and the state of Wisconsin's flag which is not currently in the Policy. The commenter further provides reasoning in the second comment. Currently, the Policy reads:

6-3. *Position of the Flag.* The position of a flag among others is an important symbol of prominence and sovereignty, therefore the following requirements must be adhered to:

- (a) Only the flag of the United States may ever be displayed at the same height as the Oneida Flag.
- (b) The Oneida Flag shall be displayed to the furthest right to show superior prominence.

Any changes based on this would be a policy decision for the LOC.

Comments 9, 10 & 11. Policy Section 6-3 (a)

Comment 9. Ted Clymer: Not that I could see right now. The one comment I had made simply about the where it says problem, I had a problem in line 120 where it says on the flag of the United States may ever be displayed at the same height as the Oneida flag. I see a problem there for example during the pow wows when you have visiting nations and when they come on in and if this line stays the way it is now, line 120 and 121 I think it ends at 121, that would mean that only those two flags can be flown at the same height but if you have visiting nations, other nations. I don't know that many of them but the Ho Chunk

would come here or the Menominee or the Oneida folks from Canada. I've attended the pow wows and you have people coming in from Canada and other places, there might be I don't know the Cherokee Nation or the Blackfeet or something, I don't know how who participates inside the Oneida Reservation and those kinds of things but that line would, if you hold it to the way its published right now, that would preclude those other nations from flying their flags at the same height and they are nations. And once again, flags of two or more nations should be flown on separate staffs of the same height. That's not only the United States flag code, it's the international flag protocols there so I think that was kind of important and that's why I put that in there. Let see, yeah that's the only one I think I needed to expand upon of the three I sent in to you. So is there...

David P. Jordan: Is that supposed to be ever or never? That word right there in that sentence. On line 120.

Douglass McIntyre: It's may ever.

David P. Jordan: May ever, ok.

Ted Clymer: So they're only talking about with only, they're only talking about those two I think.

David P. Jordan: ok

Ted Clymer: And if that's the case, because you hold international, the pow wow and so on is international, that would create a problem. Because you put penalty phase into this thing then you might be, someone might say why didn't you punish these people for allowing the visiting nations from coming on in because they did fly the flags at the same height. Example here on your podium or the stage here. If they were coming on in and you had like twenty flags, and the United States flag and the flag of the Oneida Nation would be placed in a stand and you have stands for the remaining eighteen nations, you would have to do, in order with this thing you would have to, the flag of the Oneida Nation and the flag of the United States raised on some sort of a pedestal for them to be higher than the flag of the remaining eighteen nations or you'd have to take a hacksaw and cut off the bottom of the pole that they used to carry then on in which really wouldn't be desirable. But the problem with even doing that kind of thing for a pedestal for those two and the rest of them on the ground floor, your still dishonoring the nation status of those of those nations that brought their flags because you're now putting them at different heights.

Comment 10. Loretta Metoxen: Mr. Chairman I didn't come to make any comments but I came to observe because I'm very interested in this particular topic. As a veteran and as a member of the Oneida Nation's Veteran's Affairs Committee, who has talked to the Captain [Ted Clymer] here on several occasions and he has left me his information on that. And by the way information on the eagle feather as well which we will be coming forward at a different time. So I am in agreement with his comment on all nations flags are equivalent. If you look at the Oneida, not the Oneida but the United, United Nations flags in New York. Of all the nations in the world, they are equal. And Oneida Nation should be equal to all nations. Thank you.

Comment 11. Ted Clymer: *written*-Subject: PROBLEM in LINE 120: (a) ONLY the flag of the United States MAY EVER BE DISPLAYED AT THE SAME HEIGHT as the Oneida Flag.

Please see the attached Adobe Acrobat .PDF file:

01. As written, this REQUIRES flags of VISITING NATIONS to be displayed on flag staffs or flag poles that are LOWER THAN the flag staffs or flag poles of flags of the Oneida Nation and the United States of America.

02. As written, this contradicts International Flag Protocols that say International usage forbids the display of the flag of one nation above that of another nation in time of peace.

03. Since International Flag Protocols say when flags of TWO OR MORE NATIONS are displayed they are to be flown from separate flag staffs or flag poles that are displayed AT THE SAME HEIGHT, LINE 120 really says the Oneida Nation does not allow flags of other Nations to be flown anywhere within the boundary of the Reservation of the Sovereign Oneida Nation.

Response

The Policy as written would not allow flags of other Nations or Indian Nations to be displayed at the same height as the United States and Oneida flags. It is suggested that 6-3 be changed to read:

6-3. Position of the Flag. The position of a flag among others is an important symbol of prominence and sovereignty, therefore the following requirements must be adhered to:

(a) ~~Only the flag of the United States may ever be displayed at the same height as the Oneida Flag.~~ When flags of two or more Nations are displayed, they are to be flown from separate flag staffs or flag poles that are displayed at the same height and shall be approximately of equal size.

(b) The Oneida Flag shall be displayed to the furthest right to show superior prominence.

~~(c) When the Oneida Flag and the United States flag are both displayed, they are to be flown from separate staffs of the same height and the flags shall be of approximately equal size.~~

Also the definition of Nation should be changed to refer to other , a standard definition for Tribe or Tribe provide and that change reflected in the rest of the Policy:

(b) "Nation" means ~~the Oneida Nation~~ a foreign country or a Native American Tribe.

Comment 12. Display of Respect.

Veteran's Meeting: #2. Request to add Veteran's Day and Flag Day to 6-5(a) for lowering the flag to half-staff.

Response.

6-5. *Display of Respect.* At certain times, the Oneida Flag shall be lowered to Half-staff as a sign of respect. In doing so, the Flag shall be first hoisted to the peak for an instant and then lowered to the Half-staff position. The Oneida Flag shall be again raised to the peak before it is lowered for the day.

(a) On the following days, the Oneida Flag shall be lowered to Half-staff

- (i) Oneida Code Talker Day
- (ii) Memorial Day but only until noon, which it shall be raised to top of the staff again.

The commenters suggest adding Veteran's Day and Flag Day to the list provided in Section 6-5(a).

Comments 13 & 14. Miscellaneous Questions.

Comment 13. Veteran's Meeting: #5. Request that any Oneida Flag or other flags produced because of this Policy be made in the United States.

Response

There are no recommended changes for the Policy based on this comment. If the LOC wished to include this, it would be best to do so in the adopting resolution or a separate resolution.

Comment 14. Veteran's Meeting: #6. Will the material for the flags be made from the Calico cloth from the Treaty of Canandaigua (also known as the Calico Treaty or Pickering Treaty)?

Response

The question was asked and answered at the Veteran's meeting. Currently, the Oneida Tribe of Indians of Wisconsin receives an annuity check of \$1,800 in lieu of receiving the calico cloth under the Treaty. There are no recommendations based on this comment.

Comments 15 & 16. Official Flag of the Oneida Nation.

Comment 15. Veteran's Meeting: #1. Question as to what is the official flag of the Tribe since there are different variants (ie some flags say Oneida Nation, others Oneida Tribe) in use.

Response.

The commenters mentioned that there are several versions of the Oneida currently in use and wondered whether there was an official version. Research into past OBC and GTC Resolutions did not reveal a specific Resolution issuing an official version of the flag.

There are no recommended changes to the Policy based on this comment. However, issuing an official flag could be handled through a separate resolution.

Comment 16. Veteran's Meeting: #7. There was a suggestion to create a new official version of the flag. Because of the words on the flag, the flag can only ever be placed in one direction.

This is a Policy decision for the LOC.

Conclusion

There were multiple comments provided on the Policy, at a meeting of various Veteran's groups, at the public meeting and in writing which the LOC should consider and incorporate as appropriate. It is recommended that a work meeting be scheduled with invitations to the Tribe's various veterans groups and other interested parties to review the comments and provide direction to any changes necessary based on the comments.