



Onondaga bringing several
bags of corn to
a starving army
at Valley Forge, after the
colonists had consistently
refused to aid them

Post Office Box 365

Phone: 869-2214

Oneida, WI 54155



UGWA DEMOLUM YATEHE
Because of the help of this
Oneida Chief in cementing
a friendship between the
six nations and the Colony
of Pennsylvania, a new na-
tion, the United States, was
made possible.

RESOLUTION # 8-19-91-A

- WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States, and
- WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council, and
- WHEREAS, the Oneida Business Committee formally adopted the Oneida Tribal Administrative Procedures Act and Oneida Appeals Commission on May 2, 1990, and
- WHEREAS, the Oneida Business Committee notified the General Tribal Council of said action at the 1990 annual General Tribal Council meeting and the 1991 General Tribal Council semi-annual meeting, and
- WHEREAS, the Oneida Business Committee has brought forward the Oneida Tribal Administrative Procedures Act and Oneida Appeals Commission for reauthorization and readoption by the Oneida Business Committee, and
- WHEREAS, the General Tribal Council has been given notice of said adoption of the Oneida Tribal Administrative Procedures Act and the Oneida Appeals Commission and has had adequate time to review said actions, and
- WHEREAS, said Act and Commission would enhance and protect the self-government and sovereignty of the Oneida Tribe, and
- WHEREAS, said Act and Commission will enhance a governmental separation of powers between the legislative, executive and judicial responsibilities of the Oneida Tribe, and
- WHEREAS, the Act and Commission will diminish political pressure upon the Oneida Business Committee by removing it from initial judicial decisions, and
- WHEREAS, the Act will provide for consistent procedures of law/rule making and due process throughout the Oneida Tribe, and

HEREAS, the Indian Civil Rights Act of 1968, 25 USC Section 1301-1303 supports the policy that all Indian Tribes exercising powers of self-government shall insure that individual rights are protected and that people have a right to "petition for redress of grievances", and


WHEREAS, recent federal and state regulations are requiring that in order for tribes to receive funding, loans or grants, they must have an internal governmental structure that provides fairness and notice. and

WHEREAS, An Appeals Commission will maintain the integrity of an Oneida traditional system of decision making by insuring that there is more than one decisionmaker for any issue.

NOW THEREFORE BE IT RESOLVED: that the Oneida General Tribal Council does hereby formally reauthorize the adoption of the Oneida Tribal Administrative Act and Oneida Appeals Commission for immediate implementation.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council composed of Oneida Tribal members of whom 75 members constitute a quorum. 95 members were present at a meeting duly called, noticed and held on the 19th day of August, 1991; that the foregoing resolution was duly adopted at such meeting; and that said resolution has not been rescinded or amended in any way.



Amelia Cornelius, Tribal Secretary
Oneida Business Committee

ONEIDA TRIBAL ADMINISTRATIVE PROCEDURE ACT

I. AUTHORITY

The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this Act as well as the responsibility as a government to protect the health, safety, welfare and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall insure due process of law for the above designated citizens through adoption of this Act.

II. PURPOSE

The various committees, entities and administrative bodies of the Oneida Tribe shall act in a responsible and consistent manner when implementing and administering the laws, directions, rules, programs, and policies of the Oneida Tribe as adopted. The following principles shall be the framework of this Act:

- A. Fundamental fairness, justice and common sense;
- B. Procedural and substantive ordinance and rule-making will include appropriate notice to interested persons as well as notice to the public

for an opportunity to submit views, opinions, and information;

- C. Record keeping that is responsible and understandable;
- D. Decision makers, shall be familiar with the evidence and facts of cases presented to them;
- F. Provisions for appeals of administrative errors shall be provided for;

III. DEFINITIONS

- A. "Agency". - Any Tribal entity, board, commission, committee, department, or officer authorized by the Oneida Tribe to propose ordinance/rules for adoption by the Oneida Business Committee or a decision maker for contested cases. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.
- B. "Contested Case" - A proceeding before an "Agency" in which an opportunity for a hearing before said "Agency" is required by law prior or subsequent to the determination of the "agency" of the legal rights, duties, or privileges or specific parties. This shall

include the revocation, suspension or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting.

- C. "License" or "Permit" - The approval, permission, or registration of any form required by law to engage in an activity.
- D. "Licensing" or "Permittting" - The process that refers to the grant, denial, renewal, revocation, suspension, annulment, withdrawl, or modification of a license or permit.
- E. "Oneida Business Committee" - OBC - The governing body of the Oneida Tribe elected by the Oneida General Tribal Council.
- F. "Oneida General Tribal Council" - The ultimate governing body of the Oneida Tribe composed of enrolled Tribal memebbers.
- G. "Ordinance" - A tribal law that applies to persons and things subject to tribal jursidiction.

- H. "Person" - Any individual(s), partnership, any type of corporations, any type of enterprises, any type of local, state, federal, or tribal government and any governmental entity.
- I. "Reservation" - Oneida Tribe of Indians of Wisconsin original reservation containing 64,000 more or less acres.
- J. "Reservation Population" - All persons who are conducting business and/or visiting or who reside within the exterior boundaries of the reservation.
- K. "Reservation Environment" or "Reservation Resources" - Land, surface water, ground water, fish, animals, flora, fauna, air wildlife, and capital improvements on or near the reservation.
- L. "Rule/Regulation" - Any order or directive, or regulation of general applicability enacted into law by the Oneida Business Committee that exhibits the following:
 - 1. The violation of which may result in a fine,

- penalty, or other civil administrative sanctions;
2. May establish, change, or revoke a procedure practice or requirement of administration hearing;
 3. May establish, change, or revoke requirements relating to benefits or privileges conferred by law;
 4. May establish, change, or revoke standards for assistance, suspension or revocation of licenses;
 5. The amendment or repeal of a prior ordinance/rule;
 6. Does not include:
 - a. Statements concerning internal management of an area, nor
 - b. Declaration rulings issued pursuant to this Act as now or hereafter amended.
- M. "Secretary" - Secretary of Oneida Business Committee;
- N. "Sponsoring Agencies" - Any tribal agency that prepares a ordinance/rule or other matter under this Act, for action by Oneida Business Committee.

O. "Tribe" - Oneida Tribe of Indians of Wisconsin

IV. ADOPTION OF INFORMAL PROCEDURES, RULES AND REGULATIONS

In addition to other ordinance/rule making requirements imposed by law, agencies may adopt informal procedures authorized or designated by this Act, along with forms and instructions.

V. INSPECTION OF AGENCY ORDERS, DECISIONS, AND OPINIONS

Each agency shall keep on file for public inspection all final orders, decisions and opinions in contested cases as well as an index to said cases, decisions, orders, or opinions except that said public inspection shall be limited by applicable federal law or tribal laws of confidentiality. In addition, said agencies shall forward all agency orders, decisions or opinions to the "Secretary" who shall keep said records in one centralized area.

VI. NOTICE OF INTENT TO ADOPT ORDINANCE/RULE AND OPPORTUNITY TO SUBMIT DATA

A. Prior to a final proposal to the Oneida Business

Committee to adopt, amend or repeal a ordinance/rule,
the sponsoring agency and the "Secretary" shall:

1. Publish notice thereof in the Oneida tribal newspaper and post said notice in at least four other areas within the reservation. Such notice shall include:
 - a. The authority under which the ordinance/rule is proposed;
 - b. A statement of the terms, substance or a description of the subjects and issues involved;
 - c. The time, place, whom and manner in which views may be presented.

2. Provide interested persons a reasonable opportunity to submit data, views, or arguments in writing. The sponsoring agency shall determine whether a public hearing is in the public interest, but it is the intent of this Act that public hearings be held. Subsequent to the the public comment period and prior to a final vote by the Oneida Business Committee, the Oneida Business Committee and agency

shall consider fully, all oral and written comments concerning the proposed action.

- B. An administrative regulatory proceeding shall be held on a final ordinance/rule only after ten (10) working days have passed from the publication date of the tribal newspaper in which notice is given of the adoption of the ordinance/rule by the Oneida Business Committee.
- C. A ordinance/rule hereafter adopted is valid only if adopted in substantial compliance with this section or if an emergency ordinance/rule designated as such is adopted in compliance with the "Emergency Ordinance/Rule" section.
- D. All adopted ordinance/rules shall immediately be filed with the secretary. All regular ordinance/rules hereafter adopted pursuant to this Act shall become effective upon the expiration of ten (10) working days following passages of said ordinance/rule unless so stated in ordinance/rule. No proceeding can be contested for purpose of noncompliance with the procedural requirements of this section, as now or

hereafter amended after one (1) year has elapsed from the effective date of the ordinance/rule.

VII. EMERGENCY ORDINANCE/RULES AND AMENDMENTS

A. If an agency recommends and the Oneida Business Committee so finds, that immediate adoption or the amendment of a ordinance/rule is necessary for the preservation of the public health, safety, or general welfare of the reservation population, and that observance of the above stated requirements would be contrary to public interest, the Oneida Business Committee may dispense with the above requirements and adopt the ordinance/rule or amendment immediately as an emergency ordinance/rule or amendment. The following shall apply:

1. A finding and brief statement of the reasons for the finding shall be incorporated in the ordinance/rule or amendment, and
2. An emergency ordinance/rule or amendment shall not remain in effect for longer than six (6) months.

B. The emergency ordinance/rule or amendment shall be

published in the tribal newspaper solely to inform the public of said adoption. This section shall not be construed to prevent the implementation of the ordinance/rule upon its adoption by the Oneida Business Committee in accordance with this section.

- C. Emergency ordinance/rules shall become effective upon their adoption by the Oneida Business Committee and said emergency ordinance/rule shall be promptly filed with the secretary.

VIII. FORMAT OF PROPOSED ORDINANCE/RULES

- A. The sponsoring agency shall submit a statement with the proposed ordinance/rule which describe the purpose of the ordinance/rule and how it is to be implemented. The statement shall include, but not be limited to the following:

1. A title, a description of the ordinance/rules purpose, the name of the sponsoring agency, and other information which may aid in identifying the purpose of the proposed ordinance/rule;
2. A summary of the proposed ordinance/rule;

3. The personnel responsible for drafting the proposed ordinance/rule and who will be responsible for implementation and enforcement of the proposed ordinance/rule,
- B. The sponsoring agency shall have on file all copies and statements prepared in accordance with this section, and available for public inspection upon filing the proposed ordinance/rule with the secretary.

IX. PETITION FOR ADOPTION, AMENDMENT, REPEAL OF ORDINANCE/RULES

- A. Any interested person may petition an agency and request that said agency propose that the Oneida Business Committee adopt, amend, or repeal any ordinance/rule. Should this occur the following shall apply:
 1. Within sixty (60) days after the submission of a petition, the agency shall formally consider the petition, and
 2. Within thirty (30) days thereafter, the agency shall either deny the petition in writing, (stating reasons for denial) or initiate ordinance/rule making proceedings in accordance with this Act.

X. DECLARATORY RULING, AND JUDGMENTS ON VALIDITY OF
ORDINANCE/RULE

A. Declaratory rulings shall be initially made by the agency. Any interested person may petition an agency for a declaratory ruling with respect to the applicability to any person, property, or state of facts of any ordinance/rule enforceable by such agency.

1. A declaratory ruling shall be binding between the petitioner and agency so long as the following is adhered to:
 - a. An informal hearing has been held, and
 - b. Said declaratory ruling has been submitted to and verified by the Secretary.

2. A declaratory ruling shall not be applicable if said ruling is set aside or altered by a tribal appellate body.

B. A petitioner and the sponsoring agency may petition an appropriate Oneida tribal appeals body to issue a declaratory judgment should it appear that the ordinance/rule or its proposed application threaten to

interfere with or impair the legal rights or privileges of the petitioner; the following shall apply prior to such a petition being heard:

1. The appellate body shall have jurisdiction over the issue, and
2. The petitioner has requested in writing that the sponsoring agency pass upon the validity of the ordinance/rule in question..

C. The appellate body pursuant to this section shall declare an ordinance/rule invalid, only if it finds:

1. The ordinance/rule violates constitutional provisions, and or
2. The ordinance/rule exceeds the lawful authority of the Oneida Business Committee or the General Tribal Council, and
3. The ordinance/rule was adopted without compliance with lawful ordinance/rule making procedures.

XI. CONTESTED CASES

A. Notice - Whenever a contested case arises within the

Oneida Tribal Administrative System the following notice requirements shall be adhered to:

1. The notice shall be in writing, and
2. The notice shall be postmarked, delivered or published no less than ten (10) days prior to the action or proceeding, and
3. Said notice shall include statements specifying:
 - a. the violation, citing the rules, regulation, policy or law, and
 - b. the specific grievance which shall include the alleged facts and/or charges and the date, time and place describing the alleged violation and/or non-compliance and
 - c. the name of all parties involved, including an agency or entity, if applicable, and
 - d. the nature of relief requested.
4. Types of Notices.
 - a. Notices are required to adhere to the above requirements in the following progression, unless personal service is more practical than by mail:
 - i) Service by registered mail, return receipt requested. This is to be

utilized first unless otherwise authorized by ordinance or unless the subject refuses to pick up the registered letter after a five (5) day period.

- 2) Personal Service. This shall occur by formal service by an officer of the Oneida Public Safety Department. The person serving shall verify the date, time and place of service to the subject.
- 3) Publication. This shall be used if the whereabouts of the subject if unknown and cannot be located after a diligent attempt to seek such location by one of the above methods of service. Publication shall be in the Oneida tribal newspaper, the Kalihwi saks, and another newspaper located in an area where the subject was last known to have resided and shall be designated as a LEGAL NOTICE stating the name and the last known address of the person/entity being located.

1. The record in a contested case shall include:
 - a. all pleadings, motions, and intermediate rulings;
 - b. evidence received or considered;
 - c. a statement of matters officially noticed;
 - d. questions and offers of proof, objections and rulings thereon;
 - e. proposed findings and exceptions; and
 - f. any decision, opinion or report by the officer presiding at the hearing.
 2. Fees of Reproduction. The tribe shall fix a consistent fee for the cost of producing records.
- C. Procedures and Rules. The following shall be adhered to when a contested case hearing is scheduled:
1. Prehearing Rules
 - a. Hearing officers are responsible to pick up documentation twenty-four hours prior to a hearing from a location designated by each agency.
 - b. Hearing officers are to be at a hearing a minimum of thirty (30) minutes prior to a scheduled hearing.

- c. Parties shall submit documentation for the hearing officers to review at least two (2) working days prior to a hearing.
Documentation submitted after this time will not be considered unless the panel of hearing officers elects, by a majority, to accept and consider said documentation because it may have a direct impact upon the outcome of the hearing.
- d. After proper service of notice, agencies, commissions, hearing officers or their authorized agents may:
 - 1) issue a subpoena upon the request of any party upon a statement showing general relevance of the evidence requested; said request may be signed by the party itself or its designated representative; or
 - 2) issue a subpoena upon their own motion.
- e. The hearing format shall be as follows:
 - 1) grieving party presents case;
 - 2) responding party presents case;
 - 3) grieving party cross questions;
 - 4) responding party cross questions;
 - 5) grieving party rebuttal;

- 6) responding party rebuttal;
 - 7) Commission deliberations and findings.
(Deliberations of the Commission are confidential and not subject to reproduction.)
2. Rules that encompass witnesses shall be as follows:
 - a. character witnesses shall not be allowed;
 - b. the presence of witnesses shall be the responsibility of each party and/or the Commission members;
 - c. witnesses who will not be available for a scheduled hearing shall submit a notarized statement as it relates to the hearing in order for this documentation to be considered in the case;
 - d. a witness list will be submitted at least two (2) working days prior to the hearing by each party presenting witnesses.
 3. The Commission shall institute recesses as they see fit.
 4. The Commission shall ask questions at any time during the hearing.

5. The findings and review/hearing are tribal record. Tribal members may request copies of the record of the case at the requesting parties expense.
6. Deliberation of the Commission is confidential and not subject to reproduction.
7. Hearing Rights:
 - a. The respondent has a right to be made aware of the grievance or grievances against him/her. The grievance(s) shall be attached to the notification of the hearing.
 - b. All parties have a right to be represented by an advocate if they so choose. The expenses of the advocate shall be the total responsibility of the parties. Tribal entities shall have access to a tribal attorney if they so choose.
 - c. The parties have the right to present witnesses and evidence on their own behalf.
 - d. The parties have a right to at least two (2) working days written notification prior to a review/hearing.
 - e. The parties have a right to a timely review/hearing and decision, therefore,

notification to the parties of the final decision shall be sent or personally served within ten (10) days following the hearing.

- f. Both parties may receive all records that pertain to the grievance which is being reviewed.
- g. The affected parties have a right to documentation of:
 - 1) the final decision, and
 - 2) the reason or reasons for the final decision, and
 - 3) the action to be taken as a result of the final decision.
- h. The parties have the right to request one (1) appeal of the final decision of the Commission to a designated appeals body of the Oneida Tribe because of:
 - 1) procedural irregularities which were objected to at the formal hearing, and/or procedural irregularities which are brought to the attention of the Commission, and/or
 - 2) erroneous decisions which were against the weight of testimony and evidence presented to the Commission, and/or

- 3) new evidence which is made available to the appeals body which was not available to the parties or Commission until after the final decision.
8. Should the grieving party or his/her advocate fail to appear at any scheduled hearing or meeting without justifiable cause, the grievance shall be dismissed.
9. Should the responding party or his/her advocate fail to appear at any scheduled hearing or meeting without justifiable cause, said absence shall be considered an admission to the grievance and the decision of the Commission shall be based on such an admission.
10. All proceeding that arise as a result of the action of the Oneida Child Protective Board or any other juvenile proceeding shall be confidential except to the interested parties as listed in the proceedings and the Oneida Human Services Department. All hearings shall be closed to everyone except the above mentioned parties and department.
11. The decision of the hearing body shall be based witness testimony, evidence presented, the record

of the proceedings and matters officially noticed.

12. Findings and Conclusions. Every decision and order rendered by an agency in a contested case shall be in writing or stated in the record and shall include the findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Subsequent to a decision being made the following shall occur:

- a. Parties to the action shall be notified of the decision and order in person or by mail; and
- b. A copy of the decision and order along with the findings and conclusions; shall be delivered or mailed to each party or if a party is represented by an attorney, to the attorney of record within ten (10) days of said decision.

13. Appeal. Should a party feel that a reconsideration of the contested case should occur, the party shall then follow an Oneida tribal appeals procedure.

D. Evidence

1. Agencies, commissions, hearing officers or their authorized agents, may admit and consider evidence which is commonly viewed as acceptable and having a direct connection to the subject case, by reasonable prudent people in the conduct of their affairs which shall include not be limited to:
 - a. giving effect to the rules of privilege recognized by law (ex: attorney-client, husband-wife, etc.); and
 - b. excluding incompetent, irrelevant, immaterial and unduly repetitious evidence.
2. All evidence, including but not limited to records and documents in the possession of the agency of which it desires to avail itself, along with other factual information or evidence, shall be offered and made part of the record in the case and shall be considered in the determination of the case. Documentary evidence may be accepted in the form of copies or excerpts, or incorporated by reference.
3. Every party shall have the right of cross-examination of witnesses who testify and shall have a right to submit rebuttal evidence.
4. Agencies, commissions, hearing officers or authorized agents, may take notice of general,

technical or scientific facts within their specialized knowledge and may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented them. Parties shall be notified prior to or during the hearing as to facts that have been so noticed and they shall have the opportunity to contest such facts.

E. Orders, Fines Penalties, Judgments

An authorized hearing body, subsequent to a contested case hearing may issue fines, orders, penalties and/or judgments that comply with the Indian Civil Rights Act and that may include but not be limited to the following:

1. An order directing a violator or person in non-compliance of/with a tribal law or regulation to pay for actual damages as well as punitive damages.
2. In the case of damages caused by minors, an order requiring the parent, custodian or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.

3. An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.
4. An order specifying a monetary fine for violation or non-compliance of/with tribal rules, regulations or ordinances.
5. An order requiring appropriate exclusionary mandated community service and/or denial of specific tribal benefits.
6. Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default.

F. Consideration of Record, Reopening and Consultation

1. Consideration and Reopening - The officials who are to render a decision shall personally consider the record of the case. Subsequent to the close of the contested case hearing and when determined to be in the interest of justice the decision making officials may temporarily postpone the decision and elect to reopen the record and request the parties

to the proceeding submit additional written documentation and/or present an oral argument. After full consideration and deliberation of additional information, the decision making official shall render a decision within five (5) working days.

2. Consultation - No hearing official, agency or commission presiding in a contested case or preparing/proposing a decision shall consult with any person/party on any issue of fact or law in the proceedings, except that in appraisal or analyzation of the record for a decision the hearing official may:
 - a. consult with members of the agency making the decision;
 - b. have the aid and advice of one or more personal assistants; and
 - c. have the assistance of other employees of either agency or the office of a tribal attorney who has not participated in the proceeding in any manner⁵ or who is not engaged for the agency in any investigation functions in teh same or any current factually related case.

XII. APPELLATE REVIEW OF AGENCY OR COMMISSION ACTION

- A. Appellate Review or Contested Case or Promulgation of a Rule - Any person aggrieved by either a final decision in a contested case or by the promulgation of a rule or regulation of a rule under the act, is entitled to appellate review only under the provision of this Act.
- B. Procedures - The request for appellate review of the above shall follow those procedures adopted as Oneida tribal appellate procedures.
- C. Objections - Only an objection to a rule or procedure which was raised with reasonable specificity during the public comment (hearing) period or during the contested case may be raised during appellate review.
- D. Stay - The filing of an appellate review petition shall not stay enforcement of the agency nor the rule, but the agency or appellate reviewing body may order a stay upon such terms as it deems proper.
- E. Appellate Decision - The appeals body may:

1. Affirm, modify or reverse a final decision, order or judgment; and/or
2. Remand the case back to the original hearing body and order a new hearing; and/or
3. Direct the entry of an appropriate judgment or order; and/or
4. Require such other action or further proceeding as may be appropriate to each individual proceeding.
5. Decisions of the appeals body shall be made by a majority vote.

F. Appeals Body Acceptance - The designated tribal appeals body shall accept an appeal if one or more of the following elements are found in a decision of an original hearing:

1. A violation of constitutional provisions;
2. It is outside the scope of the authority or jurisdiction of the agency or otherwise unlawful;
3. The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level;
4. Arbitrary and/or capricious;
5. There is exhibited a procedural irregularity which

would be considered a harmful error that may have contributed to the final decision and if said irregularity were no present, the decision would have been different; and/or

6. There is a presentation or introduction of new evidence that was not available at the hearing level which, if available, may have affected the final decision.

G. Appeal Procedure

1. Time and Process

- a. An appeal shall be filed within ten (10) working days of the entry of the final decision order or judgment appealed from.
- b. A written intent to appeal and a \$25.00 filing fee shall be filed at an area designated by the Oneida Tribe to accept such appeal requests.
- c. A designated tribal office shall prepare the NOTICE OF APPEAL and shall request all the documents, exhibits, pleadings and transcripts pertaining to the case on appeal from the original hearing. This record shall be

returned to the designated tribal office within ten (10) working days of their request.

2. Notice of Appeal

- a. The notice of appeal shall be sent to all parties within ten (10) working days of being filed and shall designate the following:
 - 1) the identification of the parties;
 - 2) the final decision, order or judgment appealed from; and
 - 3) a short statement of the reasons for appeal.
- b. The designee of the Commission shall mail a copy of the NOTICE OF APPEAL to all parties. The notice shall follow the notice progression and contain the same requirements as is in the NOTICE section of that entitled Contested Case.
- c. Within thirty (30) days after receipt of the total record of the original hearing record, the appropriate appeals body shall meet to review the case and set the date for final consideration.

3. Designation of Parties

- a. The party or parties filing the appeal shall

be designated as appellants.

b. Parties who are subject to an appeal, but are not appellants, shall be designated as respondents.

4. Appeals Body Costs - Appeal administration costs will be determined on a yearly basis by the Oneida Business Committee.

a. Should the appellant be successful, the respondent shall pay the costs.

b. Should the respondent be successful, the appellant shall pay the costs.

c. Should the appeal be remanded, the parties shall share the costs equally.

5. Judgment on Appeals - A judgment by the designated appeals body shall be considered final within the Oneida Tribal Administrative System.

6. Forms of Appeal

a. The appeals body may require one or both of the following methods to be presented by the parties to the appeals body for review:

1) an oral argument; and/or

2) a brief or memoranda submitted by the parties.

b. Notice of the date of an argument or

submission of a brief of memoranda shall follow the Notice Procedures designated in the contested case section of this ordinance.

c. Brief of Memoranda - Should the appeals body request a brief of memoranda, the following shall apply:

- 1) an original and three copies shall be filed with the appeal body by the appellant;
- 2) the appeals body designee shall send a copy of the memoranda to the respondent(s) (or have it served personally, if more convenient) with a return receipt requested or affidavit that shall be kept on file;
- 3) the respondent, upon receipt of appellant's memoranda, shall file with the appeals body designee an answer memoranda that will include an original and three copies;
- 4) the appeals body designee shall send a copy of the memoranda to appellant (or have it served personally if more convenient) with a return receipt

requested or affidavit, that shall be kept on file;

- 5) no further memoranda, briefs or statements shall be allowed without leave of the appeals body.
- d. Oral Argument - Should an oral argument be required of the parties, each argument shall last no longer than twenty (20) minutes exclusive of questions by the Commission.
- e. Subpoena of Witnesses and Records
- 1) The Commission may require a designee of the Commission to compel attendance of witnesses or the production of books, records, documents or other items necessary to the final disposition of an appeal proceeding.
 - 2) Noncompliance with the above subpoena order will result in a contempt charge being filed.
 - 3) Said subpoenas shall be served by the Oneida Public Safety Department only.
- f. Records of Appeal. A record of all proceedings of the appeals body shall be kept

on file and maintained by an office designated by the Oneida Tribe.

XIII. CONTEMPT PROCEEDINGS

A. Contempt - Should an individual fail to obey a subpoena, or refuse to testify or appear when requested concerning any matter under investigation or examination at a hearing or refuse to obey any order or judgment of a tribal board or commission, the agency issuing the subpoena may petition a designated tribal appeals body for enforcement of the subpoena. The petition shall include:

1. A copy of the subpoena, order or judgment;
2. Proof of service
3. The specific manner of alleged non-compliance, and
4. A request that the appeals body issue an order to require a witness to appear and testify before the agency or commission.

B. The appeals body, upon receipt of such petition or within five (5) days of receipt shall:

1. Enter an order directing the witness to appear before the appeals body at a time and place to be set by such order; and
 2. Require that the witness at the designated time show cause why he has not responded to the subpoena, why he has refused to testify or why he is failing to comply with an order or judgment.
- C. Should it appear to the appeals body that the subpoena was properly issued and that the questions the witness refuses to answer are reasonable and relevant to either the contested case or a rule making hearing, the appeals body shall:
1. Enter an order that the witness appear at the time and place fixed in the original order; and/or
 2. Enter an order that requires the witness to testify or produce required documents and comply with the existing order; and/or
 3. Require that the person failing to appear, testify or comply with an order pay a fine and/or be subject to a penalty as is described in this ordinance.

XIV. AGENCY/COMMISSION HEARING BODIES AND CONTESTED CASE HEARING BODIES RESPONSIBILITY AND AUTHORITY

A. Hearing Officers or their authorized agents, may:

1. administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge to a tribal decision making forum;
2. issue subpoenas;
3. rule upon offers of proof and receive relevant evidence;
4. require prehearing meetings;
5. regulate the course of the hearing;
6. hold conferences for the settlement or simplification of the issues;
7. dispose of procedural matters by decision;
8. take any other action authorized by tribal law consistent with this Act; and
9. issue final orders and judgments.

B. An agency/commission may hold a public hearing, subpoena

witnesses, administer oaths, take testimony or any person under oath, and in connection with, require the production of any documents relating to the contemplated regulation when attempting to determine the need or desirability of proposing that the tribe adopt, amend, repeal or revise rule, regulation or proposed rule/ordinance or regulation.

XV. MISCELLANEOUS ADMINISTRATIVE RULES

- A. Oral proceedings shall be recorded or transcribed for the purposes of agency decision. A copy of the entire record or any part thereof shall be furnished to any party upon their written request and payment of the costs.

- B. Fees of Reproduction. The tribe shall have the power to fix a consistent fee for the cost of producing records required to be produced by agency or commission subpoena which shall be paid by said agency or commission.

- C. Subpoena. Subpoenas may be served outside the reservation to the maximum extent allowable in

conformation with the requirements of the Due Process Clause of the Indian Civil Rights Act, 25 U.S.C. 1301, for purposes of long arm jurisdiction with respect to any activity occurring within the Oneida Reservation.

- D. The Federal Rules of Civil Procedures and Evidence may, where applicable, be used as general guides for proceedings before any agency, except as to matters covered explicitly by tribal law. The Federal Rules shall be interpreted as instructive rather than controlling in any event.

XVI. LICENSING, LICENSE PERMITTING AND EMERGENCY ACTIONS

- A. License Application. When a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary or provisional license does not expire until the application has been finally determined by the agency, and in case the application is denied of the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing body.

B. Notice of Action. No revocation, suspension, annulment, modification or withdrawal of any license or permit is lawful, unless, prior to an agency or commission proceeding, the agency gives notice, as is required by tribal law (return receipt) to the licensee of facts or conduct which warrants the intended action, and the licensee was given reasonable opportunity to show compliance with all lawful requirements (right to cure) for the retention of the license or permit and said licensee or permittee is given notice that he/she has a right to challenge such action under the procedures of a contested course.

C. Emergency Action. Where an agency or commission finds that protection of tribal and/or public health, safety or welfare require that immediate emergency action be taken, summary suspension of a license or permit may be ordered pending proceedings for revocation. Said order shall include the rational and/or findings. Said action, (revocation or other action) shall be instituted within five (5) working days of emergency action and shall be decided upon promptly with appropriate notice to the affected licensee or permittee.

XVII. SEVERABILITY, REPEAL, EFFECTIVE DATE, CONFLICT WITH
FEDERAL LAW, LIMITATIONS OF ACT AND COMPLIANCE WITH ACT

- A. Severability. Should a provision of this Act or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions of the Act which are considered to have legal force without the invalid provisions.
- B. Repeal. All other Oneida tribal laws, rules or regulations which are inconsistent with this Act and are held subject to this Act are hereby repealed, but such shall not affect pending proceedings.
- C. Effective Rate. This Act shall take effect _____ days after the date of formal approval by the Oneida Business Committee.
- D. Conflict with Federal Law. Should any part of this Act be found to be in conflict with federal requirements which are required in order that the Oneida Tribe receive federal funds; the conflicting ;section of this Act is to be considered inoperative only for purposes of that particular funding and that particular conflict.

Such conflict shall not affect the operation of the remainder of this Act in its application to those agencies or departments directly affected.

- E. Compliance with Act. Nothing in this Act shall be held to diminish constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. All requirements or privileges relating to evidence or procedures shall apply equally to agencies and persons. Every agency or commission is granted authority to comply with the requirements of this Act. Subsequent tribal law shall not supersede or modify this Act or its applicability to any agency unless it is done so expressly by tribal law.