

Chapter 5
PARDON AND FORGIVENESS
Tsi'náhte ʌhutatwani'yóne Olihwá'ke
of what they will be free of matter

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5.1. Purpose and Policy

5.1-1. Purpose.

- (a) The purpose of this law is to provide a fair, efficient and formal process by which:
- (1) a Tribal member may receive a pardon for the conviction of a crime(s); or
 - (2) a Tribal member or non-Tribal member may receive forgiveness for acts that render him or her ineligible for Tribal employment; an occupational license, certification or permit issued by the Tribe; housing through the Tribe; or other Tribal benefit.
- (b) This law defines the duties and responsibilities of the Oneida Pardon and Forgiveness Screening Committee, Oneida Business Committee, and other persons involved in the granting or denial of pardons and forgiveness.

5.1-2. *Policy.* It is the policy of the Oneida Tribe of Indians of Wisconsin to grant pardons or forgiveness to individuals upon demonstration of full rehabilitation, trustworthiness and/or commitment to lawful behavior. Nothing contained herein shall be construed as permitting the employment of individuals who are otherwise disqualified for employment from certain occupations under Tribal, State or Federal Law. Receipt of a pardon or forgiveness does not affect obligations imposed as part of a sentence or conviction in another jurisdiction.

5.2. Adoption, Amendment, Conflicts

5.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-05-25-11-A and is effective September 30, 2011.

5.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

5.2-3. 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.

5.2-4. In the event of a conflict between a provision of this law and a provision of another law, ordinance, policy, regulation, rule, resolution, or motion, the provisions of this law shall control. Provided that, this law repeals Resolution BC-7-31-02-A: Resolution Adopting a New Oneida Pardon Ordinance.

5.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

5.3. Definitions

5.3-1. 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) "Applicant" shall mean an individual who is applying for a pardon or forgiveness from the Tribe.
- (b) "Certified mail" shall mean mail sent through either the United States Postal Service or the Tribal Inter-Office Certified system that provides proof of delivery and receipt.
- (c) "Conviction" shall mean an individual was either found guilty or entered a plea of guilty or no contest to charges of a crime in any court of competent jurisdiction.
- (d) "Court of competent jurisdiction" shall mean any court or forum that has the power and authority to properly exercise jurisdiction over a dispute or interpret and/or enforce laws.
- (e) "Crime" shall mean any act, default, or conduct punishable as a felony or a misdemeanor.
- (f) "Forgiveness" shall mean the formal and public act of nullifying an individual's act that makes him or her ineligible for Tribal employment, an occupational license, certification or permit issued by the Tribe, housing through the Tribe or other Tribal benefit
- (g) "Hearing" shall mean a public hearing, a noticed public forum in which an applicant has an opportunity to present a case for obtaining a pardon or forgiveness from the Tribe.
- (h) "Pardon" shall mean the formal and public act of nullifying a Tribal member's criminal conviction.
- (i) "Prominent locations" shall include, but not be limited to, the following: the Tribal newspaper; at least one (1) local newspaper with regular distribution within the Reservation boundaries; one (1) regional Indian newspaper; and the Tribe's official website.
- (j) "Related to" shall mean persons who are related by blood, legal adoption, marriage, or domestic partnership, and includes any of the following relationships: Father, Father-in-law, Mother, Mother-in-law, Husband, Wife, Brother, Brother-in-law, Sister, Sister-in-law, Daughter, Daughter-in-law, Son, Son-in-law, Grandparent, Grandchild.
- (k) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

5.4. Pardon and Forgiveness Screening Committee

5.4-1. A Pardon and Forgiveness Screening Committee (Committee) is hereby created for the purpose of carrying out the provisions of this law.

5.4-2. *Authority.* The Committee shall:

- (a) promulgate internal standard operating procedures necessary to govern its proceedings;
- (b) review and process applications for a pardon or forgiveness in an orderly and expeditious manner;
- (c) investigate an applicant's background;
- (d) conduct and preside over hearings;
- (e) provide formal, written recommendations to the Oneida Business Committee to approve or deny a pardon or forgiveness application; and
- (f) take other actions reasonably related to the purpose of the Committee.

5.4-3. *Committee Membership.*

- (a) *Number of Committee Members.* The Committee shall be comprised of five (5) enrolled Tribal members from four (4) representative areas who shall serve a term consistent with that of the Oneida Business Committee term of office. Committee members shall include:
 - (1) one (1) representative from the Oneida Police Department, identified in writing by the Chief of Police, including two (2) alternates, submitted to the Tribal Secretary;
 - (2) one (1) representative from the Oneida Social Services Department, identified in

writing by the Division Director for Governmental Services Division, including two (2) alternates, submitted to the Tribal Secretary;

(3) one (1) representative from the Oneida Business Committee, identified by motion or resolution of the Oneida Business Committee, including at least one (1) alternate; and

(4) two (2) representatives from the Oneida community-at-large, appointed by motion or resolution of the Oneida Business Committee, including two (2) alternates.

(A) At least one (1) community-at-large representative shall be an elder over the age of fifty-five (55).

(B) Preference for community-at-large representatives shall be given to Tribal members with a background in social services, probation/parole, law enforcement, legal services, public policy and similar fields.

(b) *Alternates.* For each representative there shall be one (1) alternate who may serve in a regular member's place where a Committee member is absent or unable to participate in a hearing due to a conflict of interest, provided that, an alternate shall not participate if he or she has a conflict of interest.

5.4-4. *Stipends.* The Committee members who are Oneida community-at-large representatives and their alternates may receive a stipend of fifty dollars (\$50) for conducting a pardon hearing if stipend payments are available in the budget.

5.5. Pardon and Forgiveness Eligibility and Application

5.5-1. *Eligibility.* A Tribal member may receive a pardon for any criminal conviction(s) and any individual may receive forgiveness for an act(s) that renders the Tribal member or individual ineligible for Tribal employment, an occupational license, certification or permit issued by the Tribe, housing through the Tribe or other Tribal benefit.

(a) Upon completion of incarceration, parole, probation and/or deferred prosecution, Tribal members shall be eligible to apply for a pardon.

(b) One (1) year after an act is committed, or affirmed through the conclusion of any appeal process, an individual shall be eligible to apply for forgiveness. An individual is ineligible for forgiveness if he or she is:

(1) being investigated for an act and if found to have committed such act, would be ineligible for the benefit he or she is seeking; or

(2) appealing a termination and the termination makes him or her ineligible for the benefit he or she is seeking; or

(3) on probation, parole or under a deferred prosecution agreement.

5.5-2. *Initiating an Application.* Applications for a pardon or forgiveness may be obtained from the Tribal Secretary's Office. Completed applications shall be filed with the Tribal Secretary's Office in person, during normal Tribal business hours, or sent by certified mail to the Tribal Secretary at P.O. Box 365, Oneida, WI 54155.

5.5-3. *Required Application Information.* Each applicant is responsible for submitting all required materials and authorizations.

(a) A completed pardon application shall include the following:

(1) a copy of the applicant's Tribal enrollment card.

(2) a copy or copies of any discharge papers from incarceration or jail.

(3) official verification of any successful completion date of the probation, parole or deferred prosecution.

(4) any necessary releases for investigations and/or background checks.

- (5) any authorizations from a probation officer to release information.
- (6) the required non-refundable fee as specified under 5.6.
- (7) a personal written statement, including the reason(s) for requesting a pardon and a description and documentation of the applicant's efforts towards self improvement.
- (8) information regarding the conviction(s) for which the applicant is seeking a pardon, including:
 - (A) date(s) upon which the crime(s) occurred;
 - (B) location(s) where the crime(s) occurred;
 - (C) date(s) of conviction(s); and
 - (D) jurisdiction(s) which imposed the sentence(s).
- (9) verification of attendance or successful completion of any counseling, therapy, or rehabilitative programs such as anger management or coping skills classes.
- (10) letters of reference or support from people well-regarded in the community. Such letters shall detail the applicant's accomplishments or contributions to the community or attest to the applicant's rehabilitation and trustworthiness. These may include, but are not limited to:
 - (A) clergy or other spiritual leaders.
 - (B) employers and/or community members.
 - (C) teachers.
 - (D) organizers of support groups the applicant attends or has attended.
- (11) any other information relevant to the applicant's conviction(s) or rehabilitation efforts.

- (b) A completed forgiveness application shall include the following:
 - (1) a copy of the applicant's Tribal enrollment card, if applicable.
 - (2) the applicant's employment record prior to the act.
 - (3) the applicant's background records.
 - (4) the act that triggered the applicant's ineligibility.
 - (5) the impact of the act on the Tribe.
 - (6) the length of time since the act.
 - (7) a written statement from the applicant demonstrating remorse for the violation.
 - (8) two (2) letters of recommendation, with no more than one (1) recommendation coming from a person who is related to the applicant.
 - (9) the required non-refundable fee as specified under 5.6.
 - (10) any additional credible and relevant information.

5.5-4. Failure of the applicant to provide any of the required information and/or materials may result in:

- (a) the application being returned with a request for more information; or
- (b) the application being removed from consideration; or
- (c) denial of a pardon or forgiveness.

5.5-5. The applicant may obtain information regarding the status of an application by submitting a signed request to the Tribal Secretary's Office. Notification of the application status shall be sent to the applicant by certified mail or personal service within seven (7) business days following receipt of the signed request.

5.5-6. *Tribal Secretary's Office.* The Tribal Secretary's Office shall assist the Committee with carrying out the provisions of this law and assist individuals in applying for a pardon or forgiveness. The Tribal Secretary's Office shall:

- (a) create and implement procedures necessary to process pardon and forgiveness

applications.

- (b) accept pardon and forgiveness applications.
- (c) submit and track requests for a background investigation.
- (d) forward pardon and forgiveness applications to the Committee when the background investigations are complete.
- (e) maintain a record of all pardon and forgiveness applications filed, every pardon and forgiveness request granted or denied, and the reasons for each action.
- (f) maintain a complete and accurate record of all proceedings, including all correspondence, transcripts, documents, evidence, and appearances made in connection with the applications.
- (g) perform other duties in connection with matters under this law as may be requested by the Committee.

5.6. Fees

5.6-1. An application shall be accompanied by a non-refundable fee of fifty dollars (\$50), made payable to the Oneida Tribe in the form of a:

- (a) money order; or
- (b) cashier's check; or
- (c) intra-tribal purchase document, if a Tribal department or program, such as Social Services, will be providing the funds for the application fee.

5.6-2. Fees shall be used to off-set the costs of implementing this law, including, but not limited to paying stipends for Committee members, sending notice via certified mail and conducting background investigations.

5.7. Hearings

5.7-1. *Notice of the Hearing.* The Committee shall conduct quarterly hearings and provide official notice to the applicant by certified mail, including the date, time and location of the hearing, at least thirty (30) calendar days prior to the hearing. Notice shall also be posted in prominent locations at least thirty (30) calendar days prior to the hearing. If alternate arrangements have been made under 5.7-2, notice shall be posted in prominent locations with as much advance notice as possible and as time permits.

- (a) Notice of the hearings scheduled for the year shall be posted on the Tribe's website and periodically in the Tribal newspaper.
- (b) Hearings shall take place at a regularly scheduled time and location to be determined by the Committee and shall be open to the public.
- (c) The Committee shall contact any ascertainable victim or other individual that was affected by the crime or act for which the applicant is seeking a pardon or forgiveness so that he or she might have an opportunity to offer testimony or submit a notarized statement.
 - (1) The date, time and location of the hearing shall be provided by certified mail with as much advance notice as possible.
 - (2) Directions as to how the individual can avoid contact with the applicant on the day of the hearing shall also be included with the notice.

5.7-2. *Alternate Hearing Arrangements.* Applicants unable to attend a hearing may submit a written request by certified mail to the Tribal Secretary's Office for alternate arrangements including: to appear by teleconference or video conference and/or to reschedule the hearing date. If alternate arrangements are unavailable, the applicant may withdraw the application up to three (3) business days prior to the hearing without penalty, and may re-apply for a pardon at any time.

5.7-3. *Failure of Applicant to Attend Hearing.* Failure of the applicant to appear at the hearing may result in the Committee postponing making a determination on the application or recommending the Oneida Business Committee deny the application.

(a) Applicants with a legitimate reason for failing to appear for a hearing shall have ten (10) calendar days from the date of the missed hearing to provide documentation of such reason to the Committee.

5.7-4. *Testimony and Notarized Statements.* The Committee shall obtain oral testimony at the hearing from the applicant, and any victims, witnesses or other individuals supporting or opposing the pardon or forgiveness.

(a) Victims, witnesses, and other individuals unavailable for a scheduled hearing may submit a notarized statement for consideration.

(b) The Committee may institute recesses and postponements as they see fit.

(c) The Committee may ask questions at any time during the hearing.

(d) The Committee may require the applicant to provide further documentation.

(1) Within five (5) business days of the hearing, the Committee shall send a written request by certified mail to the applicant for the additional documentation.

(2) The applicant shall submit the documentation to the Tribal Secretary's Office within thirty (30) calendar days after receiving the request for the documentation.

Failure of the applicant to provide any of the required documentation may result in:

(A) the application being removed from consideration; or

(B) denial of the application.

5.7-5. *Deliberations and Recommendation.* After the hearing, the Committee shall go into executive session for deliberations.

(a) The Committee shall consider the factors listed in this law, the application, the background investigation, and any testimony or notarized statements when determining whether to recommend that the application be approved or denied.

(1) The Committee is responsible for weighing the appropriateness of granting a pardon or forgiveness. There is no formula that will guarantee a pardon or forgiveness.

(b) *Recommendation.* After considering the factors provided, the Committee shall make a decision and then compose a formal, written recommendation for each application, including reasons to approve or deny the application. The recommendation, including any dissenting opinions issued by the Committee shall be forwarded to the Oneida Business Committee within thirty (30) calendar days after making a decision, along with the following materials for review:

(1) All information from the application and the background investigation;

(2) Any notarized statements submitted;

(3) A proposed draft resolution; and

(4) An audio recording of the hearing, upon request by an Oneida Business Committee member.

5.8. Standards and Restrictions

5.8-1. *Pardons.* Certain convictions may affect a person's rights under state or federal law, or result in restrictions being placed on a person, regardless of whether a Tribal pardon has been granted.

(a) *Civil Rights.* A pardon by the Tribe does not guarantee the restoration of all civil rights, and each recipient of a Tribal pardon is responsible for determining whether the pardon affects any non-Tribal restrictions or limitations that may be applicable pursuant to the

conviction.

(b) **Employment.** Individuals convicted of a crime that is “substantially related” to the care of another person or animal may be subject to extended or permanent restrictions on licensing or professional credentials in fields relating to such caretaking. A Tribal pardon shall not affect these restrictions.

(c) **Sex Offender Registry.** Receipt of a Tribal pardon shall in no way affect registration, tracking or other restrictions or obligations imposed upon sex offenders.

(d) **Voting Rights.** Each state, and the federal government are empowered to determine whether felons may vote in elections, caucuses, referendums or any other venue dependent on the votes of citizenry. The granting of a Tribal pardon shall not supersede the rights of these jurisdictions to determine the eligibility of voters.

5.8-2. Other Restrictions. The Committee’s written recommendation to the Oneida Business Committee to approve an applicant’s request for a pardon or forgiveness may also recommend the Oneida Business Committee impose restrictions and/or standards on the applicant. Restrictions and standards shall have time lines attached to them, which may expand over a period of months, years, or indefinitely.

(a) Restrictions shall be clearly defined and may include the following:

(1) The applicant is ineligible for a transfer, promotion or job reassignment.

(2) The applicant may be prohibited from:

(A) Handling cash and/or merchandise.

(B) Having Tribal property sign-off authority.

(C) Supervising staff.

(D) Supervising or caring for children or the elderly.

(b) When restrictions or standards are imposed for a period of greater than five (5) years, the applicant may, after five (5) years, apply to have the restrictions or standards modified or lifted. The request to modify or lift restrictions or standards will follow the same process required to request a pardon.

(c) The applicant shall sign a written statement describing each restriction, standard and time period of such restriction or standard prior to becoming employed by the Tribe.

(d) The Committee may also recommend that an applicant requesting forgiveness be required to perform community service hours within a Tribal Department or pay restitution to the Tribe.

5.9. Oneida Business Committee

5.9-1. The Oneida Business Committee shall consider all of the information forwarded from the Committee prior to making a determination on whether to issue or deny a pardon or forgiveness application. The Oneida Business Committee may accept, reject or modify the Committee’s recommendation.

5.9-2. Deliberations. Deliberations by the Oneida Business Committee shall take place in executive session. The Oneida Business Committee may request, by written notice, that the applicant be present during the deliberations to provide oral testimony or to answer questions. The notice shall be provided to the applicant thirty (30) days prior to the deliberations and shall contain the time, place and date of the deliberations.

5.9-3. Final Decision. The Oneida Business Committee shall issue or deny the pardon or forgiveness in open session, by resolution, including the reasons therefor and shall include for the record a clear indication of any decision and shall list the specific crimes to be pardoned or acts to be forgiven. This decision is final and can not be appealed. Applicants may be eligible to re-apply for

a pardon or forgiveness one (1) year from the date of the most recent denial of a pardon or forgiveness.

5.9-4. *Notification.* Notification of the final decision shall be sent to the applicant by certified mail or personally served within ten (10) business days following the decision. Applicants have a right to documentation of the final decision along with the resolution, and the reason(s) for the final decision.

5.9-5. *Resolution.* To grant or deny a pardon or forgiveness, a majority vote of the Oneida Business Committee is required.

5.9-6. *Eligibilities.* Unless otherwise directed by the Oneida Business Committee, a pardon or forgiveness may fully or partially restore some Tribal eligibilities lost as a result of a conviction or act including:

- (a) employment; and/or
- (b) an occupational license, certificate or permit; and/or
- (c) housing; and/or
- (d) other Tribal benefit.

End.

Adopted – BC-2-19-93-I

Adopted – BC-11-13-93-B (Oneida Pardon Procedures Policy)

Adopted – BC-11-24-93-B (Temporary Pardons)

Adopted – BC-7-31-02-A

Adopted – BC-05-25-11-A