

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

February 17, 2016 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. February 3, 2016 LOC Meeting Minutes

III. Current Business

1. Administrative Procedures Act Amendments
2. Cemetery Law Amendments
3. Fitness For Duty Policy
4. Marriage Law Amendments
5. Removal Law Amendments
6. Violence Against Women Act
7. Administrative Rulemaking Law

IV. New Submissions

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center
 February 3, 2016 1:30 p.m.

PRESENT: Brandon Stevens, Fawn Billie, Tehassi Hill, and David P. Jordan.

EXCUSED: Jennifer Webster

OTHERS PRESENT: Taniquelle Thurner, Krystal John, Douglass McIntyre, Maureen Perkins, Rae Skenandore, Michelle Mays, Bonnie Pigman, Cheryl Vandenberg, Leyne Orosco, and Nicolas Reynolds.

I. Call to Order and Approval of the Agenda

Brandon Stevens called the February 3, 2016 Legislative Operating Committee meeting to order at 1:34 p.m.

Motion by Tehassi Hill to approve the agenda; seconded by Fawn Billie. Motion carried unanimously.

II. Minutes to be approved

1. January 20, 2016 LOC Meeting Minutes

Motion by Tehassi Hill to approve the January 20, 2016 LOC meeting minutes; seconded by Fawn Billie. Motion carried unanimously.

III. Current Business

1. Administrative Procedures Act Amendments

Motion by Tehassi Hill to direct the Legislative Reference Office to prepare an adoption packet for the Administrative Procedures Act Amendments to be forwarded to the Oneida Business Committee for consideration when ready; seconded by Fawn Billie. Motion carried unanimously.

2. Community Support Fund Policy Amendments

Motion by Fawn Billie to accept the draft of the Community Support Fund Policy Amendments, to forward to the Legislative Reference Office for an updated analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

3. Mortgage and Foreclosure Law

Motion by David P. Jordan to forward the Mortgage and Foreclosure Law to the Legislative Reference Office for a legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

4. Per Capita Law Amendments

Motion by Tehassi Hill to defer the Per Capita Law Amendments to a work meeting with the Trust/Enrollment Department, the Finance Department, Law Office and the sponsor and bring back to the LOC within the next 30 days; seconded by David P. Jordan. Motion carried unanimously.

5. Administrative Rulemaking Law (00:00-56:00)

Motion by David P. Jordan to direct the Legislative Reference Office to make the noted changes to the Administrative Rulemaking Law and defer the remainder of the policy consideration to a meeting with the sponsor; to update the Legislative Analysis and to prepare an adoption packet for Oneida Business Committee consideration; seconded by Tehassi Hill. Motion carried unanimously.

6. Comprehensive Policy Governing Boards, Committees and Commissions Amendments (56:12-57:06)

Motion by David P. Jordan to accept the Public Meeting comments and defer consideration of the comments to a work meeting to be held on Friday February 5, 2016 at 10:00 am; seconded by Tehassi Hill. Motion carried unanimously.

7. Higher Education Scholarship (57:13-01:05:36)

Motion by David P. Jordan to send the Higher Education Scholarship draft to the Oneida Business Committee to consider forwarding to the next available General Tribal Council for adoption; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to request the Higher Education Department to prepare a presentation to accompany the law to the General Tribal Council consideration; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions**V. Additions****VI. Administrative Updates****VII. Executive Session****VIII. Recess/Adjourn**

Motion by Tehassi Hill to adjourn the February 3, 2016 Legislative Operating Committee meeting at 3:09 p.m.; seconded by David P. Jordan. Motion carried unanimously.



Legislative Operating Committee

February 17, 2016

Administrative Procedures Act

Submission Date: 2/12/15

Public Meeting: 1/7/2016 Emergency Enacted:
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LOC Sponsor: Brandon Stevens

Summary: *With the adoption of the Judiciary Law, the APA was set to be repealed as of March 1, 2015. If repealed at that time, it would have left various Tribal hearing bodies without any rules to govern hearings. A revised APA was adopted on an emergency basis to address that issue.*

- 2/18/15 LOC:** Motion by Tehassi Hill to approve the resolution and forward to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.
- 2/25/15 OBC:** Motion by Tehassi Hill to adopt resolution titled Administrative Procedures Act Amendments Emergency Adoption, seconded by Trish King. Motion carried unanimously.
- 8/19/15 LOC:** Motion by Jennifer Webster to approve the resolution extending the Administrative Procedures Act Emergency Amendments and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.
- 8/26/15 OBC:** Motion by Brandon Stevens to adopt resolution 08-26-15-C Administrative Procedures Act Amendments Emergency Adoption Extension, seconded by Jennifer Webster. Motion carried unanimously.
- 11/18/15 LOC:** Motion by David P. Jordan to defer the Administrative Procedures Act Amendments to the Finance Department for a fiscal impact statement and to forward the Administrative Procedures Act Amendments to a public meeting date of January 7, 2016; seconded by Fawn Billie. Motion carried unanimously.
- 12/2/15 LOC:** Motion by Fawn Billie to approve the public meeting packet and forward the Administrative Procedures Act Amendments to a public meeting to be held on January 7, 2016; seconded by Jennifer Webster. Motion carried unanimously.
- 1/7/16:** Public Meeting Held.
- 2/3/16 LOC:** Motion by Tehassi Hill to direct the Legislative Reference Office to prepare an adoption packet for the Administrative Procedures Act Amendments to be forwarded to the Oneida Business Committee for consideration when ready; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Forward the packet to the Oneida Business Committee for consideration.

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Committee Members

Brandon Stevens, Chairperson
 Tehassi Hill, Vice Chairperson
 Fawn Billie, Councilmember
 David P. Jordan, Councilmember
 Jennifer Webster, Councilmember

Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: February 24, 2016
Re: Administrative Procedures Act Adoption

Please find attached the following for your consideration:

1. Resolution: Administrative Procedures Act Adoption
2. Statement of Effect: Administrative Procedures Act Adoption Extension
3. Administrative Procedures Act (redline)
4. Administrative Procedures Act (clean)
5. Fiscal Impact Statement

Overview

On January 7, 2013 the Oneida General Tribal Council (GTC) adopted resolution GTC-01-07-13-A, Adoption of the Administrative Procedures Act Amendments and the Legislative Procedures Act. With the adoption of the Judiciary Law through resolution GTC-01-07-13-B, the GTC repealed the hearing procedures found in the Administrative Procedures Act (APA) effective March 1, 2015, with the adoption of the Judiciary Law, resolution GTC-01-07-13-B. Although the Judiciary Law was adopted, certain boards, committees and commissions of the Tribe continued to have hearing body authority through various Tribal laws and are required to hold their hearing in accordance with the Administrative Procedures Act under Tribal law. These hearing bodies include the Child Protective Board, the Election Board, the Environmental Resource Board, Oneida Gaming Commission, Land Commission, Pardon and Forgiveness Committee, Personnel Commission, Oneida Police Commission, Oneida Nation School Board, Oneida License Commission and Trust and Enrollment Committee.

On February 25, 2015, the Oneida Business Committee (OBC) adopted emergency amendments in resolution BC-02-25-15-B: Administrative Procedures Act Amendments Emergency Adoption. These amendments repealed the outstanding sections of the APA and put a hearing process in place for those hearing bodies that were required to hold hearings in accordance with the APA and did not have other hearing rules in place. These emergency amendments took effect March 1, 2015 for a period of six (6) months. These emergency amendments were extended once through resolution BC-08-26-15-C for another six (6) month period and are set to expire on March 1, 2016.

The attached Resolution will adopt a permanent Administrative Procedures Act to replace the emergency amendments.

A public meeting was held on January 7, 2016 in accordance with the Legislative Procedures Act and no comments were received.

Requested Action

Approve the Resolution: Administrative Procedures Act Adoption.

BC Resolution _____
Administrative Procedures Act Adoption

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4 **WHEREAS**, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian
5 government and a treaty tribe recognized by the laws of the United States of
6 America; and
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8 **WHEREAS**, the Oneida General Tribal Council is the governing body of the Oneida Tribe of
9 Indians of Wisconsin; and
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11 **WHEREAS**, the Oneida Business Committee has been delegated the authority of Article IV of
12 the Oneida Tribe of Indians of Wisconsin Constitution by the Oneida General
13 Tribal Council; and
14

15 **WHEREAS**, GTC Resolution 01-07-13-A adopted amendments to the Administrative
16 Procedures Act (APA) and adopted the Legislative Procedures Act (LPA); and
17

18 **WHEREAS**, GTC Resolution 01-17-13-B adopted the Judiciary Law and repealed the hearing
19 procedures found in the APA, effective March 1, 2015; and
20

21 **WHEREAS**, although the Judiciary Law was adopted, certain boards, committees and
22 commissions of the Tribe continue to have hearing body authority through various
23 Tribal laws; and
24

25 **WHEREAS**, some of these hearing bodies, including but not limited to, the Gaming
26 Commission, Environmental Resource Board and Land Commission, are required
27 to hold their hearings in accordance with the APA; and
28

29 **WHEREAS**, after March 1, 2015, the APA no longer contained hearing body procedures; and
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31 **WHEREAS**, the Oneida Business Committee adopted resolution BC-02-25-15: Administrative
32 Procedures Act Amendments Emergency Adoption to put a hearing process in
33 place for those hearing bodies that are required to hold hearings but do not have
34 other hearing rules in place; and
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36 **WHEREAS**, the Oneida Business Committee adopted resolution BC-08-26-15 to extended the
37 emergency amendments an additional six (6) months and they are set to expire
38 March 1, 2016; and
39

40 **WHEREAS**, the attached Administrative Procedures Act amendments would enact permanent
41 requirements for hearing bodies to follow when conducting hearings; and
42

43 **WHEREAS**, allow hearing bodies to develop additional procedures so long as those procedures
44 do not conflict with the APA and are noticed to the public; and
45

46 **WHEREAS**, establish procedural requirements for hearings; and
47

Resolution _____

Page 2

48 **WHEREAS**, authorize the hearing bodies to issue fines, orders and/or penalties that comply
49 with the Indian Civil Rights Act; and

50
51 **WHEREAS**, allow a party to appeal the hearing body's decision to the Tribe's Court of
52 Appeals; and

53
54 **WHEREAS**, a public meeting for the proposed amendments was held on January 7, 2016 in
55 accordance with the Legislative Procedures Act.

56
57 **NOW THEREFORE BE IT RESOLVED**, that the attached Administrative Procedures Act is
58 hereby adopted and becomes effective March 1, 2016.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquele J. Thurner, Legislative Analyst
Maureen Perkins, Legislative Analyst



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Statement of Effect

Administrative Procedures Act Adoption

Summary

This Resolution adopts the Administrative Procedures Act (APA). The amendments implement hearing procedures for those bodies required to hold hearings in accordance with the Administrative Procedures Act. This Resolution identifies an effect date of March 1, 2016.

Submitted by: Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Administrative Procedures Act (APA) hearing procedures were repealed pursuant to GTC Resolution GTC-01-07-13-B effective March 1, 2015. Certain boards, committees and commissions of the Tribe continue to have hearing body authority through various Tribal laws and are required to hold their hearings in accordance with the Administrative Procedures Act under Tribal law. These hearing bodies include the Child Protective Board, the Election Board, the Environmental Resource Board, Oneida Gaming Commission, Land Commission, Pardon and Forgiveness Committee, Personnel Commission, Oneida Police Commission, Oneida Nation School Board, Oneida License Commission and Trust and Enrollment Committee.

On February 25, 2015, the Oneida Business Committee (OBC) adopted resolution BC-02-25-15-B, Administrative Procedures Act Amendments Emergency Adoption, to begin effect March 1, 2015 for a period of six (6) months. These amendments repealed the outstanding sections of the APA and put a hearing process in place for those hearing bodies that were required to hold hearings in accordance with the APA and did not have other hearing rules in place. The extension of the emergency amendments would keep the hearing process in place for those hearing bodies. These emergency amendments were extended once through resolution BC-08-26-15-C for another six (6) month period. This extension is set to expire on March 1, 2016.

The adoption of the APA would:

- Require hearing bodies to follow the Law when conducting hearings;
- Allow hearing bodies to develop additional procedures so long as those procedures do not conflict with the APA and are noticed to the public;
- Establish procedural requirements for hearings, including:
 - Specifying requirements for a complaint;
 - Identifying how a complaint and summons can be served;

- Authorizing hearing bodies to establish a regular time to hold pre-hearings and hearings;
- Authorizing hearing bodies to designate officer and alternates to serve on the hearing body;
- Restricting hearing officers and parties from engaging in ex parte communications;
- Specifying when evidence is used and how it can be obtained and presented, or objected to;
- Requiring a pre-hearing to be conducted, in part, to allow determine dispositive motions, identify the need for witnesses and/or evidence;
- Implementing a scheduling order and address matters that will clarify, simplify or settle the case or facilitate a just, speedy and inexpensive disposition;
- Specifying time requirements for setting hearing dates.
- Authorize the hearing bodies to issue fines, orders and/or penalties; that comply with the Indian Civil Rights Act.
- Allow a party to appeal the hearing body's decision to the Tribe's Court of Appeals.

A public meeting on the proposed amendments was held on January 7, 2016 pursuant to the Legislative Procedures Act. No comments were given.

Conclusion

Adoption of the amendments to these Laws will not conflict with any Tribal law or policy.

Chapter 1
Administrative Procedures Act

- 1.1. Purpose and Policy
- 1.2. Adoption, Amendment, Repeal
- 1.3. Definitions

- 1.4. Complaints and Notice
- 1.5. Procedures
- 1.6. Judgments and Appeals

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<i>Analysis by the Legislative Reference Office</i>			
Title	Administrative Procedures Act (APA)		
Drafter	Lynn Franzmeier/Doug McIntyre	Analyst	Candice E. Skenandore
Reason for Request	Ensure that Tribal boards, committees and commissions have hearing procedures that are noticed so a person is presented with a fair opportunity to file a claim that arises under Tribal law [See 1.1-2].		
Purpose	The APA provides hearing procedures for boards, committees and commissions that do not have established hearing procedures in place [See 1.1-1].		
Authorized/ Affected Entities	Tribal boards, committees and commissions that are authorized, by Tribal law, to conduct hearings; anyone bringing or defending an action before such a Tribal hearing body; anyone identified as a respondent; witness; and the Court of Appeals [See 1.4-1, 1.1-1, 1.4-2, 1.4-3 (a), 1.5-5 (b) & 1.6-2]		
Due Process	A party can appeal a hearing body's decision to the Tribe's Court of Appeals [See 1.6-2]		
Related Legislation	The following are some Tribal laws and policies that reference the APA when describing how a hearing is conducted: All-Terrain Vehicle Law [49.6-2]; Building Code [66.24-1]; Condominium Ordinance [68.26-2]; Oneida Nation Gaming Ordinance [21.12-8 (g)]; Hunting, Fishing and Trapping Law [45.15-3]; On-Site Waste Disposal Ordinance [46.5-1 (a), (b)(2) & (c)(2)]; Protection and Management of Archeological & Historical Resources [12.5-3]; Real Property Law [67.16-3 (a) (3)]; Oneida Vendor Licensing [56.7-1]; Well-Abandonment Law [43.7-3] and Employee Protection Policy [4-7]		
Policy Mechanism	The hearing body can issue fines, orders and/or penalties so long as they comply with the Indian Civil Rights Act [See 1.6-1].		

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Overview

The APA once housed the process for adopting Tribal legislation as well as the hearing procedures for Tribal boards, committees and commissions (hearing bodies) that have hearing authority, including the Oneida Appeals Commission. On January 7, 2013, the GTC 1) adopted the Legislative Procedures Act (LPA) which transferred the Tribal legislation process from the APA to the LPA and 2) adopted the Judiciary which repealed the hearing procedures for the Oneida Appeals Commission set forth in the APA effective March 1, 2015 [See GTC Resolutions 01-07-13-A & 01-07-13-B]. Because other Tribal laws reference the APA as a guide to be used for hearing procedures of various Tribal hearing bodies and because these Tribal hearing bodies continued to have hearing authority after the APA was set to expire, the Oneida Business Committee (OBC) adopted emergency amendments to the APA which provided a consistent process for these hearing bodies to conduct hearings. These emergency amendments became effective on March 1, 2015; were extended for six months and are set to expire on March 1, 2016.

The following amendments to the APA are currently in effect and are being considered for permanent adoption. These amendments:

- 20 ▪ Require hearing bodies to follow the APA when conducting hearings unless another
21 Tribal law establishes hearing procedures for the specific hearing body *[See 1.4-1]*. The
22 APA will not pertain to the Oneida Personnel Commission, Oneida Police Commission
23 or Oneida Election Board because Tribal law dictates how their hearings are conducted
24 *[See Oneida Judiciary Rules of Civil Procedure 153.4-6, Oneida Nation Law*
25 *Enforcement Ordinance 37.9-1 and Oneida Election Law 2.5-6]*. In addition, the APA
26 specifically excludes the Tribe’s Judiciary and Family Court *[See 1.3-1 (f)]*.
- 27 ▪ Allow hearing bodies to develop additional hearing body procedures so long as those
28 procedures do not conflict with the APA and are noticed to the public *[See 1.4-1]*.
- 29 ▪ Establishing procedural requirements for hearings, including:
- 30 ▪ Specifying what information must be included in the complaint as well as identify
31 how a complaint and summons can be served and that service must be made
32 within 30 days of filing the complaint *[See 1.4-2 & 1.4-3]*.
- 33 ▪ Authorizing hearing bodies to establish a regular time to hold pre-hearings and
34 hearings as well as designate officer and alternates to serve on the hearing body
35 *[See 1.5-1]*.
- 36 ▪ Restricting hearing officers and parties from engaging in ex parte communications
37 *[See 1.5-2]*.
- 38 ▪ Specifying when evidence is used and how it can be obtained and presented, or
39 objected to. *[See 1.5-3]*.
- 40 ▪ Require a pre-hearing to be conducted within 45 days after notice is served *[See*
41 *1.5-4]*. The pre-hearing allows the hearing body or hearing officer to determine
42 dispositive motions; identify the need for witnesses and/or evidence; implement a
43 scheduling order and address matters that will clarify, simplify or settle the case
44 or facilitate a just, speedy and inexpensive disposition *[See 1.5-4]*.
- 45 ▪ Require a hearing, if necessary, to be conducted within 60 days after the pre-
46 hearing or within 60 days after it is decided to not hold a pre-hearing *[See 1.5-6]*.
- 47 ▪ Authorize the hearing bodies to issue fines, orders and/or penalties that comply with the
48 Indian Civil Rights Act *[See 1.6-1]*.
- 49 ▪ Allow a party to appeal the hearing body’s decision to the Tribe’s Court of Appeals in
50 accordance with the Judiciary law and any applicable rules of procedure *[See 1.6-2]*.

Considerations

The LOC may want to consider the following:

- 53 ▪ Amendments require a pre-hearing to be conducted within 45 days after the notice is
54 served as well as require a hearing be held, if necessary, within 60 days after the pre-
55 hearing was conducted or the decision that a pre-hearing is not needed *[See 1.5-1 and*
56 *1.5-5]*. The amendments do not address allowing hearing bodies to extend these
57 timelines. The LOC may want to consider whether or not to allow hearing bodies to
58 extend the 45 day pre-hearing and/or 60 day hearing timelines if all parties agree, or in
59 specific circumstances when additional time is necessary in the interests of justice.
- 60 ▪ Amendments will allow the hearing body to issue fines, orders or penalties for those who
61 violate the APA but there are no enforcement provisions for hearing bodies that violate
62 this Law.
- 63 ▪ The APA does not state whether or not a hearing body can issue subpoenas.

Miscellaneous

67 A public meeting was held January 7, 2016. Please refer to the fiscal impact statement
68 for any financial impacts.

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71 ~~1.1-1. Authority. The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction~~
72 ~~to enforce this act as well as the responsibility as a government to protect the health, safety,~~
73 ~~welfare, and economy of the Oneida Reservation lands and all persons who either reside on the~~
74 ~~reservation or who are visitors and/or are conducting business within the exterior boundaries of~~
75 ~~the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens~~
76 ~~through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as~~
77 ~~amended.~~

78
79 ~~1.2-1. Purpose. The Oneida Business Committee, various committees, entities and~~
80 ~~administrative bodies of the Oneida Tribe shall act in a responsible and consistent manner when~~
81 ~~enacting, approving, revising, reviewing, interpreting, implementing, and administering the laws,~~
82 ~~directions, rules, programs, and policies of the Oneida Tribe as adopted. The following~~
83 ~~principles shall be the framework of this Act:~~

- 84 (a) ~~Fundamental fairness, justice, and common sense.~~
85 (b) ~~Record keeping that is responsible, organized, accessible, and understandable.~~
86 (c) ~~Deliberative bodies and decision makers which are familiar with the evidence and~~
87 ~~facts of the cases presented to them as well as issuing clear and concise written opinions;~~
88 ~~and~~
89 (d) ~~Provisions for appeals of administrative errors and contested issues.~~

90
91 **1.3-1. Adoption, Amendment, Repeal**

92 (a) ~~This law was adopted by the Oneida General Tribal Council by resolution GTC 8-19-91-A~~
93 ~~and amended by GTC 1-07-13-A.~~

94 (b) ~~This law may be amended by the Oneida General Tribal Council.~~

95 (c) ~~Should a provision of this law or the application thereof to any person or circumstances be~~
96 ~~held as invalid, such invalidity shall not affect other provisions of this law which are considered~~
97 ~~to have legal force without the invalid portions.~~

98 (d) ~~Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly~~
99 ~~conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent~~
100 ~~with or is contrary to this law. Specifically, the following are repealed:~~

101 (a) ~~BC #7-5-95-K (Amendment to the Administrative Procedures Act to address public~~
102 ~~hearing process)~~

103 (b) ~~BC# 2-2-88-A (Public hearing process for laws and policies)~~

104 (e) ~~This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of~~
105 ~~Wisconsin.~~

106
107 **1.4-1. Definitions.** (a) ~~"AGENCY": Any tribal entity, board, commission, committee,~~
108 ~~department, or officer authorized by the Oneida Tribe to propose ordinance/rules for adoption by~~
109 ~~the Oneida Business Committee or a decision maker for the contested cases. The term "Agency"~~
110 ~~shall not include the Oneida Business Committee or a tribal appeals body.~~

111 (b) ~~"CONFIDENTIALITY": State or quality of being confidential; treated as private and not for~~
112 ~~publication.~~

- 113 ~~(c) "CONTESTED CASES": A proceeding before an "Agency" in which an opportunity for a~~
114 ~~hearing before said "Agency" is required by law prior or subsequent to the determination of the~~
115 ~~"Agency" of the legal rights, duties, or privileges or specific parties unless otherwise provided~~
116 ~~for by tribal law. This shall include the revocation, suspension, or modification of a license or~~
117 ~~permit when a grant of such application is contested by a person directly affected by said~~
118 ~~licensing or permitting.~~
- 119 ~~(d) "DECLARATORY RULING": A written ruling made by a tribal decision-making body~~
120 ~~which removes doubts or puts an end to conflicting decisions in regard to what law is in relation~~
121 ~~to a particular matter.~~
- 122 ~~(e) "DELIBERATIVE BODY": A body that weighs, examines, and consults the reasons for and~~
123 ~~against a contemplated act or course of conduct or a choice of acts or means in order to form an~~
124 ~~opinion.~~
- 125 ~~(f) "EMERGENCY": An unexpected or unforeseen occurrence or condition; a sudden or~~
126 ~~unexpected occasion for action; pressing necessity.~~
- 127 ~~(g) "LICENSE" or "PERMIT": The approval, permission, or allowance of an individual or~~
128 ~~group to engage in an activity that is lawfully adopted by the Oneida Tribe.~~
- 129 ~~(h) "LICENSING" or "PERMITTING": The process that refers to the grant, denial, renewal,~~
130 ~~revocation, suspension, annulment, withdrawal, or modification of a license or permit.~~
- 131 ~~(i) "ONEIDA BUSINESS COMMITTEE" (OBC): The representative body of the Oneida Tribe~~
132 ~~elected by the Oneida General Tribal Council pursuant to Article III of the Oneida Tribal~~
133 ~~Constitution.~~
- 134 ~~(j) "ONEIDA GENERAL TRIBAL COUNCIL": The ultimate governing body of the Oneida~~
135 ~~Tribe composed of enrolled tribal members as described in Article III of the Oneida Tribal~~
136 ~~Constitution.~~
- 137 ~~(k) "ORDINANCE": A tribal law that applies to and governs persons, activities, and properties~~
138 ~~subject to tribal jurisdiction.~~
- 139 ~~(l) "RESERVATION": All land within the exterior boundaries of the Reservation of the Oneida~~
140 ~~Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat.~~
141 ~~566, and any lands added thereto pursuant to federal law.~~
- 142 ~~(m) "RESERVATION ENVIRONMENT" or "RESERVATION RESOURCES": Land, surface~~
143 ~~water, ground water, fish, animals, flora, fauna, air, wildlife, and capital improvements on or~~
144 ~~near the reservation.~~
- 145 ~~(n) "RULE/REGULATION": Any order or directive, or regulation of general applicability~~
146 ~~enacted into law and approved by the Oneida Business Committee that exhibits the following:~~
- 147 ~~(1) The violation of which may result in a fine, penalty, or other civil administrative~~
148 ~~sanction;~~
- 149 ~~(2) May establish, change, or revoke a procedure, practice, or requirement of~~
150 ~~administration hearing;~~
- 151 ~~(3) May establish, change, or revoke requirements relating to benefits or privileges~~
152 ~~conferred by law;~~
- 153 ~~(4) May establish, change, or revoke standards for assistance, suspension, or revocation~~
154 ~~of licenses;~~
- 155 ~~(5) The amendment or repeal of a prior ordinance/rule;~~
- 156 ~~(6) Does not include the following:~~
- 157 ~~(A) statements concerning internal management of an area, nor:~~
- 158 ~~(B) Declaratory rulings issued pursuant to this Act as now or hereafter amended.~~
- 159 ~~(o) "SECRETARY": Secretary of the Oneida Business Committee.~~

~~(p) "SPONSORING AGENCIES": Any tribal agency that prepares an ordinance/rule or other matter under this Act for action by the Oneida Business Committee.~~

~~**1.5-1. 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.~~

1.1. Purpose and Policy

1.1-1. Purpose. The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law

1.1-2. Policy. It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC _____.

1.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

1.2-3. 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.

1.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

1.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.3. Definitions

1.3-1. 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) "Decision" shall mean the written conclusion of the hearing body concerning the facts, alleged violations of Tribal law and penalties.

(b) "Deliberations" shall mean the confidential process during which the hearing officers discuss the issues presented before the hearing body.

(c) "Dispositive motion" shall mean a request to the hearing body to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) "Evidence" shall mean documentation or testimony presented to the hearing body which supports a party's claim.

(e) "Ex parte communication" shall mean oral or written, off-the-record communication made to or by the hearing officers without notice to the parties that is directed to the merits or outcome of the hearing.

(f) "Hearing body" shall mean the member or members of a board, committee or

208 commission that hear and decide the case or motions presented as part of a case.
209 “Hearing body” shall not include the Family Court or any court of the Tribe’s Judiciary.
210 (g) “Scheduling order” shall mean the hearing body’s order establishing the dates of the
211 hearing and the deadlines for discovery and submitting witness lists.
212 (h) “Summons” shall mean an order to appear before a hearing body because a petitioner
213 has filed a complaint.

214 **1.4. Complaints and Notice**

215 1.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in
216 accordance with the procedures established under this Law, unless another Tribal law has
217 established hearing procedures for that specific hearing body. Nothing in this Law shall be
218 construed to prevent a hearing body from establishing additional hearing body procedures, as
219 long as those procedures do not conflict with this Law and are noticed to the public by the
220 hearing body.

221 1.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

- 222 (a) The name and contact information of each petitioner;
- 223 (b) The name and contact information, if known, of the respondent(s)
- 224 (c) The alleged violation that resulted in the complaint and the Tribal law that has been
225 violated;
- 226 (d) The date, time, place and description of the alleged violation;
- 227 (e) The nature of the relief requested.

228 1.4-3. Notice. The complaint, along with a summons, shall be served upon the respondent(s)
229 within thirty (30) days after the complaint is filed with the hearing body.

- 230 (a) The summons shall contain the date, time and place the respondent(s) is required to
231 appear, along with a notice that failure to appear may result in a default judgment against
232 him or her.
- 233 (b) Anyone who is not a party to the action and is at least eighteen (18) years of age may
234 serve the notice. Notice shall be served in the following order of progression, unless
235 personal service is more practical than by mail:
 - 236 (1) Mail with delivery confirmation, using U.S. mail or a private carrier.
 - 237 (2) Personal service, by hand delivering a copy of the complaint and summons to
238 the party named in the complaint.
 - 239 (3) Publication, in the Kalihwisaks and another paper located in an area where
240 the subject was last known to have resided. The publication shall be designated
241 as a legal notice, stating the name and last-known address of the subject being
242 located.

243 **1.5. Procedures**

244 1.5-1. Designated Hearing Dates. The hearing body may establish a regular time to hold pre-
245 hearings and hearings. The hearing body shall designate officers and may designate alternates to
246 serve on a hearing body.

247 1.5-2. Ex Parte Communications. Hearing officers and parties shall not engage in ex parte
248 communications.

249 1.5-3. Evidence. A party shall include evidence as part of his/her original filings or obtain the
250 evidence through discovery. A party may attempt to present the hearing body with evidence
251 later in the proceedings if the opposing party does not object.

- 252 (a) Copies. If a party submits documentation as evidence, the party shall present an
253 original for the record and copies to each of the hearing officers and the opposing party.

256 (b) Objections. The opposing party may object to any evidence submitted.
 257 (c) Acceptance into the record. The hearing body makes the final determination whether
 258 to accept evidence into the record. The hearing body may admit and consider evidence
 259 that is commonly accepted and has a direct connection to the case.

260 1.5-4. Pre-Hearings. Pre-hearings shall be conducted within forty-five (45) days after notice
 261 has been served. The purpose of a pre-hearing is for the hearing body or a hearing officer to:

262 (a) Hear and determine dispositive motions. The parties may present any dispositive
 263 motions and raise any issues that may affect the conduct of the hearing, including, but not
 264 limited to excluding evidence. If either party makes a dispositive motion:

265 (1) The party making the motion shall reference the applicable law and state with
 266 clarity why the hearing body should grant the motion. The party making the
 267 motion may present a proposed written decision for the hearing body to consider.

268 (2) The opposing party shall respond and state with clarity why the hearing body
 269 should not grant the motion. The opposing party may request an adjournment to
 270 prepare a written response to oral dispositive motions.

271 (3) The hearing body may ask any questions of the parties in order to clarify the
 272 issues.

273 (b) Identify the need for any witnesses and/or evidence.

274 (c) Implement a scheduling order.

275 (d) Address any matters which will assist in the clarification, simplification or settlement
 276 of the case or that may facilitate the just, speedy and inexpensive disposition of the
 277 matter.

278 1.5-5. Hearing Procedures. Within sixty (60) days after a pre-hearing is conducted, or within
 279 sixty (60) days after it has been determined that a pre-hearing will not be conducted, the hearing
 280 body shall conduct a hearing, if necessary. If a hearing is conducted, it shall substantially
 281 comply with the following:

282 (a) Opening Statements. Each party shall state with clarity why the hearing body should
 283 decide in his/her favor based on the facts and the laws presented.

284 (b) Witnesses. Each party may call any witness to testify.

285 (1) Each party shall be responsible for ensuring his or her witness(es) appears at
 286 the hearing.

287 (2) A witness(es) may rely only on evidence on record.

288 (3) A witness(es) is subject to cross examination by the opposing party.

289 (4) The hearing body may ask questions of any witness or request clarification of
 290 any documents during the proceeding.

291 (c) Rebuttal. Parties may present a witness(es) or introduce evidence that has not been
 292 previously presented in order to refute or rebut the opposing party's evidence or a witness
 293 statement.

294 (d) Closing Statements. Each party summarizes the evidence and the testimony he or she
 295 presented in order to rebut evidence or witness testimony presented by the opposing
 296 party.

297 (e) Deliberations. After the hearing, the hearing body shall schedule a time for
 298 deliberations. Deliberations are confidential and shall not be subject to reproduction and
 299 shall not be part of the case record. During deliberations, the hearing body shall place an
 300 emphasis on logic and reasoning in order to make sound decisions. The hearing body
 301 may adopt a proposed written decision and issue the decision during the hearing.

302 1.5-6. Decisions. The hearing body may issue an oral decision on a matter, but the decision
 303 shall not be final until the hearing body issues a written decision. The hearing body shall issue a

304 written decision within ten (10) business days after a pre-hearing or hearing. Should any party
305 fail to appear at any scheduled pre-hearing or hearing or contest a complaint, the hearing body
306 may issue a default judgment in favor of the opposing party.

307 (a) The decision shall include:

308 (1) Findings of fact and conclusions of law;

309 (2) Reference to specific provision of Tribal law violated;

310 (3) Disposition of any dispositive motions;

311 (4) In the case of a decision issued after a pre-hearing, a scheduling order if the
312 hearing body does not grant a dispositive motion; and

313 (5) Reference to the parties' appeal rights.

314 (b) If the hearing body does not reach a unanimous decision, hearing officers may draft
315 concurring and/or dissenting opinions.

316 (c) Notification to Parties. The hearing body shall ensure the final decision is sent to the
317 parties via mail with delivery confirmation, using U.S. mail or a private carrier, within
318 one (1) business day following the issuance of the decision. Time lines for an appeal are
319 calculated based on receipt of the written decision.

321 **1.6. Judgments and Appeals**

322 1.6-1. *Judgments* A hearing body, subsequent to a hearing, may issue fines, orders and/or
323 penalties that comply with the Indian Civil Rights Act and may include, but not be limited to, the
324 following:

325 (a) An order directing a violator or person in non-compliance of/with a Tribal law or
326 regulation to pay a monetary fine for the violation, and/or actual damages and/or punitive
327 damages.

328 (b) In the case of damages caused by minors, an order requiring the parent, custodian, or
329 guardian to pay for damages and/or plan designed for restitution in lieu of monetary
330 compensation to be fulfilled by the minor.

331 (c) An order directing the violator or non-complying person to cease and desist from
332 further violation or non-compliance and to cure said violation within a specified period.

333 (d) An order requiring appropriate exclusion and/or mandated community service and/or
334 denial of specific Tribal benefits.

335 (e) Unless precluded by law, informal disposition, signed by both parties, may also be
336 made of any contested case by stipulation, agreed settlement, consent order, or default.

337 (f) An order placing a lien upon property owned by a person within jurisdiction of the
338 Tribe.

339 1.6-2. *Appeals* A party may appeal a decision of a hearing body to the Court of Appeals in
340 accordance with the Judiciary law and any applicable rules of procedure.

341 *End.*

344 Emergency Adoption BC-02-25-15-B

345 Emergency Adoption BC-08-26-15-C

346

Chapter 1 Administrative Procedures Act

1.1. Purpose and Policy
1.2. Adoption, Amendment, Repeal
1.3. Definitions

1.4. Complaints and Notice
1.5. Procedures
1.6. Judgments and Appeals

1.1. Purpose and Policy

1.1-1. *Purpose.* The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law

1.1-2. *Policy.* It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC _____.

1.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

1.2-3. 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.

1.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

1.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.3. Definitions

1.3-1. 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) "Decision" shall mean the written conclusion of the hearing body concerning the facts, alleged violations of Tribal law and penalties.

(b) "Deliberations" shall mean the confidential process during which the hearing officers discuss the issues presented before the hearing body.

(c) "Dispositive motion" shall mean a request to the hearing body to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) "Evidence" shall mean documentation or testimony presented to the hearing body which supports a party's claim.

(e) "Ex parte communication" shall mean oral or written, off-the-record communication made to or by the hearing officers without notice to the parties that is directed to the merits or outcome of the hearing.

(f) "Hearing body" shall mean the member or members of a board, committee or commission that hear and decide the case or motions presented as part of a case. "Hearing body" shall not include the Family Court or any court of the Tribe's Judiciary.

(g) "Scheduling order" shall mean the hearing body's order establishing the dates of the hearing and the deadlines for discovery and submitting witness lists.

(h) “Summons” shall mean an order to appear before a hearing body because a petitioner has filed a complaint.

1.4. Complaints and Notice

1.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. Nothing in this Law shall be construed to prevent a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with this Law and are noticed to the public by the hearing body.

1.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

- (a) The name and contact information of each petitioner;
- (b) The name and contact information, if known, of the respondent(s)
- (c) The alleged violation that resulted in the complaint and the Tribal law that has been violated;
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- (e) The nature of the relief requested.

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(a) The summons shall contain the date, time and place the respondent(s) is required to appear, along with a notice that failure to appear may result in a default judgment against him or her.

(b) Anyone who is not a party to the action and is at least eighteen (18) years of age may serve the notice. Notice shall be served in the following order of progression, unless personal service is more practical than by mail:

- (1) Mail with delivery confirmation, using U.S. mail or a private carrier.
- (2) Personal service, by hand delivering a copy of the complaint and summons to the party named in the complaint.
- (3) Publication, in the Kalihwisaks and another paper located in an area where the subject was last known to have resided. The publication shall be designated as a legal notice, stating the name and last-known address of the subject being located.

1.5. Procedures

1.5-1. *Designated Hearing Dates.* The hearing body may establish a regular time to hold pre-hearings and hearings. The hearing body shall designate officers and may designate alternates to serve on a hearing body.

1.5-2. *Ex Parte Communications.* Hearing officers and parties shall not engage in ex parte communications.

1.5-3. *Evidence.* A party shall include evidence as part of his/her original filings or obtain the evidence through discovery. A party may attempt to present the hearing body with evidence later in the proceedings if the opposing party does not object.

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(a) Hear and determine dispositive motions. The parties may present any dispositive motions and raise any issues that may affect the conduct of the hearing, including, but not limited to excluding evidence. If either party makes a dispositive motion:

(1) The party making the motion shall reference the applicable law and state with clarity why the hearing body should grant the motion. The party making the motion may present a proposed written decision for the hearing body to consider.

(2) The opposing party shall respond and state with clarity why the hearing body should not grant the motion. The opposing party may request an adjournment to prepare a written response to oral dispositive motions.

(3) The hearing body may ask any questions of the parties in order to clarify the issues.

(b) Identify the need for any witnesses and/or evidence.

(c) Implement a scheduling order.

(d) Address any matters which will assist in the clarification, simplification or settlement of the case or that may facilitate the just, speedy and inexpensive disposition of the matter.

1.5-5. *Hearing Procedures*. Within sixty (60) days after a pre-hearing is conducted, or within sixty (60) days after it has been determined that a pre-hearing will not be conducted, the hearing body shall conduct a hearing, if necessary. If a hearing is conducted, it shall substantially comply with the following:

(a) Opening Statements. Each party shall state with clarity why the hearing body should decide in his/her favor based on the facts and the laws presented.

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(1) Each party shall be responsible for ensuring his or her witness(es) appears at the hearing.

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(d) Closing Statements. Each party summarizes the evidence and the testimony he or she presented in order to rebut evidence or witness testimony presented by the opposing party.

(e) Deliberations. After the hearing, the hearing body shall schedule a time for deliberations. Deliberations are confidential and shall not be subject to reproduction and shall not be part of the case record. During deliberations, the hearing body shall place an emphasis on logic and reasoning in order to make sound decisions. The hearing body may adopt a proposed written decision and issue the decision during the hearing.

1.5-6. *Decisions*. The hearing body may issue an oral decision on a matter, but the decision shall not be final until the hearing body issues a written decision. The hearing body shall issue a written decision within ten (10) business days after a pre-hearing or hearing. Should any party fail to appear at any scheduled pre-hearing or hearing or contest a complaint, the hearing body may issue a default judgment in favor of the opposing party.

(a) The decision shall include:

- (1) Findings of fact and conclusions of law;
 - (2) Reference to specific provision of Tribal law violated;
 - (3) Disposition of any dispositive motions;
 - (4) In the case of a decision issued after a pre-hearing, a scheduling order if the hearing body does not grant a dispositive motion; and
 - (5) Reference to the parties' appeal rights.
- (b) If the hearing body does not reach a unanimous decision, hearing officers may draft concurring and/or dissenting opinions.
- (c) Notification to Parties. The hearing body shall ensure the final decision is sent to the parties via mail with delivery confirmation, using U.S. mail or a private carrier, within one (1) business day following the issuance of the decision. Time lines for an appeal are calculated based on receipt of the written decision.

1.6. Judgments and Appeals

1.6-1. *Judgments* A hearing body, subsequent to a hearing, may issue fines, orders and/or penalties that comply with the Indian Civil Rights Act and may include, but not be limited to, the following:

- (a) An order directing a violator or person in non-compliance of/with a Tribal law or regulation to pay a monetary fine for the violation, and/or actual damages and/or punitive damages.
- (b) 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.
- (c) 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.
- (d) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Tribal benefits.
- (e) Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (f) An order placing a lien upon property owned by a person within jurisdiction of the Tribe.

1.6-2. *Appeals* A party may appeal a decision of a hearing body to the Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure.

End.

Emergency Adoption BC-02-25-15-B
Emergency Adoption BC-08-26-15-C

ONEIDA TRIBE OF INDIANS OF WISCONSIN



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



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 nation, the United States was made possible.

ONEIDA FINANCE OFFICE
Office: (920) 869-4325 • Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: February 16, 2016
FROM: Rae Skenandore, Project Manger
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Financial Impact of the Administrative Procedures Act Amendments**

I. Background

Due to the complex legislative history, background is being provided on several separate pieces of Legislation. The APA originally defined the legislative and hearing body processes. Resolution GTC-01-07-13-A adopted the Legislative Procedures Act (LPA) which removed the legislative process from the Administrative Procedures Act (APA). On November 15, 2013 the Legislative Operating Committee (LOC) requested the following from the Legislative Reference Office (LRO):

- Research Tribal Boards, Committees and Commissions to find out which are also hearing bodies.
- Identify where the hearing body authority comes from.

After that research was completed, the following was proposed:

- An Administrative Court be developed which would assume the hearing body authority of each of those entities; so that all disputed administrative matters would be heard in the same forum.

On September 17, 2014, the Administrative Court was added back to the active files list with Jennifer Webster as the sponsor. The last action on the Administrative Court was on December 2, 2015 was the following

- Motion by Jennifer Webster to defer the Administrative Court to the Legislative Reference Office for a legislative analysis and to the Finance Office for a fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

The Administrative Rulemaking Law was submitted to the LOC on April 13, 2012 and carried over to the current session. The purpose is to provide a consistent process for adopting and amending Administrative Rules.

With the adoption of the Judiciary, the APA was set to be repealed as of March 1, 2015. Emergency amendments were adopted on February 25th, 2015 and extended on August 26, 2015 to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. Those amendments are now up for permanent adoption.

II. Executive Summary of Findings

The amendments simply maintain the process and structure needed by existing Tribal hearing bodies that are separate from the Judiciary and have no procedures in place under other Tribal law. As noted above, LOC is in the process of developing an administrative court and the accompanying legislation needed. At that time, an administrative court under the Judiciary would absorb most of the Tribal hearing body authority. No new personnel will be needed and there are no other startup costs to the permanent adoption of the APA amendments. The law can be implemented immediately upon approval.

III. Financial Impact

No fiscal impact.

III. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.



Legislative Operating Committee

February 17, 2016

Cemetery Law Amendments

Submission Date: 8/5/15

Public Meeting:
 Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This request for amendments was brought to the LOC by the Oneida Law Office. Amendments were requested to correct the name of the Cemetery, which was changed by resolution of the Oneida Land Commission on May 11, 2015. Additional revisions may also be necessary to change who is responsible for the cemetery's maintenance.*

8/5/15 LOC: Motion by David P. Jordan to add the Cemetery Law Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8/12/15 OBC: Determine responsible area for cemetery maintenance. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.

8/17/15 OBC: Motion by David Jordan to defer this issue to the September 23, 2015, regular Business Committee meeting and direct the Tribal Secretary to schedule the special Business Committee work meeting and that an invitation be extended to all interested parties, including departments and families impacted, seconded by Jennifer Webster. Motion carried unanimously

9/2/15: OBC work meeting. Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, Michelle Mays, Douglass McIntyre, various departments and family members of those buried in the cemetery.

9/23/15 OBC: Motion by Lisa Summers to place an indefinite land use moratorium on area designation # 18 'Where the Water Birds Nest', identified in the Public Use of Land Law, and to defer the cemetery issues identified today to the Business Committee Officers for follow-up with a final action plan to be brought by the November 11, 2015, regular Business Committee meeting, seconded by David Jordan. Motion carried unanimously.

Motion by Lisa Summers to direct the Chairwoman's Office to send out communications, regarding the indefinite land use moratorium directive, to the Business Committee's Direct Reports, appropriate Boards, Committees, and Commissions, and affected parties, including sweat lodge users and families impacted, seconded by David Jordan. Motion carried unanimously.

Amendment to the second motion by Melinda J. Danforth to inform users of the sweat lodge and families of the cemetery. Motion fails for lack of support.

10/7/15 LOC: Motion by Jennifer Webster to accept the memorandum update and defer the Cemetery Law Amendments back to the Legislative Operating Committee and bring back when ready. Noting that the Legislative Operating Committee is waiting on the four Oneida Business Committee Officers to make a decision regarding cemetery maintenance; seconded by David P. Jordan. Motion carried unanimously.

- 11/10/15 OBC:** Motion by Tehassi Hill to accept and approve the recommendations provided in the Business Committee Officers' memorandum dated November 5, 2015, seconded by Jennifer Webster. Motion carried unanimously.
- Motion by Jennifer Webster to request the Trust and Enrollment Committee to send out updated communications to the families of the cemetery, seconded by David Jordan. Motion carried unanimously.
- 12/16/15 LOC:** Motion by Jennifer Webster to accept the Cemetery Law Amendments memorandum B and to include language which requires communication pertaining to the history of the land and possible issues that may result if encasements are not used; seconded by David P. Jordan. Motion carried unanimously.
- 12/23/15 OBC:** Motion by Lisa Summers to accept the Cemetery Action Plan update dated December 3, 2015, and to request the Legislative Operating Committee revisit this item once the study is completed, seconded by Brandon Stevens. Motion carried unanimously.
- 1/6/16 LOC:** Motion by Jennifer Webster to defer the draft Cemetery Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Accept the analysis of the Cemetery Law Amendments and direct the Legislative Reference Office to prepare a public meeting packet.



<i>Analysis by the Legislative Reference Office</i>					
Title	Cemetery Law (Law)				
Requester	Oneida Law Office OBC	Drafter	Douglass McIntyre	Analyst	Maureen Perkins
Reason for Request	Correct the name of the cemetery and change the entity responsible for the cemetery's maintenance. Additionally, review the Cemetery Law as it relates to the requirement of having encasements as part of burial mandate(s) and provide a recommendation. Request a position analysis be developed for groundkeeper and/or cemetery manager, including a reporting structure in the law.				
Purpose	The Law establishes authorities and responsibilities, governs the sale of Tribal Cemetery plots and establishes who is eligible for interment in a Tribal cemetery, and establishes the process for disinterment of buried remains and cremated remains.				
Authorized/ Affected Entities	Enrollment Department, Trust/Enrollment Committee, OBC, Land Commission, all enrolled Tribal members, their families (including step-children) and descendants who wish to be interred at a Tribal Cemetery.				
Due Process	Any individual may file a complaint with the Enrollment Department. The Enrollment Department shall respond to complaints within five days. Disinterment may only occur upon order from the judiciary. Judiciary decisions regarding disinterment are appealable. Disinterment requests are required to notify affected parties. Rules established through the Enrollment Department will be governed by the Administrative Rulemaking Law when adopted.				
Related Legislation	The Rules of Appellate Procedure govern appeals of disinterment decisions.				
Policy Mechanism	The Enrollment Department has Administrative Rulemaking authority.				
Enforcement	The Enrollment Department may prohibit those who violate this Law or cemetery rules from accessing a Tribal Cemetery. The Enrollment Department may also remove items from plots if non-compliant with cemetery rules. The OPD may issue citations for violating this law or cemetery rules, in accordance with the Public Use of Tribal Lands Schedule of Citations.				

Overview

1
 2 The Oneida Burial Ordinance BC 5-19-89-E was established to have a non-
 3 denominational cemetery for Tribal Members and their families. The Cemetery Board was
 4 established under this ordinance which was the entity responsible for meeting with the individual
 5 or family whenever a plot or burial was requested, maintaining vital statistics, plotting,
 6 surveying, selling and conveying plots, establish regulations, and maintaining, improving,
 7 safeguarding and beautifying the cemetery grounds. The Land Commission (Committee) was
 8 responsible for designation of the plot for the cemetery [See 5-19-89-E]. Amendments made
 9 with BC resolution 6-29-05-A changed the ordinance into the Oneida Burial Law and clarified
 10 the burial eligibility of non-Oneidas (non-Oneida parents were added). The Burial Law was
 11 renamed the Cemetery Law [See 1-14-09-E] and dissolved the Cemetery Board, moving the
 12 responsibilities listed above to the Enrollment Department. Amendments also included
 13 descendants as eligible for interment. The current amendments add step-children as eligible for

14 interment. Additionally, the Enrollment Department was granted rulemaking authority regarding
 15 their duties under this law.

16

17

18

Proposed Amendments

19 Land Commission

- 20 ■ The responsibility to ensure “land designed to be used for a Tribal cemetery shall be
 21 surveyed and mapped into plots, drives and walks” was moved from the Enrollment
 22 Department in the current Law [*See 75.4-1(b)*] to the Oneida Land Commission in the
 23 proposed amendments [*See 75.4-2*].

24

25 Enrollment Department

- 26 ■ Requesting additional portions of land to be designated for use as a tribal cemetery, if
 27 needed, was added to the Enrollment Department’s responsibilities [*See 75.4-3(b)*].
- 28 ■ Rulemaking Authority
 - 29 ○ The language regarding establishing regulations was changed to establishing rules
 30 [*See 75.4-3(g)*].
 - 31 ○ Complaints with regard to rules established under this law will be handled in
 32 accordance with the Rulemaking Law once it is adopted.
- 33 ■ A maintenance responsibilities section was added [*See 75.4-4*]. Additional maintenance
 34 duties were added to the Enrollment Department’s responsibilities:
 - 35 ○ Ensuring the appearance of Tribal cemeteries is kept in accordance with any
 36 established rules or regulation [*See 75.4-4(b)*].
 - 37 ○ Entering into agreements with person(s) or entities, where needed, in order to
 38 meet the maintenance responsibilities [*See 75.4-4(c)*].
 - 39 ○ Oversight of any position created to care for the cemetery [*See 75.4-4(d)*].
- 40 ■ Language regarding the company selling an outer burial container contacting the
 41 Enrollment Department prior to delivering was removed [*See 75.6-4*].
- 42 ■ The specifics of the division of plots were updated to be determined by the individual
 43 purchasing the plot rather than the Enrollment Department [*See 75.6-5*].
- 44 ■ When a complaint is received, the Enrollment department shall respond in writing within
 45 5 business days indicating any action taken or planned action to remedy the complaint to
 46 the individual that filed the complaint, to the Trust/Enrollment Committee and to the
 47 Secretary’s Office [*See 75.9-2*].
- 48 ■ Complaints filed with the Enrollment Department are no longer appealable to the
 49 Trust/Enrollment Committee [*See 75.9-2*].

50

51 General Amendments

- 52 ■ The term for step-children was added and step-children were added to the eligibility
 53 section [*See 75-3.1(i) and See 75.5-1(a)*].
- 54 ■ The Oneida Scared Burials Grounds, also known as Tsi[?] Tyeya[?]Tat’alih was recognized
 55 [*See 75-4.1 and 75.4-3*].
- 56 ■ Restrictions were placed on interments. “No interments will be scheduled on the
 57 observance of any Tribal Holiday” [*See 75.6-2*].

Analysis Draft # 1 to Draft 3 2/8/16

- 58 ▪ No monuments/markers can be installed from November 1st through May 1st [*See*
59 75.6(a)].
- 60 ▪ Only flush markers can be installed outside of the headstone area when a plot is
61 designated for two or more people [*See* 75.6-6].
- 62 ▪ A stay may be issued by the Judiciary if an appeal regarding disinterment is filed [*See*
63 75.7-6].
- 64 ▪ The Oneida Police Department was added as the authorized entity to restrict who is
65 present during a disinterment or re-interment [75.7-8].
- 66
- 67

Miscellaneous

69 A public hearing has not yet been held. Minor language changes and movement of text
70 have been made to improve the clarity without affecting the content. Revisions have been made
71 to comply with drafting styles. Please refer to the fiscal impact statement for any financial
72 impacts.

73

74

75

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

[75.1. Purpose and Policy](#)

[75.2. Adoption, Amendment, Repeal](#)

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[75.5. Tribal Cemeteries](#)

[75.6. Interment and Plots](#)

[75.7. Prohibited Items and Behavior on Cemetery Grounds](#)

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75.1. Purpose and Policy

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

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

75.2. Adoption, Amendment, Repeal

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

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

75.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

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

~~(a) BC 03-11-98-N (Resolution regarding Opposition to Disturbance/Removal of Human Burials~~

~~(b) BC 2-18-98-A (Repatriated Human Remains)~~

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

75.3. Definitions

75.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Days” ~~shall mean~~ means calendar days, unless otherwise specifically stated.
- (b) “Descendant” ~~shall mean~~ means a person who is not enrolled in the Tribe, but is a blood relative in the direct line of descent of a Tribal member.
- (c) “Disinterment” ~~shall mean~~ means to exhume buried human remains or cremated remains.
- (d) “Family” ~~shall mean~~ means a Tribal member’s parent, spouse and children.
- (e) “Interment” ~~shall mean~~ means the act or ceremony of burying human remains or cremated remains.
- (f) “Re-interment” ~~shall mean~~ means to rebury human remains or cremated remains.
- (g) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838

38 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
39 (h) "Step-children" means a person(s) whose parent is legally married to a Tribal
40 member and the relationship can be demonstrated through an original state certified
41 marriage license.

42 (i) "Tribe" or "Tribal" shall mean means the Oneida Tribe of Indians of Wisconsin.
43 "Step-Children" mean a person(s) an original state certified marriage license
44

45 **75.4. Administration and Authority**

46 75.4-1. The land designation, administrative duties and maintenance responsibilities for the
47 Oneida Scared Burials Grounds, also known as Tsi> Tyeya>Tat'alih and any other cemetery
48 falling within this law shall be as provided within this section.

49 75.4-2. Land Designation Responsibilities. The Oneida Land Commission shall designate
50 parcel(s) of land to be used for one (1) or more Tribal cemeteries. Land designed to be used for
51 a Tribal cemetery shall be surveyed and mapped into plots, drives and walks.

52 75.4-3. Administrative Responsibilities. The Enrollment Department shall be responsible for
53 the Administrative duties of the Oneida Scared Burials Grounds, also known as Tsi>
54 Tyeya>Tat'alih and any other cemetery falling under this Law. These duties include:

55 (a) Maintaining vital statistics of those interred in a Tribal cemetery, creating long-term
56 strategic plans for Tribal cemeteries and reporting such information as may be required
57 by the Oneida Business Committee or General Tribal Council.

58 ~~(b) Causing portions of land designed to be used for a Tribal cemetery to be surveyed~~
59 ~~and mapped into plots, drives and walks.~~ Requesting additional portions of land to be
60 designated for use as a tribal cemetery, if needed.

61 (c) Selling and transferring plots and restricting the use of plots.

62 (d) Administering all payment activities related to the sale of a plot.

63 (e) Determining how to utilize gifts to a Tribal cemetery.

64 ~~(f) Maintaining Tribal cemeteries.~~

65 ~~(fg)~~ (fg) Establishing rules regulations or entering into agreements with person(s) or entities,
66 where needed, in order to carry out their responsibilities under this Law.

67 75.4-4. Maintenance Responsibilities. The Enrollment Department shall be responsible for the
68 maintenance duties including:

69 (a) Maintaining Tribal cemeteries grounds.

70 (b) Ensuring the appearance of Tribal cemeteries is kept in accordance with any
71 established rules.

72 (c) Entering into agreements with person(s) or entities, where needed, in order to meet
73 the maintenance responsibilities.

74 (d) Oversight of any position created to care for the cemetery.
75

76 **75.5. Tribal Cemeteries Eligibility and Ownership**

77 ~~75.5-1. The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or~~
78 ~~more Tribal cemeteries.~~

79 75.5-1.2. Eligibility. The following persons may be interred in a Tribal cemetery:

80 (a) A Tribal member, his or her family, ~~and~~ descendants or step-children.

81 (b) Human remains that are:

82 (1) Returned to the Tribe; or

83 (2) Discovered on the Reservation ~~and if~~ the Enrollment Department, Cultural
84 Heritage Department and any other interested parties have determined that the
85 most suitable place for interment of the remains is a Tribal cemetery.

86 | 75.5-~~23~~. *Ownership of Plots.* Plots in a Tribal cemetery may be purchased by anyone for
87 | individuals eligible to be interred in a Tribal cemetery, as defined in 75.5-~~12~~, ~~but~~. ~~The~~ owner of
88 | the plot shall be the individual for whom the plot was purchased. Purchase of a plot does not
89 | result in any ownership rights in the plot itself, but grants an individual the right to be interred in
90 | the plot or determine who will be interred in the plot, subject to the eligibility requirements of
91 | this Law.

92 | (a) In the event the owner of a plot becomes ineligible to be interred in a Tribal
93 | cemetery, he or she shall resell the plot to the Tribe in accordance with 75.5-3(c).

94 | (b) A plot is not inheritable, and may only be transferred from one owner to an
95 | individual eligible to be interred in a Tribal cemetery, ~~as defined in 75.5-2~~. The transfer
96 | of a plot from one owner to another ~~shall~~ must be processed through the Enrollment
97 | Department.

98 | (c) A plot may only be re-sold by the owner of the plot to the Tribe through the
99 | Enrollment Department. Plots re-sold to the Tribe shall be bought for the original
100 | purchase price. The following owners of plots may resell a plot to the Tribe:

101 | (1) Competent individuals who are at least eighteen (18) years of age;

102 | (2) Individuals who are less than eighteen (18) years of age, with the written
103 | permission of the original purchaser of the plot; and

104 | (3) Incompetent individuals who are at least eighteen (18) years of age, with the
105 | permission of their guardian.
106 |

107 | **75.6. Interment and Plots**

108 | 75.6-1. All interments ~~shall~~ must be approved by the Enrollment Department prior to interment
109 | to ensure the health and safety of the public will not be endangered, that the plot is properly
110 | marked and to provide information to any company or contractor providing services for the
111 | interment.

112 | 75.6-2. No interments will be scheduled on the observance of any Tribal Holiday. or during the
113 | winter months from November 1st to May 1st.

114 | 75.6-~~23~~. *Cost of Interment.* All fees for the cost of a plot and/or an interment are the
115 | responsibility of the deceased person's estate or family.

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

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

121 | (c) Opening and closing fees ~~shall~~ must be assessed by the vendor chosen by the
122 | deceased's ~~f~~Family or estate.

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

128 | 75.6-~~43~~. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while
129 | recommended, are not required for interment, ~~however if an outer burial container is purchased,~~
130 | ~~the company shall notify the Enrollment Department before delivering and installing it in the~~
131 | ~~designated plot in order to ensure the plot is properly prepared.~~ The Department responsible for
132 | administration duties shall provide information concerning the potential effects if a burial
133 | container is not used.

134 75.6-~~54~~. *Division of Plots*. Each plot may only be used, as determined by the individual
135 purchasing the plot, for the interment of:

- 136 (a) one (1) individual;
137 (b) ~~one (1) or more human remains, with or without a casket(s) and/or~~ one (1) individual
138 along with the cremated remains of ~~one (1) an other~~ individual(s); or
139 (c) the cremated remains of up to four (4) people ~~as determined by the Trust/Enrollment~~
140 ~~Department.~~

141 75.6-~~65~~. *Monuments and Flush Markers*. No more than four (4) monuments or flush markers
142 per plot ~~shall~~ may be allowed. If a purchased plot is designated for more than two (2)
143 individuals only flush markers can be installed outside of the designated headstone area. The
144 Enrollment Department shall establish maximum height, width and thickness requirements for
145 monuments or flush markers placed at a plot. In addition, the Enrollment Department may
146 establish the types of materials that may be used for monuments or flush markers.

- 147 (a) No monuments/markers can be installed from November 1st through May 1st
148 ~~75.6-6. Decorations. The Enrollment Department shall remove all inappropriate and~~
149 ~~deteriorated items left at a plot.~~

151 75.7. Disinterment

152 ~~75.7.16-7. Disinterment.~~ Disinterment from a Tribal cemetery ~~shall~~ may only occur upon order
153 ~~of from~~ the Tribe's judicial system. Disinterment ~~is an extraordinary remedy that shall~~ may only
154 be ordered when all other reasonable means for obtaining the requester's objective have been
155 exhausted and when the Tribe's judicial system determines that substantial cause exists to order
156 disinterment.

157 75.7-.2. (a)—A request to the Tribe's judicial system to issue an order for disinterment from a
158 Tribal cemetery may be made by the following persons, in the following order of priority:

- 159 (a1) The surviving spouse of the deceased.
160 (b2) An adult child of the deceased.
161 (c3) A parent of the deceased.
162 (d4) An adult sibling of the deceased.
163 (e5) A guardian of the person of the deceased at the time of the deceased's death.

164 75.7-3. (b)—A requester ~~shall~~ must notify the Enrollment Department and all individuals of the
165 same or a higher priority of his or her intent to request the Tribe's judicial system to issue an
166 order of ~~d~~Disinterment. If any member of the same or a higher priority cannot be located, this,
167 along with the efforts taken to locate the individual, shall be reported to the Tribe's judicial
168 system. Notification shall specifically state:

- 169 (a1) the requester's intent to obtain an order of ~~d~~Disinterment;
170 (b2) the reason for the ~~d~~Disinterment;
171 (c3) the place of ~~r~~Re-interment or intent of the requestor to have human remains
172 cremated; and
173 (d4) that any objections ~~shall~~ must be filed with the Tribe's judicial system within five
174 (5) business days of the notification or may be presented at the hearing.

175 75.7-4. (e) Disinterment Process. (1)—The Tribe's judicial system shall set a hearing date on the
176 disinterment request at the earliest possible time after the deadline for filing objections has
177 passed and shall issue an order on the matter within ten (10) days after the hearing. The Tribe's
178 judicial system may, for good cause, extend the time for an order to be issued for an additional
179 ten (10) days., taking into consideration:

- 180 (aA) the manner in which the deceased died;
181 (bB) whether disinterment would create a public health risk;

- 182 | (c) the decedent's wishes, if known;
183 | (d) any objections filed with the Tribe's judicial system or presented at the hearing;
184 | (e) whether an order of disinterment from a court other than the Tribe's judicial system
185 | has been issued; and
186 | (f) whether any required permits regarding re-interment have been obtained.

187 | ~~75.7-5. (2) All of the factors listed in 75.6-7(c) shall be considered when determining whether~~
188 | ~~to allow disinterment, although t~~The Tribe's judicial system shall make a determination on the
189 | request and may deny the request for disinterment based solely on any objections to the
190 | disinterment filed or presented by an individual with the same or a higher priority than the
191 | requester.~~(3) The Tribe's judicial system may, for good cause, extend the time for an order to be~~
192 | ~~issued for an additional ten (10) days.~~ (4) The Tribe's judicial system may issue an additional
193 | order(s) to assist the requester in obtaining his or her objective for ~~d~~Disinterment, including
194 | testing, inspection and/or transportation of the remains.

195 | ~~75.7-6. (d) Appeals.~~ An appeal of an order issued under this section shall must be filed with the
196 | Tribe's judicial system within five (5) business days after the order is issued. ~~All appeals shall~~
197 | ~~be heard in accordance with the Tribe's Rules of Appellate Procedure.~~

198 | ~~(e) Time lines for Disinterment.~~

199 | ~~(1) If no appeal of an order issued under this section is filed, disinterment shall must~~ take place
200 | within sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a
201 | stay of the disinterment may be order.

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

204 | ~~75.7-7. (f)~~—Following ~~d~~Disinterment, the remains of the deceased person shall must be
205 | reinterred or cremated as identified by the order of disinterment within forty-eight (48) hours of
206 | ~~d~~Disinterment.

207 | ~~75.7-8. (g)~~—The Enrollment Department shall be present at for each disinterment and re-
208 | interment that occurs in the Tribal cemetery. The Oneida Police Department and shall have the
209 | authority to restrict who may be present during a disinterment or re-interment.

210 | ~~75.7-9. (h)~~—The requester shall be responsible for making all arrangements and incurring all
211 | costs associated with disinterment and re-interment.

212 | **75.87. Prohibited Items and Behavior on Cemetery Grounds**

213 | 75.87-1. The Enrollment Department shall establish Tribal cemetery rules which shall must be
214 | posted on Tribal cemetery grounds. The Enrollment Department shall notify the Oneida
215 | Trust/Enrollment Committee of the current rules and changes to any rules.

216 | 75.87-2. The Enrollment Department, or its designee, may remove any non-conforming objects
217 | from plots, prohibit individuals who violate this Law or the cemetery rules from accessing a
218 | Tribal cemetery and/or contact the Oneida Police Department for assistance with individuals who
219 | violate this Law or the cemetery rules.

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

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

225 | **75.97-3. Reporting Appeals.**

226 | 75.9-1. Any individual may file a complaint regarding the implementation and enforcement of
227 | this Law. All complaints will be forwarded to the Enrollment Department.

230 75.9-2. Within five (5) business days of the receipt of a complaint, the Enrollment Department
231 shall respond in writing indicating any action taken or planned action to remedy the complaint to
232 the individual that filed the complaint, if the address is known, to the Trust/Enrollment
233 Committee and to the Secretary's Office. ~~decisions regarding the implementation and~~
234 ~~enforcement of this Law and the creation and enforcement of any cemetery rules may be~~
235 ~~appealed to the Trust/Enrollment Committee.~~

236
237 *End.*

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



Legislative Operating Committee

February 17, 2016

Fitness for Duty Policy

Submission Date: 9/17/14

Public Meeting:
 Emergency Enacted:
 Expires:

LOC Sponsor: Jennifer Webster

Summary: *This item was carried over into the current term by the LOC. Employees who are not fit for duty may present a health and/or safety hazard to themselves, to other employees, to the Tribe and to the general public. Since no policy exists currently, supervisors either do nothing and let the issues continue; force an employee on a leave of absence, adversely modify job duties, and/or terminate the employee.*

9/17/14 LOC: Motion by Jennifer Webster to add the Fitness for Duty Policy to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

2/11/15 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee priority list , seconded by Trish King. Motion carried unanimously.

8/5/15: Work meeting. Attendees include Leyne Orosco, Robert Keck, Mary Cornelissen, Kristi Giltner, Kelly McAndrews, Michelle Mays, Rae Skenandore, Candice Skenandore, Douglass McIntyre.

1/26/16: Work meeting held. Attendees include Matthew Denny, Eric Bollinger, Robert Keck, Mary Cornelissen, Kristi Giltner, Kelly McAndrews, Rae Skenandore, Maureen Perkins, Douglass McIntyre.

Next Steps:

- Review the draft and forward to the Legislative Reference Office for an legislative analysis and to the Finance Department for a fiscal impact statement.

Fitness-For-Duty Policy

Article I. Purpose and Policy
 Article II. Adoption, Amendment, Repeal
 Article III. Definitions
 Article IV. Applicability
 Article V. Triggering Events
 Article VI. Employee Responsibility

Article VII. Supervisor Responsibility
 Article VIII. EHN Responsibility
 Article IX. FFD Assessment
 Article X. Fraudulent Report
 Article XI. Confidentiality
 Article XII. Appeal Rights

Article I. Purpose and Policy

1-1. Purpose. The ~~purpose~~purposes of this Policy ~~is~~are to:
 (a) provide a safe work environment, understanding that employees who are not fit-for-duty may present a health and/or safety hazard to themselves, to other employees, to the Tribe, and/or to the general public;; and
~~The purpose of this Policy is to~~(b) supplement the Tribe’s personnel policies and procedures. This Policy shall not negate an employee’s duties set forth in the Tribe’s personnel policies and procedures.

1-2. Policy. It is the policy of the Oneida Tribe of Indians of Wisconsin to:
 (a) minimize health risks to employees and Tribal liability by maintaining the highest level of safety in the work environment;; and
~~It is the policy of the Oneida Tribe of Indians of Wisconsin to~~(b) assist employees when the employee may have an underlying health condition that affects the employee’s ability to perform the employee’s job duties.

Article II. Adoption, Amendment, Repeal

2-1. This Policy was adopted by the Oneida Business Committee by resolution _____.
 2-2. This Policy may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.
 2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy which are considered to have legal force without the invalid portions.
 2-4. In the event of a conflict between a provision of this Policy and a provision of another Policy, the provisions of this Policy shall control.
 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

Article III. Definitions

3-1. This section shall govern the definitions of words or phrases as used within this Policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Assessment” ~~shall mean~~means the evaluation, initial or otherwise, of an employee by a medical provider, defined herein assigned by the EHN to determine an employee’s ability to perform the required functions of the job as outlined in the employee’s job description.

(b) “Danger to self or others” ~~shall mean~~means a substantial and imminent risk of harm or threat of harm to self, others or property established through a recent act, attempt or threat of the same.

~~“(c) “EHN” means the Employee” shall mean~~ Health Nursing Department.

(d) “Employee” means any person working for the Tribe in its programs, enterprises

and/or governmental functions. This shall not include appointed officials or elected officials. This shall include temporary employees and political appointees.

~~(a) “EHN” shall mean the Employee Health Nursing Department.~~

(e) “Fit” or “fitness-for-duty” shall mean means the state of an employee where he or she has no present physical, mental, nervous, organic, or functional disease or psychiatric disorder which is likely to interfere with his or her ability to productively perform the assigned functions of the job, and does not pose a direct threat to his or her own safety or the safety of others.

(f) “Leave of Absence” shall mean means an approved absence from work without loss of seniority or benefits.

(g) “Medical Provider” shall mean means a licensed health care evaluator assigned by EHN with appropriate expertise in one or more the following areas: medical, psychological, alcohol or drug conditions.

~~(b) “Accommodation” shall mean modified duty which could include part time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations.~~

–(h) “Modified duty” means temporary, transitional work within the healthcare provider’s prescribed activities, restrictions and other recommendations for the employee which reelects that individual’s functional capacity and/or rehabilitative needs.

(i) “Supervisor” shall mean means a person or entity who directly oversees the work and performance of an employee on a daily basis.

(j) “Tribal” or “Tribe” shall mean means the Oneida Tribe of Indians of Wisconsin.

Article IV. Employee Responsibility Applicability

4-1. This Policy shall apply for all Employees ~~shall:~~

~~(a) Report to work able to perform the functions of his or her job according to his or her specific job description;~~

~~–Notify of the supervisor when the employee believes that his or her performance of the required job functions may be compromised Tribe unless:~~

~~(1) from a medical condition; or~~

~~(2) from any other condition or event that has the potential to impact the safe conduct of his or her job duties;~~

~~Notify the supervisor of any concerns in the workplace of another employee’s fitness for duty. If the concern involves the employee’s supervisor, the employee shall make the notification to the next highest level supervisor;~~

~~(b) Cooperate with (a supervisor’s directive and/or referral for an assessment;~~

~~(c) Sign the consent form that allows EHN to receive medical and/or mental health records that pertain only to the condition that triggered the referral for an assessment; and~~

~~(d) Sign the informed consent and disclosure form of the medical provider to allow the department, agency or employee to be evaluated and to allow EHN to receive the records pertaining to the fit for duty request.~~

~~–Cooperate with attending scheduled appointments and call EHN if there position is a concern specifically exempted from this Policy by tribal law, policy or Oneida Business Committee Resolution; or conflict with the scheduled appointment.~~

(b) the department, agency or employee position has a more restrictive policy in place

for employees on file with the Human Resources Department and has received an exemption from the Human Resource Department.

Article V. Triggering Events

5-1. A triggering event may require an employee to undergo an assessment by the Tribe’s contracted medical provider.

5-2. Triggering events shall include, but is not limited to the following:

- (a) a workplace accident;
- (b) good faith reliable observations by other person(s) that address issues including, but not limited to an employee’s problem during the performance of work with:
 - (1) manual dexterity;
 - (2) coordination;
 - (3) alertness;
 - (4) speech;
 - (5) vision acuity;
 - (6) concentration;
 - (7) ~~inappropriate interactions with others;~~
 - (8) ~~suicidal or threatening statements;~~
 - (9) ~~change in personal hygiene;~~
 - (10) ~~(8) presence of condition likely to lead to foodborne disease transmission;~~
 - (11) ~~(9) memory problems; and~~
 - (12) ~~odor of alcohol, marijuana, or other substance abuse concern.~~
 - (13) ~~excessive sick leave, unpaid leave, and/or no call/no show for work~~
 - (14) (10) excessive number of errors in job duties;
 - (15) (11) continued reduced productivity in job duties;
 - (16) (12) frequent injuries; and
 - (17) (13) observed health problems (i.e. seizures, falling asleep, trouble breathing, low blood sugar reactions, etc.)

5-3. The above listed triggering events may also be a trigger for the Drug and Alcohol Free Workplace Policy. Therefore, if the reasonable suspicion standards of the Drug and Alcohol Free Workplace Policy are met, the supervisor shallis required to, pursuant to the Drug and Alcohol Free Workplace Policy, send an employee for alcohol/drug testing. During the time of alcohol/drug testing the Drug and Alcohol Free Workplace Policy will govern as to the receipt of pay by the employee.

5-4. The supervisor shall also follow Article ~~VI~~VII below ~~to also~~and have the employee tested as to his or her fitness-for-duty. If the employee’s alcohol/drug test returns as a negative result, then this Policy will be reinstated as the governing policy as to the receipt of pay by the employee.

Article VI. ~~Supervisor~~Employee Responsibility

6-1. An Employee shall:

- (a) Report to work able to safely perform the functions of his or her job according to his or her specific job description;
- (b) Notify his or her supervisor or when the employee believes that his or her performance of the required job functions may be compromised:
 - (1) from a medical condition; or
 - (2) from any other condition, medication or event that has the potential to impact

134 the safe conduct of his or her job duties;
 135 (c) Notify the supervisor of any concerns in the workplace of another employee’s fitness-
 136 for-duty. If the concern involves the employee’s supervisor, the employee shall make the
 137 notification to the next highest level supervisor;

138 ~~Supervisors~~(d) Cooperate with a supervisor’s directive and/or referral for an assessment;
 139 (e) Sign the consent form that allows EHN to receive medical and/or mental health
 140 records that pertain only to the condition that triggered the referral for an assessment; and
 141 (f) Sign the informed consent and disclosure form of the medical provider, if required to
 142 do so by the provider, to allow the employee to be evaluated and to allow EHN to receive
 143 the records pertaining to the fit-for-duty request.

144 (g) Cooperate with attending scheduled appointments and notifying EHN if there is a
 145 concern or conflict with the scheduled appointment.

146 6-2. Where an Employee fails to live up to these responsibilities he or she may be subject to
 147 discipline under the Tribe’s personnel policies and procedures, up to and including termination.
 148

149 **Article VII. Supervisor Responsibility**

150 7-1. A Supervisor shall utilize this Policy in a fair and consistent manner, respecting the
 151 employee’s privacy and the confidentiality of medical information. A Supervisor shall not use
 152 this Policy as a disciplinary tool.

153 ~~67-2. Fit-For-Duty Assessment.~~ Upon the occurrence of a triggering event or where a triggering
 154 event has been reported to the supervisor, the supervisor, or his or her designee if the supervisor
 155 is unavailable, shall immediately initiate an investigation of the employee who is alleged to be
 156 unfit-for-duty ~~and, when appropriate, do the following:~~ Where possible, EHN must be
 157 immediately contacted for a consultation. If the investigation results in a belief that the
 158 Employee is fit-for-duty, the matter is at an end.

159 ~~(a) 7-3. Fit-For-Duty Assessment. Fill out the assessment form explaining:~~
 160 ~~(1) The functions~~ When the investigation of the ~~employee’s job description; and~~
 161 ~~(2) Why an assessment is a necessity for this employee. This statement shall~~
 162 ~~include:~~

163 ~~(A) Relevant background information, concerns, dates, times, and events.~~
 164 ~~Objective information recording the reasons/observations~~ results in a belief that ~~triggered~~ a Fit-
 165 For-Duty Assessment ~~referral, including is appropriate, the Supervisor shall:~~

166 ~~(B) (a specific explanation on how) Fill out the employee is not meeting~~
 167 ~~his or her duties required in his or her job description.~~

168 ~~(C) Explanation of how the employee’s condition presents a health~~
 169 ~~and/or safety hazard to himself or herself, to others or to property, and~~
 170 ~~how it impacts the employee’s ability to safely and effectively perform~~
 171 ~~the functions of the position.~~

172 ~~Discuss the~~ Fit-For-Duty assessment form ~~with the employee and:~~ (b) Immediately place
 173 that employee on paid leave pending the ~~result~~ results of the assessment, and ~~inform~~ enter
 174 the Human Resources Department of the employee’s ~~employee on~~ immediate paid leave
 175 status within forty-eight (48) hours;

176 (c) Discuss the assessment form with the employee and have the employee sign the
 177 informed consent and disclosure form ~~and also,~~ the request for fit-for-duty assessment
 178 form and any other appropriate documents;

179 ~~After~~ (d) Send the ~~discussion with the employee in 6 2(b), send~~ following documents to
 180 EHN via fax or email:

- 181 | (1) The completed assessment form to EHN via fax or email,;
- 182 | (2) a signed informed consent and disclosure form,;
- 183 | (3) any other necessary documents along with the current job description, ~~keeping~~
- 184 | ~~a copy for the employee file;~~

185 | ~~(b) Utilize this Policy in a fair and consistent manner, respecting the employee’s privacy~~
 186 | ~~and the confidentiality of medical information.~~

187 | (e) Complete any mandatory reporting required under the employee’s license, certificate,
 188 | or ethics code;

189 | (f) When the assessment results are received, meet with the employee to discuss the
 190 | results and the actions being taken, which may include any of the following:

- 191 | (1) Immediate return to regular work duties; or
- 192 | (2) Return to work with reasonable accommodations. If the reasonable
- 193 | accommodations are due to physical restrictions, the employee shall be
- 194 | placed in the Early Return to Work Program; or
- 195 | (3) The option for the employee to apply for a medical leave of absence; or
- 196 | (4) The option to resign and apply for disability; or
- 197 | (5) Termination of employment.

198 | ~~(hg) Supervisors shall make an attempt of reasonable accommodation and/or comply~~
 199 | ~~with other employee restrictions or requests related to a medical provider’s fit-for-duty~~
 200 | ~~recommendation. The supervisor shall be responsible for determining what is reasonable~~
 201 | ~~accommodations for his or her department would be~~ reasonable within his or her
 202 | department related to a medical provider’s fit-for-duty recommendation. .

203 | (ih) Communicate with the Human Resources Department the actions taken in 6-2(h).

204 | ~~6-3~~(i) The supervisor shall retain a copy of all documents for the employee file.

205 | 7-4. Emergency. If the employee poses a danger to himself or herself or others, the supervisor
 206 | shall contact law enforcement and take whatever emergency steps are available to protect
 207 | himself or herself, the employee or others from immediate harm.

208 | ~~6-4~~7-5. When a supervisor receives a self-referral, the supervisor shall refer the employee to the
 209 | Employee Assistance Program or to the Employee Resource Center.

210 | ~~7-6~~7-5. If an employee is relieved of duty for an assessment and the employee could pose a threat
 211 | to other employees, the supervisor shall arrange transportation or ensure the employee has
 212 | adequate transportation. If necessary, the supervisor may arrange transportation with the Tribe’s
 213 | contracted transportation provider to the employee’s home or to a medical facility. ~~In the~~
 214 | ~~alternative, the supervisor may arrange for a family member to come and pick up the employee.~~

215 |

216 | **Article ~~VH~~VIII. EHN Responsibility**

217 | ~~78~~78-1. *EHN Responsibility.* EHN shall be responsible for coordinating the fit-for-duty program
 218 | and if a referral is received, shall do the following:

- 219 | (a) Review the assessment form and job description as needed for clarification;
- 220 | (b) Contact the supervisor if there are questions or additional documentation that is
- 221 | needed, as is necessary;
- 222 | (c) Contact the appropriate medical provider and schedule an assessment for the next
- 223 | available appointment;
- 224 | (d) Send the assessment form to the medical provider along with the employee’s job
- 225 | description;
- 226 | (e) Notify the employee of the assessment appointment date, time and location;
- 227 | (f) Notify the referring supervisor or his or her designee of employee’s assessment

- 228 appointment date, time and location;
- 229 (g) Receive the assessment results and:
 - 230 (1) Send the notice to the employee’s supervisor that the employee is fit-for-duty;
 - 231 and/or
 - 232 (2) Forward any recommendations made by the medical provider to the referring
 - 233 supervisor with respect to reasonable accommodations, other restrictions for the
 - 234 employee.
- 235 (h) Maintain the employee’s fit-for-duty file;
- 236 (i) Obtain appropriate authorizations for the release of information. Unless otherwise
- 237 provided for in an Authorization for Release of Information, information available to the
- 238 employee’s supervisor will be limited to:
 - 239 (1) Whether the employee is fit to resume his or her job duties; and/or
 - 240 (2) Whether the employee needs specific reasonable accommodations.
- 241 ~~(j) Monitor the employee’s compliance with the fit for duty recommendations made by~~
- 242 ~~the medical provider.~~

244 **Article VIII.IX. FFD Assessment**

245 **89-1. Payment for Assessment.** The Tribe shall pay the cost of the initial assessment.

246 **89-2. Paid Leave for Assessment.** When an employee is referred for an assessment under this
 247 Policy, that employee shall receive paid leave until such time as the employee is:

- 248 (a) Returned to regular duty; or
- 249 (b) Placed on modified duty pursuant to the Early Return to Work Law; or
- 250 (c) Placed on medical leave or disability; or
- 251 (d) Terminated from employment.

252 However, if an employee is referred for an assessment regarding the same physical or mental
 253 health issue a second or subsequent time, paid leave shall not be available and the employee will
 254 have to seek other paid time off options such as accrued vacation or personal time, medical
 255 leave, or non-paid time with supervisor approval.

256 **89-3. Leave of Absence.** If a medical provider recommends a leave of absence from work, the
 257 supervisor shall:

- 258 (a) Provide his or her supervisor(s) with written documentation as to why he or she can
 259 or cannot accommodate a Leave of Absence, explain the findings with the employee and
 260 place a copy of the written documentation in the employee’s personnel file.
- 261 (b) Collaborate with the Oneida Human Resources Department to establish an
 262 appropriate resolution, explain the findings of that collaboration, and place a copy of the
 263 resolution in the employee’s personnel file.

264 **89-4. Treatment.** If a medical provider recommends counseling sessions or other medical
 265 treatments, the supervisor shall allow the employee to attend the counseling, treatment and/or
 266 appointment.

- 267 (a) The cost of any counseling or medical treatment after the initial assessment shall be
 268 the responsibility of the employee.
- 269 (b) The remaining follow-up counseling, treatment and/or appointments shall be
 270 conducted on personal time.

271 **89-5. Modified Duty.** If a medical provider places physical restrictions on the employee’s work
 272 duties or recommends modified duties, the process set out in the Tribe’s Early Return to Work
 273 Law shall be followed. However, modified duty pursuant to the Early Return to Work law shall
 274 only be granted two (2) times in the lifetime of employment if the modified duty is a result of fit-

275 | for-duty testing, and is not available for mental health issues. Modified duty under this Policy is
276 | limited to up to one-hundred and eighty (180) days. After that time has expired, it is a
277 | determination of the supervisor whether the modifications will continue.

278 | 89-6. Safety Risk. Employees found to be a danger to themselves or others by a medical
279 | provider, regardless if it was a self-referral, may be found to be unfit to perform their duties and
280 | may be terminated.

281 | 89-7. Refusal of Assessment. Refusal to undergo an assessment may result in termination if the
282 | supervisor and area manager both determine the employee poses a significant danger to the
283 | health, safety or welfare of themselves or others. Refusal to sign the informed consent and
284 | disclosure form and the request for fit-for-duty assessment form is considered a refusal of
285 | assessment.

286 | 89-8. Refusal of Treatment. An employee who refuses recommended counseling or other
287 | medical treatments may still be terminated if the failure to receive such counseling or treatment
288 | results in the employee continuing to be unfit-for-duty.

289

290 | **Article ~~IX~~X. Fraudulent Report**

291 | 910-1. Any employee or Supervisor found to have made a report other than in good faith, and
292 | the assessment returns from a medical provider as being medically unnecessary shall be
293 | disciplined according to the Tribe's personnel policies and procedures, up to and including
294 | termination.

295

296 | **Article ~~XI~~XI. Confidentiality**

297 | 1011-1. Information received about an employee as a result of a report, self-disclosure,
298 | assessment or counseling/treatment received is strictly confidential and said information shall not
299 | be disclosed to third parties without the prior written consent of the employee or in compliance
300 | with a court order or relevant laws or policies.

301

302 | **Article ~~XII~~XII. Appeal Rights**

303 | 1112-1. A directive by a supervisor to submit to a fit-for-duty test shall not be appealable.

304 | 1112-2. A termination based on a decision that the employee is not fit-for-duty may be appealed
305 | pursuant to the Tribe's law governing personnel policies and procedures.

306

307 | End.

308



Legislative Operating Committee

February 17, 2016

Marriage Law Amendments

Submission Date: November 4, 2015

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *This item is a proposal to amend the Marriage Law to provide for a way to waive the standard waiting period between applying for a license and solemnizing the marriage, provide for an administrative fee for amendments to an application after it has been submitted and to provide for a process to adopt a fee schedule.*

11/04/15 LOC: Motion by Jennifer Webster to add the Marriage Law Amendments to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

1/6/16 LOC: Motion by Fawn Billie to accept the legislative analysis for the Marriage Law amendments, defer the amendments to the Finance Department for a fiscal impact statement and direct the Legislative Reference Office to prepare the amendments for a public meeting to be held on February 18, 2016; seconded by Jennifer Webster. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to accept the Marriage Law Amendments public meeting packet and to forward to a public meeting to be held on February 18, 2016; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Approve the public meeting packet for the Marriage Law Amendments and forward to a public meeting date on March 17, 2016.

NOTICE OF

PUBLIC MEETING

TO BE HELD

THURSDAY, MARCH 17 at 12:15 p.m.

IN THE

OBC CONFERENCE ROOM**(2nd FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: MARRIAGE LAW AMENDMENTS

This is a proposal (to amend an existing Tribal Law) which would:

- ◆ clarify the process in which a fee schedule is to be adopted;
- ◆ provide for a way to waive the standard waiting period between applying for a license and solemnizing the marriage;
- ◆ provide for an administrative fee for amendments to an application after it has been submitted

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD OPEN UNTIL MARCH 24, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidanation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Marriage Law Amendments

<i>Analysis by the Legislative Reference Office</i>				
Title	Marriage (Law)			
Requester	Tonya Webster	Drafter	Douglass McIntyre	Analyst Maureen Perkins
Reason for Request/Purpose	The licensing department has had issues with implementation of the Law and has provided suggested amendments. Authorize a waiver process for the waiting period [71.5-4]. Provide an administrative fee for changes requested after an application is submitted. Adopt a fee schedule [71.5-1].			
Authorized/Affected Entities	Family Court, licensing department, anyone that wishes to marry under this Law			
Related Legislation	Any person issued a fine under this law can appeal through the Judiciary [See 71.5-1 & 71.5-1(g)].			
Enforcement & Due Process	Any person who knowingly violates this law will be subject to a fine; the licensing department is responsible for enforcing fines issued [See 71.7-1 & 71.7-2].			

Overview

The Law regulates the rights and responsibilities with respect to marriage.

Proposed Amendments

The following are proposed amendments to the Law:

- Applicants will be required to pay all fees at the time the license is issued. The Law authorizes the OBC to set the fee schedule by resolution. The OBC shall seek the departments' recommendation when determining the appropriate fee schedule [71.5-1].
- Language has been added to clarify that a marriage ceremony must take place between the 6th and 30th day of receiving the marriage license [See 71.5-4].
- A waiver process has been created to allow for the marriage ceremony to take place between the 1st and 5th day of issuing the marriage license for an additional fee [See 71.5-4].

Considerations

- The request to provide an administrative fee for amendments to a submitted application has been addressed indirectly under the fee section of the law [See 71.5-1]. The fee section is broad and allows for the Business Committee to adopt a fee schedule upon recommendation of the department. This can include an administrative fee for amendments to submitted applications at the Business Committees' discretion.

Miscellaneous

A public meeting was not held. Revisions were made to this Law which complies with drafting styles. Revisions were also made to improve the flow and sequence of the Law without changing the intended content. Please refer to the fiscal impact statement for any financial impacts.

CHAPTER 71
MARRIAGE
Yeny@kta>

71.1. Purpose and Policy
71.2. Adoption, Amendment, Conflicts
71.3. Definitions
71.4. Marriages, Generally

71.5. Marriage Document and Marriage Ceremony
71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities
71.7. Penalties

1
2 **71.1. Purpose and Policy**

3 71.1-1. *Purpose.* It is the purpose of this Law to exercise the sovereign right of the Oneida
4 Tribe to regulate the rights and responsibilities relating to marriage.

5 71.1-2. *Policy.* Marriage is a foundation of Tribal society that stabilizes families which the
6 Tribe acknowledges by recognizing the legal relationship of a union between two adults.
7

8 **71.2. Adoption, Amendment, Conflicts**

9 71.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F
10 and amended by resolutions BC-06-12-13-E, ~~and~~ BC-05-27-15-A and _____.

11 71.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
12 the procedures set out in the Legislative Procedures Act.

13 71.2-3. Should a provision of this Law or the application thereof to any person or circumstances
14 be held as invalid, such invalidity shall not affect other provisions of this Law which are
15 considered to have legal force without the invalid portions.

16 71.2-4. In the event of a conflict between a provision of this Law and a provision of another law,
17 the provisions of this Law shall control. Provided that, nothing in this Law is intended to repeal
18 or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

19 71.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
20 of Wisconsin.

21 71.2-6. *Rules.* If rules addressing a certain area of this Law have not been enacted in accordance
22 with Tribal law and the Court is faced with a question, the Court may, in its discretion, refer to
23 other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent
24 with this or any other Tribal law.
25

26 **71.3. Definitions**

27 71.3-1. This section shall govern the definitions of words and phrases used within this Law. All
28 words not defined herein shall be used in their ordinary and everyday sense.

29 (a) "Court" means Family Court, which is a branch of the judicial arm of the Tribe~~the~~
30 ~~judicial system of the Tribe which is assigned to handle all family law matters.~~

31 (b) "Court of competent jurisdiction" means a court that has the power and authority to
32 dissolve a marriage.

33 (c) "Department" means the licensing department of the Tribe that is responsible for
34 administering and issuing licenses in accordance with Oneida-Tribal laws.

35 (d) "Marriage" means the civil contract to which the consent of the parties capable in law
36 of contracting is essential, and which creates the legal status of spouses.

37 (e) "Marriage document" means that document issued by the Department which includes
38 the marriage license as well as information concerning the marriage ceremony, the
39 signatures of the witnesses and officiating person(s), and proof of filing.

40 (f) "Marriage license" means that portion of the marriage document designated as such,
41 which is the authorization for the marriage to take place.

42 (g) "Officiating person" means the person or persons who perform the marriage

43 ceremony.

44 (h) "Reservation" means all the land within the exterior boundaries of the Reservation of
45 the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the
46 Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

47 (i) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.
48

49 **71.4. Marriages, Generally**

50 71.4-1. *Who May Marry.* A marriage may be contracted under this Law between two (2) adults
51 who:

- 52 (a) have a marriage document issued by the Department;
- 53 (b) have attained the age of eighteen (18), except as provided in 71.4-3; and
- 54 (c) meet all other provisions under this Law.

55 71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

- 56 (a) are currently legally married to another person; or,
- 57 (b) have been legally divorced for less than six (6) months with a judgment of divorce
58 from a court of competent jurisdiction; or,
- 59 (c) are not legally competent; or,
- 60 (d) are closer in relationship than second cousins, except first cousins may marry if both
61 parties are fifty-five (55) years old or older.

62 71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet
63 the above requirements, except for 71.4-1(b) and are over the age of sixteen (16) but under the
64 age of eighteen (18) may marry if they present:

- 65 (a) written consent by his or her parent or guardian, signed and notarized before the
66 person issuing the marriage license; or
- 67 (b) proof that they have been legally emancipated.
68

69 **71.5. Marriage Document and Marriage Ceremony**

70 71.5-1. *Fees.* An applicant is responsible for paying all fees at the time the application is filed.
71 The Oneida Business Committee, upon recommendation of the Department, shall adopt a fee
72 schedule through Resolution for all fees associated under this Law. The Oneida Business
73 Committee may require any fees as long as those fees are consistent with this Law.

74 71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants
75 within five (5) business days after the application is filed if, in addition to the other requirements
76 in this Law, the following conditions are met at the time a marriage license is applied for:

- 77 (a) Either (1) or (2) applies to the applicants:
 - 78 (1) each applicant:
 - 79 (A) is a Tribal member; or
 - 80 (B) resides on the Reservation and is a member of an Indian tribe, band or
81 community which is recognized by a state or the federal government.
 - 82 (2) one of the applicants meets the requirements of (1)(A) or (B) and the other
83 applicant consents to the Tribe's jurisdiction to issue the license. The completion
84 of an application for a marriage license represents a person's consent to the
85 Tribe's jurisdiction to grant the license.
- 86 (b) Both applicants appear in person at the Department to complete the marriage license
87 application.
- 88 (c) The applicants provide any information necessary to complete the application, which
89 may include: social security numbers, birth certificates, proof of residence, proof of tribal
90 membership, documentation of a judgment of divorce, annulment, or death certificates

91 from most recent marriages, parents' full names, mothers' maiden names, date and place
92 of marriage ceremony, and the name, address, and phone number of the officiating
93 person(s).

94 (d) The applicants swear under oath that the information provided is true and accurate
95 and sign the application in the presence of a notary public.

96 (e) The applicants pay the required fees.

97 71.5-~~32~~. *Objections.* Any relative of the applicants, Department official, or applicant that
98 objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting
99 to the marriage.

100 (a) The petition shall state grounds for the belief that a marriage license should not be
101 issued to the applicants or a marriage license that has already been issued should be
102 revoked.

103 (b) The Court shall approve the petition only if the marriage, if conducted, would violate
104 this Law.

105 (c) If the petition is approved by the Court, the applicants shall show cause why the
106 license should be issued or why the license should not be revoked.

107 71.5-~~43~~. *Marriage Ceremony.*

108 (a) The ~~marriage applicants shall marry not less than~~ must occur between six (6) days
109 after the license is issued and ~~not more than~~ thirty (30) days after the license is issued.
110 The applicant may apply for a waiver of the initial 5 day waiting period for an additional
111 fee. The marriage license shall contain notification of these time limits.

112 (b) If neither applicant resides on the Reservation, the marriage ceremony shall be held
113 on the Reservation. If one (1) or both of the applicants reside on the Reservation, the
114 marriage ceremony shall be held within the State of Wisconsin. The applicants shall be
115 notified of this requirement when applying for a marriage license.

116 (c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent
117 adult witnesses present.

118 (d) The parties shall vow by mutual declarations, before the officiating person(s) and
119 witnesses, that they take each other in lawful matrimony.

120 (e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the
121 ceremony, sign and date the marriage document.

122 (f) The officiating person(s) shall deliver the original completed marriage document to
123 the Department within three (3) business days after the ceremony. The Department shall
124 deliver the original marriage document to the Wisconsin Vital Statistics Department
125 within ten (10) business days after it is filed. The Department shall retain a file stamped
126 copy and provide a file stamped copy to the married couple.

127 (g) The Department shall keep a marriage license docket and shall enter therein a
128 complete record of the marriage applications and issuance of marriage licenses which
129 shall be available for public inspection during regular business hours.

130 71.5-~~54~~. *Officiating Persons.* The following persons are authorized as officiating persons under
131 this Law:

132 (a) a traditional tribal practitioner or spiritual or religious leader who is commonly
133 recognized as such by the Oneida community or other Indian community and has
134 registered with the Court; or

135 (b) a Judge from the Court or a tribal, federal, or state judge or commissioner authorized
136 to solemnize marriages under tribal, federal or state law; or

137 (c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the
138 request of the persons being married; or

- 139 (d) any ordained clergy person of any religious denomination, society, or sect; or
140 (e) any person licensed by a religious body or appointed by a high-ranking clergy
141 member, if the religious denomination, society, or sect allows the person to solemnize
142 marriages; or
143 (f) the parties themselves, by mutual declarations that they take each other as spouses, in
144 accordance with the customs, rules, and regulations of any religious denomination,
145 society, or sect to which either of the parties belongs.

146
147 **71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities**

148 71.6-1. If a person is prohibited from marrying another under this Law and goes to another
149 jurisdiction and there contracts a marriage that is prohibited under this Law, such marriage shall
150 not be recognized by the Tribe.

151 71.6-2. No marriage shall be contracted under this Law by a party residing and intending to
152 continue to reside in another jurisdiction, if such marriage would be void if contracted in such
153 other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

154 71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is
155 consummated with the full belief on the part of the persons so married that they have been
156 lawfully joined in marriage, and:

- 157 (a) the officiating person(s) did not have the authority to solemnize the marriage; or
158 (b) the marriage license was issued by a department or person who did not have
159 jurisdiction to issue the license; or
160 (c) the marriage license or application for the marriage license had an informality or
161 irregularity; or
162 (d) either or both of the witnesses to the marriage were incompetent; or
163 (e) the marriage ceremony was solemnized outside of the Reservation boundaries, or
164 Brown or Outagamie County, when applicable, or outside of the required time lines listed
165 on the marriage license.

166
167 **71.7. Penalties**

168 71.7-1. A person who knowingly violates this Law may be penalized as follows:

- 169 (a) Any person who swears to a false statement to obtain a marriage license or to help
170 another obtain a marriage license shall be fined no less than five hundred dollars
171 (\$500.00).
172 (b) Any person who is not an officiating person who solemnizes a marriage ceremony
173 shall be fined no less than one hundred dollars (\$100.00).
174 (c) The parties to a marriage and/or the officiating person(s) of a marriage conducted
175 without a valid marriage license or without the presence of two (2) competent adult
176 witnesses shall be fined no less than one hundred dollars (\$100.00).
177 (d) Any person who goes to another jurisdiction to avoid this Law and contracts a
178 marriage prohibited under this Law shall be fined no less than five hundred dollars
179 (\$500.00).
180 (e) Any person who violates any other provision of this Law shall be fined no less than
181 one hundred dollars (\$100.00).

182 71.7-2. The Department shall be the responsible entity for the enforcement of this section. All
183 fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a
184 fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline
185 to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of
186 penalty issued shall inform the person penalized of the process to file his or her appeal.

187
188 *End.*
189

Adopted-BC-04-28-10-F
Amended-BC-06-12-13-E
Amended-BC-05-27-15-A

CHAPTER 71
MARRIAGE
Yeny@kta>

71.1. Purpose and Policy
71.2. Adoption, Amendment, Conflicts
71.3. Definitions
71.4. Marriages, Generally

71.5. Marriage Document and Marriage Ceremony
71.6. Marriages Conducted to Avoid the Law and Immaterial
Irregularities
71.7. Penalties

1
2 **71.1. Purpose and Policy**

3 71.1-1. *Purpose.* It is the purpose of this Law to exercise the sovereign right of the Oneida
4 Tribe to regulate the rights and responsibilities relating to marriage.

5 71.1-2. *Policy.* Marriage is a foundation of Tribal society that stabilizes families which the
6 Tribe acknowledges by recognizing the legal relationship of a union between two adults.

7
8 **71.2. Adoption, Amendment, Conflicts**

9 71.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F
10 and amended by resolutions BC-06-12-13-E, BC-05-27-15-A and _____.

11 71.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
12 the procedures set out in the Legislative Procedures Act.

13 71.2-3. Should a provision of this Law or the application thereof to any person or circumstances
14 be held as invalid, such invalidity shall not affect other provisions of this Law which are
15 considered to have legal force without the invalid portions.

16 71.2-4. In the event of a conflict between a provision of this Law and a provision of another law,
17 the provisions of this Law shall control. Provided that, nothing in this Law is intended to repeal
18 or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

19 71.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
20 of Wisconsin.

21 71.2-6. *Rules.* If rules addressing a certain area of this Law have not been enacted in accordance
22 with Tribal law and the Court is faced with a question, the Court may, in its discretion, refer to
23 other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent
24 with this or any other Tribal law.

25
26 **71.3. Definitions**

27 71.3-1. This section shall govern the definitions of words and phrases used within this Law. All
28 words not defined herein shall be used in their ordinary and everyday sense.

29 (a) "Court" means Family Court, which is a branch of the judicial arm of the Tribe.

30 (b) "Court of competent jurisdiction" means a court that has the power and authority to
31 dissolve a marriage.

32 (c) "Department" means the licensing department of the Tribe that is responsible for
33 administering and issuing licenses in accordance with Tribal laws.

34 (d) "Marriage" means the civil contract to which the consent of the parties capable in law
35 of contracting is essential, and which creates the legal status of spouses.

36 (e) "Marriage document" means that document issued by the Department which includes
37 the marriage license as well as information concerning the marriage ceremony, the
38 signatures of the witnesses and officiating person(s), and proof of filing.

39 (f) "Marriage license" means that portion of the marriage document designated as such,
40 which is the authorization for the marriage to take place.

41 (g) "Officiating person" means the person or persons who perform the marriage
42 ceremony.

43 (h) "Reservation" means all the land within the exterior boundaries of the Reservation of
44 the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the
45 Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

46 (i) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

47
48 **71.4. Marriages, Generally**

49 71.4-1. *Who May Marry.* A marriage may be contracted under this Law between two (2) adults
50 who:

51 (a) have a marriage document issued by the Department;

52 (b) have attained the age of eighteen (18), except as provided in 71.4-3; and

53 (c) meet all other provisions under this Law.

54 71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

55 (a) are currently legally married to another person; or,

56 (b) have been legally divorced for less than six (6) months with a judgment of divorce
57 from a court of competent jurisdiction; or,

58 (c) are not legally competent; or,

59 (d) are closer in relationship than second cousins, except first cousins may marry if both
60 parties are fifty-five (55) years old or older.

61 71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet
62 the above requirements, except for 71.4-1(b) and are over the age of sixteen (16) but under the
63 age of eighteen (18) may marry if they present:

64 (a) written consent by his or her parent or guardian, signed and notarized before the
65 person issuing the marriage license; or

66 (b) proof that they have been legally emancipated.

67
68 **71.5. Marriage Document and Marriage Ceremony**

69 71.5-1. *Fees.* An applicant is responsible for paying all fees at the time the application is filed.
70 The Oneida Business Committee, upon recommendation of the Department, shall adopt a fee
71 schedule through Resolution for all fees associated under this Law. The Oneida Business
72 Committee may require any fees as long as those fees are consistent with this Law.

73 71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants
74 within five (5) business days after the application is filed if, in addition to the other requirements
75 in this Law, the following conditions are met at the time a marriage license is applied for:

76 (a) Either (1) or (2) applies to the applicants:

77 (1) each applicant:

78 (A) is a Tribal member; or

79 (B) resides on the Reservation and is a member of an Indian tribe, band or
80 community which is recognized by a state or the federal government.

81 (2) one of the applicants meets the requirements of (1)(A) or (B) and the other
82 applicant consents to the Tribe's jurisdiction to issue the license. The completion
83 of an application for a marriage license represents a person's consent to the
84 Tribe's jurisdiction to grant the license.

85 (b) Both applicants appear in person at the Department to complete the marriage license
86 application.

87 (c) The applicants provide any information necessary to complete the application, which
88 may include: social security numbers, birth certificates, proof of residence, proof of tribal
89 membership, documentation of a judgment of divorce, annulment, or death certificates
90 from most recent marriages, parents' full names, mothers' maiden names, date and place

91 of marriage ceremony, and the name, address, and phone number of the officiating
92 person(s).

93 (d) The applicants swear under oath that the information provided is true and accurate
94 and sign the application in the presence of a notary public.

95 (e) The applicants pay the required fees.71.5-3. *Objections.* Any relative of the applicants,
96 Department official, or applicant that objects to an upcoming marriage may file a petition and
97 sworn affidavit with the Court objecting to the marriage.

98 (a) The petition shall state grounds for the belief that a marriage license should not be
99 issued to the applicants or a marriage license that has already been issued should be
100 revoked.

101 (b) The Court shall approve the petition only if the marriage, if conducted, would violate
102 this Law.

103 (c) If the petition is approved by the Court, the applicants shall show cause why the
104 license should be issued or why the license should not be revoked.

105 71.5-4. *Marriage Ceremony.*

106 (a) The marriage must occur between six (6) days after the license is issued and thirty
107 (30) days after the license is issued. The applicant may apply for a waiver of the initial 5
108 day waiting period for an additional fee. The marriage license shall contain notification
109 of these time limits.

110 (b) If neither applicant resides on the Reservation, the marriage ceremony shall be held
111 on the Reservation. If one (1) or both of the applicants reside on the Reservation, the
112 marriage ceremony shall be held within the State of Wisconsin. The applicants shall be
113 notified of this requirement when applying for a marriage license.

114 (c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent
115 adult witnesses present.

116 (d) The parties shall vow by mutual declarations, before the officiating person(s) and
117 witnesses, that they take each other in lawful matrimony.

118 (e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the
119 ceremony, sign and date the marriage document.

120 (f) The officiating person(s) shall deliver the original completed marriage document to
121 the Department within three (3) business days after the ceremony. The Department shall
122 deliver the original marriage document to the Wisconsin Vital Statistics Department
123 within ten (10) business days after it is filed. The Department shall retain a file stamped
124 copy and provide a file stamped copy to the married couple.

125 (g) The Department shall keep a marriage license docket and shall enter therein a
126 complete record of the marriage applications and issuance of marriage licenses which
127 shall be available for public inspection during regular business hours.

128 71.5-5. *Officiating Persons.* The following persons are authorized as officiating persons under
129 this Law:

130 (a) a traditional tribal practitioner or spiritual or religious leader who is commonly
131 recognized as such by the Oneida community or other Indian community and has
132 registered with the Court; or

133 (b) a Judge from the Court or a tribal, federal, or state judge or commissioner authorized
134 to solemnize marriages under tribal, federal or state law; or

135 (c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the
136 request of the persons being married; or

137 (d) any ordained clergyperson of any religious denomination, society, or sect; or

138 (e) any person licensed by a religious body or appointed by a high-ranking clergy
139 member, if the religious denomination, society, or sect allows the person to solemnize
140 marriages; or

141 (f) the parties themselves, by mutual declarations that they take each other as spouses, in
142 accordance with the customs, rules, and regulations of any religious denomination,
143 society, or sect to which either of the parties belongs.
144

145 **71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities**

146 71.6-1. If a person is prohibited from marrying another under this Law and goes to another
147 jurisdiction and there contracts a marriage that is prohibited under this Law, such marriage shall
148 not be recognized by the Tribe.

149 71.6-2. No marriage shall be contracted under this Law by a party residing and intending to
150 continue to reside in another jurisdiction, if such marriage would be void if contracted in such
151 other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

152 71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is
153 consummated with the full belief on the part of the persons so married that they have been
154 lawfully joined in marriage, and:

155 (a) the officiating person(s) did not have the authority to solemnize the marriage; or

156 (b) the marriage license was issued by a department or person who did not have
157 jurisdiction to issue the license; or

158 (c) the marriage license or application for the marriage license had an informality or
159 irregularity; or

160 (d) either or both of the witnesses to the marriage were incompetent; or

161 (e) the marriage ceremony was solemnized outside of the Reservation boundaries, or
162 Brown or Outagamie County, when applicable, or outside of the required time lines listed
163 on the marriage license.
164

165 **71.7. Penalties**

166 71.7-1. A person who knowingly violates this Law may be penalized as follows:

167 (a) Any person who swears to a false statement to obtain a marriage license or to help
168 another obtain a marriage license shall be fined no less than five hundred dollars
169 (\$500.00).

170 (b) Any person who is not an officiating person who solemnizes a marriage ceremony
171 shall be fined no less than one hundred dollars (\$100.00).

172 (c) The parties to a marriage and/or the officiating person(s) of a marriage conducted
173 without a valid marriage license or without the presence of two (2) competent adult
174 witnesses shall be fined no less than one hundred dollars (\$100.00).

175 (d) Any person who goes to another jurisdiction to avoid this Law and contracts a
176 marriage prohibited under this Law shall be fined no less than five hundred dollars
177 (\$500.00).

178 (e) Any person who violates any other provision of this Law shall be fined no less than
179 one hundred dollars (\$100.00).

180 71.7-2. The Department shall be the responsible entity for the enforcement of this section. All
181 fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a
182 fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline
183 to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of
184 penalty issued shall inform the person penalized of the process to file his or her appeal.
185

186 *End.*
187

Adopted-BC-04-28-10-F
Amended-BC-06-12-13-E
Amended-BC-05-27-15-A



Legislative Operating Committee

February 17, 2016

Removal Law Amendments

Submission Date: December 17, 2014

Public Meeting: 10/29/15
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *These amendments will give the OBC the ability to remove elected members of boards, committees and commissions upon petition or request by the board, committee or commission. The OBC removal process will not be amended.*

- 12/17/14 LOC:** Motion by Fawn Billie to add the Removal Law Amendments to the active files list with herself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- 02/18/15 LOC:** Motion by Fawn Billie defer the Removal Law Amendments for a legislative analysis and a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.
- 4/3/15 LOC:** Motion by Jennifer Webster to forward the Removal Law Amendments to an April 30th, 2015 Public Meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 4/30/15:** Public Meeting Held.
- 7/1/15 LOC:** Motion by David P. Jordan to defer the Removal Law Amendments to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 7/1/15:** Work Meeting Held. Attendees include: Brandon Stevens, Tehassi Hill, David P. Jordan, Danelle Wilson, Leyne Orosco, Ed Delgado, Douglass McIntyre, Candice Skenandore, Taniquelle Thurner, Daril Peters, Jordyn Rassmussen.
- 9/4/15:** Strategy meeting held. Attendees include: Brandon Stevens, Jennifer Webster, Fawn Billie, Douglass McIntyre.
- 9/16/15 LOC:** Motion by David P. Jordan to defer the Removal Law Amendments to the Legislative Reference Office to bring back with a proposed date for a Public Meeting; seconded by Fawn Billie. Motion carried unanimously.
- 10/7/15 LOC:** Motion by Jennifer Webster to forward the revised Removal Law Amendments to a public meeting to be held on October 29, 2015 at 12:15 p.m.; seconded by David P. Jordan. Motion carried unanimously.
- 10/29/15:** Public Meeting held.
- 11/18/15 LOC:** Motion by Tehassi Hill to accept the public meeting comments regarding the Removal Law Amendments and defer to a LOC work meeting to be held tentatively on December 4, 2015; seconded by Fawn Billie. Motion carried unanimously.
- 12/4/15:** Work meeting held. Attendees include Brandon Stevens, Tehassi Hill, Danelle Wilson, David P. Jordan, Fawn Billie, Jennifer Webster, Ed Delgado, Yvonne Metivier, Bonnie Pigman, Michelle Mays, Taniquelle Thurner, Douglass McIntyre.

Next Steps:

- Accept the draft and forward to the Legislative Reference Office for an updated analysis and to the Finance Department for a fiscal impact statement.

Chapter 4
REMOVAL LAW

Kwah Oná lluwalihutákwas Kayanláhsla
Just when they will remove him our kind of laws

- | | |
|---|--|
| 4.1. Purpose and Policy | 4.8. Final Determination of General Tribal Council Meeting – Oneida Business Committee |
| 4.2. Adoption, Amendment, Repeal | 4.9. Removal – Elected Official |
| 4.3. Definitions | 4.10. Preliminary Review – Elected Official |
| 4.4. Grounds for Removal | 4.11. Hearing – Elected Official |
| 4.5. Removal – Oneida Business Committee | 4.12. Final Determination of Oneida Business Committee Meeting – Elected Official |
| 4.6. Preliminary Review – Oneida Business Committee | |
| 4.7. Hearing – Oneida Business Committee | |

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4.1. Purpose and Policy

4.1-1. The purpose of this Law is to govern the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin.

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.

4.2. Adoption, Amendment, Repeal

4.2-1. This Law is adopted by the General Tribal Council by Resolution GTC-01-09-06-A and amended by Resolution BC-05-28-14-B and by Resolution GTC_____.

4.2-2. This Law may be amended or repealed by the General Tribal Council ~~only~~ pursuant to the procedures set out in the Legislative Procedures Act.

4.2-3. 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.

4.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)

4.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

4.3. Definitions

4.3-1. This section shall govern the definitions of words or phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Counsel" means an attorney or advocate.
- (b) "Elected Official" means, for the purposes of this Law, any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and ~~does not include the Oneida Business Committee~~ those appointed to vacancies in elected position on a board, committee or commission. For the purpose of

36 this Law, this definition will exclude members of the Oneida Business Committee who
37 are subject to separate removal provisions under this Law.

38 ~~(c)~~ “(Eligible voter)” means a person able to vote under the Constitution of the Oneida
39 Tribe of Indians of Wisconsin.

40 (d) “Judiciary” means the judicial system that was established by Oneida General Tribal
41 Council resolution GTC-01-07-13-B to administer the judicial authorities and
42 responsibilities of the Tribe.

43 ~~(e)~~ “(Tribe ~~or Tribal~~)” means the Oneida Tribe of Indians of Wisconsin.
44

45 **4.4. Grounds for Removal**

46 4.4-1. *Oneida Business Committee.* A member of the Oneida Business Committee may be
47 removed from office for any of the following reasons:

48 (a) failure to attend four (4) regularly scheduled meetings per term without ~~a~~an excused
49 written explanation;

50 (b) intentional mis-use of Tribal funds;

51 (c) alcohol use while performing official responsibilities or use of illegal drugs at any
52 time;

53 ~~(d) if he or she no longer meets~~failure to continue to meet the qualifications for office as
54 identified in the Oneida Constitution;

55 (e) violating a Tribal law which specifies removal as a penalty; or

56 (f) felony conviction while in office.

57 4.4-2. *Elected Official.* An Elected Official may be removed from office for any of the
58 following reasons:

59 (a) failure to attend four (4) regularly scheduled meetings per term without ~~a~~an excused
60 written explanation;

61 (b) failure to attend fifty percent (50%) of an entity’s regular scheduled meetings within
62 a twelve (12) month period for any reason;

63 (c) violation of the by-laws of the board, committee or commission, operating
64 agreements, ~~laws, regulations or Standard Operating Procedures of the board, committee~~
65 ~~or commission~~laws, policies or rules of the Tribe;

66 (d) intentional mis-use of Tribal funds;

67 (e) alcohol use while performing official responsibilities or use of illegal drugs at any
68 time;

69 ~~(f) if he or she no longer meets~~failure to continue to meet the qualifications for office as
70 identified in by-laws and Tribal law;

71 (g) violating a Tribal law which specifies removal as a penalty; ~~or~~

72 (h) felony conviction while in office; ~~or~~

73 (i) or meeting additional grounds for removal as provided in the board, committee or
74 commission bylaws.

75 4.4-3. The failure to continue to meet the qualifications for office as identified in the Oneida
76 Constitution for an Oneida Business Committee member and failure to continue to meet the
77 qualifications for office as identified in by-laws and Tribal law for elected positions may
78 automatically proceed to the preliminary review without requiring the collection of signatures.
79

80 | **4.5. ~~Petition~~Removal – Oneida Business Committee**

81 | 4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an
82 | Oneida Business Committee member. No petition ~~shall~~may request the removal of more than
83 | one (1) Oneida Business Committee member. ~~The~~

84 | 4.5-2. The petitioner shall use a petition shall form which may be obtained through the Tribal
85 | Secretary's Office. The petition form must include appropriate lines for the elgilbe voter's:
86 | shall consist of the same requirements for a petition found under the Election Law.

87 | 4.5-3. The petition must state with particularity the facts upon which it is based and the specific
88 | grounds for removal, in not more than ~~two~~three hundred (~~200~~300) words, and must be signed by
89 | ~~fifty (50) or more~~ a number of eligible voters ~~or a number~~ equal to at least thirty (~~30~~)
90 | (30%) of the votes cast in the previous general election, ~~whichever is greater. A petition may not~~
91 | ~~be amended after it is filed with the Tribal Secretary.~~

92 | ~~4.5-24.~~ The petition ~~shall~~must be filed with the Tribal Sectary's Office within thirty (30)
93 | calendar days after the date the first signature is obtained on the petition.

94 | ~~4.5-3. The A~~ petition ~~shall contain, in ink:~~

95 | ~~(a) The appropriate lines for the eligible voter's:~~

96 | ~~(1) Printed name;~~

97 | ~~(2) Signature;~~

98 | ~~(3) Street address; and~~

99 | ~~(4) Enrollment number.~~

100 | ~~(b) An oath verifying may not be amended after it is filed with the fact that: Tribal Secretary.~~

101 | ~~(1) The circulator witnessed each person sign the petition;~~

102 | ~~(2) Each signature appearing thereon is the genuine signature of the person it~~
103 | ~~purports to be; and~~

104 | ~~(3) The petition was signed in the presence of the witness on the date indicated.~~

105 | ~~4.5-5-4.~~ Upon receipt of a petition, the Tribal Secretary shall promptly:

106 | (a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within
107 | five (5) business days, ~~determine whether the petition contains the requisite number~~
108 | ~~of verify the person who signed petitions are~~ signatures of eligible voters and notify the
109 | Tribal Secretary of the verified petition; and

110 | (b) Notify the Oneida Business Committee member sought to be removed that a petition
111 | has been filed seeking his or her removal by providing a copy of the uncertified petition.

112 | ~~4.5-56.~~ If ~~the Enrollment Department determines that~~ the petition does not contain the requisite
113 | number of signatures, the Tribal Secretary shall so certify to the Oneida Business Committee and
114 | file the petition without taking further action, ~~and~~ the matter shall be at an end. for lack of
115 | requisite signatures. No additional names may be added to the petition, and the petition ~~shall~~may
116 | not be used in any other proceeding.

117 | ~~4.5-67.~~ If ~~the Enrollment Department determines that~~ the petition contains the requisite number
118 | of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be
119 | served upon the Oneida Business Committee member sought to be removed and forward a copy
120 | of the same to the Judiciary.

121 | ~~4.5-78.~~ In the event the removal of the Tribal Secretary is sought, the Tribal Vice Chairperson
122 | shall perform the duties assigned to the Secretary under this Law.

123 |

124 | **4.6. Preliminary Review – Oneida Business Committee**

125 | 4.6-1. The Judiciary, upon receipt of the petition, shall schedule a preliminary review, to take
126 | place within ~~twenty~~ thirty (~~23~~30) calendar days, to determine whether the allegations set forth in

127 the petition would constitute sufficient grounds for removal. The Judiciary may request that the
128 parties submit arguments in writing, and the parties may be represented by Counsel.

129 4.6-2. If the Judiciary determines that a petition does not allege sufficient grounds for removal,
130 the petition shall be dismissed. If the Judiciary determines that the petition alleges sufficient
131 grounds for removal, the Judiciary shall conduct a hearing under 4.7.

132 4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the
133 petition may be reviewed by the Judiciary upon motion of the Oneida Business Committee
134 member whose removal is sought. The motion ~~shall~~must be filed within twenty (20) calendar
135 days of service of the certified copy of the petition upon the Oneida Business Committee
136 member sought to be removed. The motion ~~shall~~must be in writing and the grounds limited to:
137 the authenticity of the signatures.

138 ~~(a) the authenticity of the signatures; and~~

139 ~~(b) whether the signature is that of an eligible voter.~~

140 4.6-4. ~~The Judiciary review shall~~ Where possible, the motion will be ~~conducted~~heard in the
141 presence of the parties, who may be represented by Counsel during the preliminary review. The
142 Judiciary shall provide the parties the opportunity to present evidence and testimony ~~shall be~~
143 ~~provided~~only as to the authenticity of the signatures. The Oneida Business Committee member
144 will have the burden of showing through clear and convincing evidence that the signatures are
145 not authentic. If the Judiciary determines that a petition contains less than the required number
146 of valid signatures, the petition shall be dismissed and the matter shall be at an end.

147

148 **4.7. Hearing – Oneida Business Committee**

149 4.7-1. *Rights of Oneida Business Committee Member at Hearing.* An Oneida Business
150 Committee member whose removal is sought ~~shall have~~has the right to present witnesses on his
151 or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented
152 by Counsel of his or her choice.

153 4.7-2. *Burden of Proof.* A person seeking the removal of an Oneida Business Committee
154 member ~~shall have~~has the burden of proving by clear and convincing evidence that ground(s) for
155 removal exist.

156 4.7-3. *Findings Decision.* The Judiciary shall, within twenty (20) calendar days after the
157 preliminary review has been completed, schedule a hearing to determine whether each allegation
158 of the petition has been proven by clear and convincing evidence, and whether such allegations
159 constitute sufficient grounds for removal under 4.4-1. If the Judiciary determines that sufficient
160 grounds have not been proven, the Judiciary shall dismiss the petition. If the Judiciary
161 determines that the sufficient grounds have been proven, the Judiciary shall forward the written
162 findings decision to the Tribal ~~Chair~~Chairperson and or designee.

163

164 **4.8. Final Determination at General Tribal Council Meeting – Oneida Business Committee**

165 4.8-1. *Special Meeting.* Within forty-five (45) calendar days of receiving the findings decision
166 from the Judiciary, a special General Tribal Council meeting ~~shall~~must be held to consider the
167 findings decision.

168 4.8-2. *Right to address the Council.* An Oneida Business Committee member whose removal is
169 sought ~~shall have~~has the right to address the General Tribal Council personally.

170 4.8-3. *Determination.* An Oneida Business Committee member may only be removed from
171 office upon the affirmative vote of a two-thirds (2/3) majority of the General Tribal Council at a
172 meeting called for the purpose of considering the removal.

173 4.8-4. *Quorum*. If the meeting of the General Tribal Council fails to obtain a quorum, the
174 removal petition ~~shall~~must be dismissed.

175 4.8-5. *Non-appealable*. There is no appeal from the determination of the General Tribal
176 Council.

177

178 4.9. Removal – Elected Official

179 4.9-1. An Elected Official may be subject to removal either by petition or by request of the
180 board, committee or commission, which ~~shall~~must be filed with the Tribal Secretary's Office
181 within thirty (30) calendar days after:

182 (a) the date the first signature is obtained on the petition; or

183 (b) the board, committee or commission adopts the removal request.

184 4.9-2. Upon receipt of a petition or removal request, the Tribal Secretary shall promptly notify
185 the Elected Official sought to be removed that a petition or removal request has been filed
186 seeking his or her removal by providing a copy of the uncertified petition or removal request.

187 4.9-3. *Petitions*. Any eligible voter may file a petition with the Tribal Secretary seeking the
188 removal of an Elected Official. No petition ~~shall~~may request the removal of more than one (1)
189 Elected Official.

190 4-9.4. The petition ~~shall~~must state with particularity the facts upon which it is based and the
191 specific grounds for removal, in not more than ~~two~~three hundred (~~200~~300) words, and must be
192 signed by ~~fifty (50) or more~~ a number of eligible voters ~~or a number~~ equal to at least thirty (~~30~~)
193 percent (30%) of the vote cast in the previous general election, ~~whichever is greater~~. A petition
194 may not be amended after it is filed with the Tribal Secretary.

195 (a) The petitioner shall use a petition form which may be obtained through the Tribal
196 Secretary's Office. The petition form shall consist of the same requirements for a petition
197 found under the Election Law.

198 ~~shall contain, in ink:~~

199 (1) ~~The appropriate lines for the eligible voter's:~~

200 (A) ~~printed name;~~

201 (B) ~~Signature;~~

202 (C) ~~street address; and~~

203 (D) ~~Enrollment Number.~~

204 (2) ~~An oath verifying the fact that:~~

205 (A) ~~The circulator witnessed each person sign the petition;~~

206 (B) ~~Each signature appearing thereon is the genuine signature of the person it purports to~~
207 ~~be; and~~

208 (C) ~~The petition was signed in the presence of the witness on the date~~
209 ~~indicated.~~

210 (b) The Tribal Secretary shall promptly submit such petition to the Oneida Tribal
211 Enrollment Department which shall, within five (5) business days, ~~determine~~verify
212 whether the petition contains the requisite number of the person who signed the petition
213 are signatures of eligible voters.

214 (1) If the ~~Enrollment Department determines that a~~ petition does not contain the
215 requisite number of signatures, the Tribal Secretary shall so certify to the Oneida
216 Business Committee and file the petition without taking further action, ~~and~~
217 the matter ~~shall be~~ at an end: for lack of requisite signatures. No additional names
218 may be added to the petition, and the petition ~~shall~~may not be used in any other
219 proceeding.

220 | (2) If the ~~Enrollment Department determines that a~~ petition contains the requisite
221 | number of signatures, the Tribal Secretary shall promptly cause a certified copy of
222 | the petition to be served upon the Elected Official sought to be removed and
223 | forward a copy of the same to the Judiciary.

224 | 4.9-~~54~~. *Removal Requests*. A board, committee, or commission may file a removal request for
225 | one of its members with the Tribal Secretary ~~for one of its members~~ after adoption of a majority
226 | vote of the board, committee or commission regarding the removal request. No removal request
227 | ~~shall~~may request the removal of more than one (1) Elected Official. The removal request
228 | ~~shall~~must state with particularity the facts upon which it is based and the specific grounds for
229 | removal, in not more than ~~two~~three hundred (~~200~~300) words. A removal request may not be
230 | amended after it is filed with the Tribal Secretary.

231 | (a) Upon verification by the Tribal Secretary of the action the board, committee or
232 | commission adopting the removal request, the Tribal Secretary shall promptly cause a
233 | certified copy of the removal request to be served upon the Elected Official sought to be
234 | removed and forward a copy of the same to the Judiciary.

235 | (b) If the Tribal Secretary determines that a removal request does not meet the
236 | requirements of 4.9-4, the Tribal Secretary shall so certify to the Oneida Business
237 | Committee and file the removal request without taking further action, ~~and~~ the matter ~~shall~~
238 | ~~be~~ at an end for lack of valid action by the board, committee or commission.

240 | **4.10. Preliminary Review – Elected Official**

241 | 4.10-1. The Judiciary, upon receipt of the petition or removal request, shall schedule a
242 | preliminary review, to take place within ~~twenty~~ thirty (~~23~~30) calendar days, to determine whether
243 | the allegations set forth in the petition or removal request would constitute sufficient grounds for
244 | removal. The Judiciary may request that the parties submit arguments in writing, and the parties
245 | may be represented by Counsel.

246 | 4.10-2. If the Judiciary determines that a petition or removal request does not allege sufficient
247 | grounds for removal, the petition ~~or removal request~~ shall be dismissed. If the Judiciary
248 | determines that the petition or removal request alleges sufficient grounds for removal, the
249 | Judiciary shall conduct a hearing under 4.11.

250 | 4.10-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the
251 | petition or the validity of the action of the board, committee or commission adopting a removal
252 | request may be reviewed by the Judiciary upon motion of the Elected Official whose removal is
253 | sought. The motion ~~shall~~must be filed within twenty (20) calendar days of service of the
254 | certified copy of the petition or removal request upon the Elected Official sought to be removed.
255 | The motion ~~shall~~must be in writing and the grounds limited to ~~one (1) or more~~either of the
256 | following:

257 | (a) the authenticity of the signatures on a petition; or

258 | ~~(b) whether the signature on the petition is that of an eligible voter; or~~

259 | ~~(c)~~(b) the validity of the action taken by a board, committee or commission in approving a
260 | removal request.

262 | 4.10-4. ~~The Judiciary review shall~~ Where possible, the motion will be ~~conducted~~heard in the
263 | presence of the parties, who may be represented by Counsel during the review. The Judiciary
264 | shall provide the parties the opportunity to present evidence and testimony ~~shall be provided~~only
265 | as to the authenticity of the signatures and the validity of the action taken by a board, committee
266 | or commission in approving a removal request. The elected official will have the burden of

267 showing through clear and convincing evidence that the signatures are not authentic or the board
 268 action was not valid. If the Judiciary determines that a petition contains less than the required
 269 number of valid signatures, or the petition shall be dismissed. ~~If the Judiciary determines that a~~
 270 ~~removal request does not contain valid~~ action taken by ~~the~~ board, committee or commission in
 271 approving a removal request was invalid, the Judiciary shall dismiss the petition and the ~~removal~~
 272 ~~request~~ matter shall be ~~dismissed.~~ at an end.

273
 274 **4.11. Hearing – Elected Official**

275 4.11-1. *Rights of Elected Official at Hearing.* An Elected Official whose removal is sought ~~shall~~
 276 ~~have~~ has the right to present witnesses on his or her behalf; to cross-examine adverse witnesses;
 277 and to, at his or her expense, be represented by Counsel of his or her choice.

278 4.11-2. *Burden of Proof.* A ~~person~~ party seeking the removal of an Elected Official ~~shall~~
 279 ~~have~~ has the burden of proving by clear and convincing evidence that ground(s) for removal
 280 exist.

281 4.11-3. *Findings Decision.* The Judiciary shall, within twenty (20) calendar days after the
 282 preliminary review has been completed, schedule a hearing to determine whether each allegation
 283 of the petition or removal request has been proven by clear and convincing evidence, and
 284 whether such allegations constitute sufficient grounds for removal under 4.4-2. If the Judiciary
 285 determines that sufficient grounds have not been proven, the Judiciary shall dismiss the petition
 286 or removal request. If the Judiciary determines that the sufficient grounds have been proven, the
 287 Judiciary shall forward the written findings decision to the Tribal ~~Chair~~ Chairperson and or
 288 designee.

289
 290 **4.12. Final Determination at Oneida Business Committee Meeting – Elected Official**

291 4.12-1. *Special Meeting.* Within forty-five (45) calendar days of receiving the findings decision
 292 from the Judiciary, a special Oneida Business Committee meeting ~~shall~~ must be held to consider
 293 the findings decision.

294 4.12-2. *Right to address the Oneida Business Committee.* An Elected Official whose removal is
 295 sought ~~shall~~ ~~have~~ has the right to address the Oneida Business Committee personally.

296 4.12-3. *Determination.* An Elected Official may only be removed from office upon the
 297 affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for
 298 the purpose of considering the removal.

299 4.12-4. *Quorum.* If the meeting of the Oneida Business Committee fails to obtain a quorum, the
 300 removal request ~~shall~~ must be dismissed.

301 4.12-5. Non-appealable. There is no appeal from the determination of the Oneida Business
 302 Committee.

303
 304 *End.*

306 Adopted GTC-01-09-06-A
 307 Amended – BC-05-28-14-B



Legislative Operating Committee

February 17, 2016

Violence Against Women Act (VAWA)

Submission Date: March 18, 2015

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Jennifer Webster

Summary: *This item will look at how the Tribe can exercise jurisdiction over non-Indians in domestic abuse cases on the Reservations being that the State of Wisconsin is a PL 280 state.*

3/18/15 LOC: Motion by Tehassi Hill to add the Violence Against Women Act to the active files list; second by Fawn Billie. Motion carried unanimously.

5/20/15 LOC: Motion by Fawn Billie to accept the Violence Against Women Act (VAWA) memorandum as FYI; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Accept the memorandum and direct next steps.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Krystal L. John, Staff Attorney
 Douglass A. McIntyre, Staff Attorney
 Taniquelle J. Thurner, Legislative Analyst
 Maureen Perkins, Legislative Analyst



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

Memorandum

TO: Legislative Operating Committee
FROM: Douglass McIntyre
DATE: February 17, 2016
RE: Active File – Violence Against Women Act

On March 18, 2015, the Legislative Operating Committee (LOC) added the Violence Against Women Act (VAWA) to the Active Files List. On May 20, 2015, the LOC deferred to the Legislative Reference Office to complete research on how the Tribe can exercise jurisdiction over non-Indians in domestic abuse incidences that occur on the Reservation. The following lays out the research:

Background

In the 1978 United States Supreme Court case *Oliphant v Suquamish Indian Tribe*, the Supreme Court held that Indian Tribes did not have inherent criminal jurisdiction over non-Indians for crimes that occurred within the boundaries of the reservation. This caused many issues within Indian country as states generally do not have criminal jurisdiction on most reservations and the federal government only has jurisdiction over certain cases (such as murder, manslaughter, kidnapping, maiming, arson, burglary, robbery, felony assault, along with other felonies under the Major Crime Acts, 18 USC § 1153). The *Oliphant* decision essentially created a lawless gap in Indian country that allowed non-Indians to violate the law without the ability of a Tribe to prosecute the offenders.

Violence Against Women Act (VAWA)

In 2013, the United States Congress renewed the Violence Against Women Act (VAWA) with added provisions to help fix the problem caused by the *Oliphant* decision. These provisions would allow participating Tribes to have “special domestic violence criminal jurisdiction” to prosecute non-Indian offenders for domestic violence, dating violence and criminal violation of protection orders in certain cases.¹ However, this expanded jurisdiction is conditioned on a Tribe meeting certain due process requirements. A Tribe would need to:

¹ The expanded jurisdiction does not apply where: 1) both victim and offender are non-Indian; 2) the offender lacks sufficient ties to the participating Tribe; 3) the crime occurs off reservation

- protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the U.S. Constitution's Bill of Rights, including the right to due process.
- protect the rights of defendants as described in the Tribal Law and Order Act of 2010, by providing:
 - Effective assistance of counsel for defendants;
 - Free, appointed, licensed attorneys for indigent defendants;
 - Law-trained tribal judges who are also licensed to practice law;
 - Publicly available tribal criminal laws and rules; and
 - Recorded criminal proceedings.
- include a fair cross-section of the community in jury pools and not systematically exclude non-Indians.
- inform defendants ordered detained by a tribal court of their right to file federal habeas corpus petitions if the Tribe met certain requirements.

Public Law 280

The Oneida Tribe of Indians of Wisconsin falls into a unique position in Indian Country as Wisconsin is one of a handful of states under Public Law 280 (PL 280). PL 280 grants states criminal prohibitory jurisdiction over offenses committed on reservation by either an Indian or a non-Indian. Under a PL 280 state a non-Indian that commits a crime against an Indian could be charged in state court. Therefore, the Oneida Tribe does not experience the same gap in regard to prosecution of crimes covered by the VAWA extended jurisdiction.

Extending Oneida Jurisdiction

At this time, the Tribe is not exercising any criminal jurisdiction. However, Congress has provided a way for the Tribes to regain some of its authority, including criminal jurisdiction, through retrocession. This would give the Tribe the ability to prosecute Indians for crimes committed on the reservation as well as potentially non-Indians under VAWA if the conditions provided above were met. Currently, there are efforts to plan for retrocession of criminal jurisdiction, but this are in the initial planning stages and not likely to be finalized in the near future.

For the Oneida Tribe to move towards having criminal jurisdiction in general there are a number of obstacles that would need to be addressed:

- the Oneida Judiciary is not currently equipped to handle criminal cases
- a criminal court would need to be established including funding and potentially more court staff;
- a criminal code of laws would need to be drafted and made available to the public;
- at least one compact with a local jail would be needed to house those that are sentenced to serve jail time;
- a prosecutor's office would need to be established including funding and a staff;

- In addition, to exercise the extended jurisdiction under VAWA, the Tribe would need to meet the requirements provided earlier including:
 - requiring that criminal court judge(s) be licensed-attorneys;
 - providing a structure for free criminal defense for indigent defendants;.
 - creating a system and funding a jury pools system which does not systematically exclude non-Indians;

Conclusion

Given that 1) the Tribe does not currently exercise any criminal jurisdiction, 2) the Tribe has significant pieces to put in place prior to being able to exercise criminal jurisdiction; and 3) Wisconsin already has jurisdiction over a crime that would fall under the VAWA extended jurisdiction there is no immediate pressing need to pass any legislation on VAWA. Any legislation should be done in conjunction with the retrocession efforts. However these efforts are not likely to reach the point where legislation would be required within the current term.

As such, it is the recommendation of the Legislative Reference Office that VAWA be removed from the active files list as there is no current legislation that can be created until the retrocession efforts are move forward.

Requested Action

Motion to accept the memorandum regarding the status of the VAWA as FYI and direct next actions.



Legislative Operating Committee

February 17, 2016

Administrative Rulemaking Law

Submission Date: 09/17/14

Public Meeting:
 Emergency Enacted:
 Expires:

LOC Sponsor: Tehassi Hill

Summary: *This item was carried over into the current term by the LOC. Originally submitted to the LOC on April 13, 2012; the proposal seeks a consistent process for the adoption of administrative rules by Tribal agencies that have been granted rulemaking authority under other Tribal laws.*

9/17/14 LOC: Motion by Tehassi Hill to add the Rulemaking Law to the Active Files List with Tehassi Hill as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8/19/15 LOC: Motion by Fawn Billie to defer the Rulemaking Law, with the noted changes, to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; and to bring an update to the September 16, 2015 LOC meeting and to bring back the legislative analysis within 60 days; seconded by Tehassi Hill. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to accept the memorandum regarding the status of the Administrative Rulemaking Law as FYI; seconded by Jennifer Webster. Motion carried unanimously.

10/21/15 LOC: Motion by Fawn Billie to accept the legislative analysis and defer the Administrative Rulemaking Law to the sponsor to go through the noted considerations, make any changes if necessary and prepare for December 3, 2015 public meeting; seconded by David P. Jordan. Motion carried unanimously.

12/16/15 LOC: Motion by David P. Jordan to enter the Administrative Rulemaking Law and Comprehensive Policy Governing Boards, Committees and Commissions Amendments e-poll into the record; seconded by Jennifer Webster. Motion carried unanimously.

2/3/16 LOC: Motion by David P. Jordan to direct the Legislative Reference Office to make the noted changes to the Administrative Rulemaking Law and defer the remainder of the policy consideration to a meeting with the sponsor; to update the Legislative Analysis and to prepare an adoption packet for Oneida Business Committee consideration; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Forward the Administrative Rulemaking Law adoption packet to the Oneida Business Committee for consideration.

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

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 Oneida, WI 54155
 (920) 869-4376
 (800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members

Brandon Stevens, Chairperson
 Tehassi Hill, Vice Chairperson
 Fawn Billie, Councilmember
 David P. Jordan, Councilmember
 Jennifer Webster, Councilmember

Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: February 24, 2016
Re: Administrative Rulemaking Law

Please find the following attached backup documentation for your consideration of the new Administrative Rulemaking Law:

1. Resolution: Administrative Rulemaking Law
2. Statement of Effect: Administrative Rulemaking Law
3. Administrative Rulemaking Law Legislative Analysis
4. Administrative Rulemaking Law (clean)
5. Administrative Rulemaking Law Fiscal Impact Statement

Overview

This Resolution adopts a new Administrative Rulemaking Law that:

- Allows authorized agencies to prepare their own rules, conduct the required public meetings; receive comments during the public comment periods, and review/consider all comments received. [17.4 and 17.6]
- Provides a rule officially goes into effect after the Legislative Operating Committee (LOC) certifies that it was promulgated in accordance with this Law – it does not have to be adopted by Oneida Business Committee (OBC) or General Tribal Council (GTC) resolution [17.7], except that the OBC is still responsible for adopting emergency rules before they go into effect. [17.9]
- Requires the OBC to review a rule once it has been certified by the LOC. This Law sets out a detailed process for the OBC to repeal/change a rule within a certain amount of time after it has been certified. [17.7]
- Includes a standard of review – i.e. identifying when a person can appeal decisions and actions taken pursuant to a rule, and when a judge can reverse or modify an action. [17.11 and 17.12]
- Identifies requirements for seeking judicial review of a rule (i.e. seeking to have the Judiciary determine whether a rule is valid) – and enabling the Judiciary to strike down part or all of a rule if it violates the Tribe's constitution or is otherwise unlawful, or if the Rule exceeds the authorized agency's rulemaking authority.

In accordance with the Legislative Procedures Act, a public meeting was held regarding these amendments on January 7, 2016 and the comments received during that process were consider by the LOC at the LOC meeting held on February 3, 2016.

Requested Action

Approve the Resolution: Administrative Rulemaking Law

BC Resolution _____
Administrative Rulemaking Law

1
2
3
4 **WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian
5 government and a treaty tribe recognized by the laws of the United States of
6 America; and

7 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of
8 Indians of Wisconsin; and

9 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV,
10 Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal
11 Council; and

12 **WHEREAS,** the Tribe's current laws and policies delegate authority to various Tribal entities
13 to interpret, implement and/or enforce Tribal laws and policies, but there is no
14 consistent process required for exercising that authority; and

15 **WHEREAS,** the Oneida Business Committee recognizes a need to create a standardized
16 process to govern how Tribal entities exercise the authority that is delegated to
17 them by law; and

18 **WHEREAS,** this Law establishes one consistent process for how Tribal entities may
19 promulgate rules in furtherance of the responsibilities delegated to them to
20 interpret, implement and/or enforce Tribal laws and policies; and

21 **WHEREAS,** the process established by this Law would require public meetings and public
22 comment periods for all rules, and

23 **WHEREAS,** this Law requires the Legislative Operating Committee to review and certify a
24 rule before it can become effective, and requires the Oneida Business Committee
25 to review a rule after it has been certified by the Legislative Operating
26 Committee; and

27 **WHEREAS,** this Law sets out a process for the Oneida Business Committee to amend Rules
28 after they have been enacted, if it determines that it is necessary; and

29 **WHEREAS,** a public meeting on the proposed Law was held on January 7, 2016 in accordance
30 with the Legislative Procedures Act; and

31 **NOW THEREFORE BE IT RESOLVED,** that the Administrative Rulemaking Law is
32 hereby adopted; and

33 **NOW BE IT FURTHER RESOLVED**, that all forms of exercised authority that would be
34 considered rules under this Law remain in effect in their current form, but will become subject
35 to the requirements of this Law for any subsequent amendments; and

36 **NOW BE IT FINALLY RESOLVED**, Tribal entities shall submit that all forms of exercised
37 authority that would be considered rules under this Law to the Legislative Operating
38 Committee within six (6) months of the date of this Resolution so that the LOC may publish
39 them on the Oneida Register.

40

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Krystal L. John, Staff Attorney
 Douglass A. McIntyre, Staff Attorney
 Taniquelle J. Thurner, Legislative Analyst
 Maureen Perkins, LTE Legislative Analyst



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Statement of Effect

Resolution: Administrative Rulemaking Law

Summary

This Resolution adopts the Administrative Rulemaking (Law). This is a new Law that:

- Allows authorized agencies to prepare their own rules, conduct the required public meetings; receive comments during the public comment periods, and review/consider all comments received. [17.4 and 17.6]
- Provides a rule officially goes into effect after the Legislative Operating Committee (LOC) certifies that it was promulgated in accordance with this Law – it does not have to be adopted by Oneida Business Committee (OBC) or General Tribal Council (GTC) resolution [17.7], except that the OBC is still responsible for adopting emergency rules before they go into effect. [17.9]
- Requires the OBC to review a rule once it has been certified by the LOC. This Law sets out a detailed process for the OBC to repeal/change a rule within a certain amount of time after it has been certified. [17.7]
- Includes a standard of review – i.e. identifying when a person can appeal decisions and actions taken pursuant to a rule, and when a judge can reverse or modify an action. [17.11 and 17.12]
- Identifies requirements for seeking judicial review of a rule (i.e. seeking to have the Judiciary determine whether a rule is valid) – and enabling the Judiciary to strike down part or all of a rule if it violates the Tribe’s constitution or is otherwise unlawful, or if the Rule exceeds the authorized agency’s rulemaking authority.

Submitted by Krystal L. John, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This Law is one of the LOC’s priorities. It provides a detailed process for entities that are authorized agencies to adopt new rules and to amend current rules. An entity is an authorized agency under this law if a law other than the Administrative Rulemaking Law delegates the entity authority to interpret, implement and/or enforce the said law. Currently entities and departments that are delegated authority under laws of the Tribe implement that authority in a variety of different ways including notice only to the OBC and required approval of the OBC. This Law unifies that process.

This Law’s rulemaking process applies to all new rules being developed and includes a

“grandfather” provision, which allows all rules currently in place (whether formally called “rules,” “standard operating procedures,” or anything else that would amount to rulemaking authority under this Law) to remain in place. This Law’s rulemaking process would apply to these rules if/when they are amended in the future.

There is also a requirement that all current rules, which includes citation schedules, must be submitted to the LOC within six (6) months of the date this Law is adopted to be included on the Oneida Register. This will create a centralized location for all laws and rules

This Law will supersede all provisions in other laws that include processes for the promulgation of administrative rules that contradict with the process contained in this Law. Because this law supersedes those provisions, it is not necessary to immediately amend those Laws, but as they naturally come up for amendment, any conflicting processes should be removed and replaced with a reference to the Administrative Rulemaking Law. Nearly all of the Tribe’s laws and policies contain some sort of delegation of authority that this law considers rulemaking authority.

Conclusion

Adoption of this Resolution would not conflict with Tribal law.

Chapter 17
Administrative Rulemaking
Thotih<=& lutyank<slu-nShe>
they are the leaders, they are making the laws, policies and rules

<i>Analysis by the Legislative Reference Office</i>					
Title	Administrative Rulemaking Law (the Law)				
Requester	LOC (previous term)	Drafter	Krystal John	Analyst	Tani Thurner
Reason for Request	To ensure consistency in how Tribal boards, committees, commissions, departments and officials develop and implement Rules in furtherance of the laws they are delegated authority to implement/enforce.				
Purpose	This Law is being requested in order to develop a consistent process for promulgating Tribal Rules, which are created to further the goals established by a Tribal law.				
Authorized/ Affected Entities	Legislative Operating Committee (LOC) and Legislative Reference Office (LRO) are given duties under this Law; all Tribal entities, departments and officials with “Rulemaking Authority” are affected when developing/amending Rules.				
Due Process	Judicial Review of Rules				
Related Legislation	The Legislative Procedures Act (LPA) identifies a similar process for the promulgation and adoption of Tribal laws.				
Enforcement	Judicial Review of Rules, Rules can be challenged if they are not promulgated in accordance with this Law.				

Overview

The Tribe currently has a law in place (the LPA) that establishes a process and requirements for adopting and amending Tribal laws. This Law establishes a process and requirements for adopting and amending Rules promulgated in furtherance of those laws.

The purpose and policy of this Law are to provide a process for adopting and amending Administrative Rules (Rules) that is efficient, effective and democratic, and to ensure that Authorized Agencies act responsibly and consistently when enacting and revising Rules. [17.1]

Attached to the Law is a chart which sets out the process for creating Rules. This is intended to be adopted as part of the Law.

What is a Rule?

A Rule is “a set of requirements enacted by an Authorized Agency in order to implement, interpret and/or enforce a law of the Tribe, which includes citation fee and penalty schedules.” [17.3-1(f)] Rules have the same force and effect as the law they were developed under, and must be followed by both the general public and the Authorized Agency promulgating the Rule. [17.4-1(b)]

Generally, laws set out broad requirements; but more specific, detailed requirements are needed to actually carry out the law. Various Tribal laws delegate authority to specific Tribal “agencies” (i.e. boards, committees, commissions, departments or officers of the Tribe) to administer and/or enforce that law; and this Law authorizes those agencies to develop and adopt Rules, in furtherance of those responsibilities.

An “Authorized Agency” is any Tribal board, committee, commission, department or officer that has “Rulemaking Authority” – i.e. authority delegated in a Tribal law to implement, interpret and/or enforce that law. [17.3-1(a)&(g)]

24 This Law does not apply to standard operating procedures, defined as “statements,
25 interpretations, decisions, internal rules, regulations, internal policies, procedures or other
26 matters concerning internal management of an agency, which do not affect the private rights or
27 interests of individuals outside of the agency.” [17.4-1(a)]

28 Although not stated in this Law, it is intended that existing Tribal policies, which have
29 been adopted by the Oneida Business Committee (OBC) will be reorganized and re-classified as
30 laws or Rules, meaning that any existing policies may also delegate Rulemaking Authority.

31 **Rules already in effect**

32 Any Rules adopted after this Law goes into effect are valid only if adopted “in substantial
33 compliance” with this Law. Any Rules already in effect when this Law is adopted will remain in
34 effect unless the OBC directs that they be updated; but if they are ever amended, those
35 amendments must follow this law’s requirements. [17.4-3]

36 Although not stated in the Law, it is intended that the adopting Resolution would require
37 authorized agencies to forward any existing Rules to the Legislative Reference Office, to be
38 published on the Oneida Register within a certain period of time after this Law is adopted.

39 **Overview: The Rulemaking Process**

40 The Rulemaking process is similar to the lawmaking process, except:

- 41 • Instead of the LOC, each Authorized Agency is responsible for preparing its own Rules,
42 conducting the required public meetings; receiving comments during the public comment
43 periods, and reviewing/considering all comments received. [17.4 and 17.6]
- 44 • A Rule goes into effect after the LOC certifies it – it does not have to be adopted by OBC or
45 GTC resolution. [17.7] The OBC does not review a Rule until after it has gone into effect
46 (except for emergency Rules – see below), but this Law adds a detailed process for the OBC
47 to repeal/change a Rule within a certain period of time after it has been enacted. [17.7] If the
48 OBC and the authorized agency do not agree on the changes to be made to a Rule; the OBC
49 may direct the LOC to prepare a revised Rule, which would then be adopted by the OBC.
- 50 • This Law provides for standards of review for actions and decisions taken pursuant to a Rule,
51 adding that Authorized Agencies are recognized as subject matter experts in their areas, so
52 Tribal hearing bodies are required to uphold to an Authorized Agency’s actions and decisions
53 except in certain listed circumstances. [17.12]
- 54 • This Law also authorizes the Judiciary to issue declaratory judgments to determine the
55 validity of a Rule, just like it can for a law. However, actions to challenge a Rule on the basis
56 that it was not promulgated as required by this Law, can only be brought within one year
57 after the Rule’s effective date. [17.11-1]

58 **Who can propose/request that a Rule be developed?**

59 Only Authorized Agencies may promulgate Rules; and they may only promulgate Rules
60 interpreting a law that the Authorized Agency has been delegated authority to administer or
61 enforce. Rules may not exceed the Rule Making Authority given to the Authorized Agency by
62 that law. This Law does not confer Rulemaking Authority. [17.4-1]

63 **Public Meeting/Comment Requirements for Rules**

64 This Law requires public meetings to be held before a Rule can be enacted. The public
65 meetings are similar to those conducted for laws, except the Authorized Agency (instead of the
66 LOC) is responsible for publishing notice, conducting the meeting; and receiving and
67 considering all comments submitted during the public comment period [17.6-2]. Unlike laws, the
68 Public Meetings for Rules must be audio recorded. [17.6-2(f)]

69 After a public comment period ends, the Agency must fully consider all public comments

70 received; and must prepare a memo identifying every comment received, along with the
71 Agency’s response to each comment. This memo accompanies the proposed Rule when it is
72 submitted to the LOC for certification, and to the OBC for review. [17.10-1(c)]

73 **Submission Materials**

74 When a Rule is presented for public comment, LOC certification or OBC review, it is
75 required to be accompanied by supporting materials, which are combined into one summary
76 report, which must provide an overview of the Rule, [17.5-2] and include:

- 77 • A **statement of effect** – this is a legislative and legal analysis, prepared by the Legislative
78 Reference Office (LRO) upon request from the Agency [17.5-2(d)]; which explains the
79 effects the Rule would have on the Tribe. [17.2-5(h)]
- 80 • A **financial analysis** –prepared by the Authorized Agency, this must include a report from
81 every entity that may be financially affected by the Rule. [17.3-1(c)] If an entity does not
82 provide the requested information within 10 business days the financial analysis may still be
83 submitted, noting which entities did not respond to their request. [17.5-2(e)(1)]
- 84 • **Public Comment Changes.** As part of the summary report, an Authorized Agency must
85 include “a description of any changes made to the proposed Rule based on the public
86 comment period (if applicable).” Agencies are not required to identify any changes made that
87 were not based on the public comment period. [17.5-2.]

88 **LOC Certification**

89 Each Authorized Agency ultimately adopts its own Rules (except emergency Rules and
90 OBC amendments – see below), and determines a Rule’s effective date, but a Rule can only
91 become effective after the LOC certifies that all the requirements of this Law were met. [17.8]
92 Once a Rule is ready for adoption, the Agency submits it, along with the following, to the LOC:

- 93 • the summary report
- 94 • a memo showing the procedural timeline when the requirements of this Law were met
- 95 • supporting documentation, as listed in the Law,
- 96 • A memo identifying every public comment received and the agency’s response to each.
- 97 • The effective date for the new Rule or amendments to go into effect. [17.10-1.]

98 Then, if the Rule was promulgated in accordance with this Law, the LOC issues a written
99 certification, and publishes the Rule on the Oneida Register. [17.7-2] If the LOC is “unable to
100 certify” that the Agency has complied with this Law, the LOC must return the Rule to the
101 Agency with specific feedback as to what procedural requirements were not met. [17.7-2]

102 **OBC Review of Rules**

103 This OBC only reviews a Rule after it has been certified by the LOC and enacted.

- 104 • After certifying a Rule, the LOC forwards the Rule and supporting materials to the OBC for
105 review.
- 106 • If the OBC has any concerns or requested revisions, the Authorized Agency “shall work
107 with” the OBC to “address any concerns.”
- 108 • The Rule remains in effect as adopted by the Agency, unless:
 - 109 ○ The OBC deems it necessary to repeal the Rule, in which case any Rule in effect prior to
110 the repealed Rule is immediately reinstated, or
 - 111 ○ The OBC provides the agency with written notice of intent to repeal or amend the Rule
112 within 30 days after receiving notice of the Rule, and a revised Rule is adopted within six
113 months afterwards. [17.7-3(b)]
- 114 • If the Agency and the OBC agree upon the necessary changes, the Agency must
115 process the amendments and adopt an amended Rule with those changes.

162 contributed to the final decision; and the decision would have been different otherwise.
163 If the Tribal hearing body finds that the appeal or action did any of these, then it must either
164 reverse or modify the action taken; or remand the matter for further consideration, if the action
165 was at the second level of appeal. [17.12]

166 **New Responsibilities**

- 167 • **New Entity Responsibilities:** Every Tribal entity (including officers) that is delegated
168 authority by law to implement or enforce a Tribal law is now responsible for developing their
169 own Rules, and for each Rule they are responsible for: conducting public comment periods,
170 reviewing all public comment received; preparing a fiscal analysis and various reports;
171 including memos identifying the procedural timeline, identifying/responding to every public
172 comment received, and ultimately, adopting their Rules. [17.5-2 and 17.10-1]
- 173 • **New LOC Responsibilities:**
 - 174 ○ Developing a template for Rules, which Authorized Agencies must comply with (the
175 template is not subject to the procedural requirements of this Law, which appears to
176 mean this is not a delegation of Rulemaking Authority to the LOC). [17.5-1]
 - 177 ○ Reviewing and either certifying a Rule and forwarding it to the OBC, or sending a
178 rejected Rule back to the agency with specific feedback as to which procedural
179 requirements were not fulfilled. [17.7]
 - 180 ○ Publishing certified/final Rules on the Oneida Register. [17.7-2(a) and 17.7-3(f)]
 - 181 ○ Reviewing emergency Rules to determine if there is a valid emergency. [17.9-1]
 - 182 ○ Preparing amendments to Rules, including conducting any necessary public meetings,
183 when the OBC directs amendments to a Rule but the Authorized Agency does not
184 agree with those amendments. [17.7-3(c)(2)]
 - 185 ○ Creating and updating administrative histories for each Rule. [17.10-2]
 - 186 ○ Publishing pre-existing and emergency Rules on the Register. [17.7-3(e) and 17.9-5]
- 187 • **New LRO Responsibilities:**
 - 188 ▪ Creating/maintaining a record of all proposed and adopted Rules. [17.10-1]
 - 189 ▪ Preparing statements of effect for all Rules, upon request of the Agency. [17.5-2(d)]

190 **Other**

191 This Law requires Rules to follow the same numbering format as laws. [17.5-1]

192 The LPA was adopted by General Tribal Council (GTC) and can only be amended by
193 GTC; this Law would be adopted by the Oneida Business Committee (OBC) and could only be
194 amended or repealed by the OBC. [17.2-1 and 17.2-2]

195 A public meeting was held on January 7, 2016 and any comments received during the
196 Public Meeting and public comment period have been reviewed by the LOC, and any changes
197 based on the public meeting and public comment period, if any, have been incorporated into this
198 draft.

200 **Considerations**

201 Other Law

- 202 • When the LPA is next amended, it is also recommended that the definition of the Oneida
203 Register be revised to state that it includes agency “Rules” instead of agency regulations, to
204 reflect this Law. Similarly, future amendments to other Tribal laws and policies should also
205 include changes to ensure they are consistent with terminology related to Rules, policies, and
206 laws, and with the requirements of this Law.
- 207 • The language used in some laws may be ambiguous, meaning it is not clear whether the law

208 actually delegates authority to establish certain types of Rules. It may be beneficial to review
209 all other laws and identify how each will be affected by this Law; and/or to clarify the
210 delegation of authority as set out in each law.

211 Policy Calls

- 212 • Under section 17.9, Emergency Rules are first submitted to the LOC, who must determine
213 whether there is a valid emergency, and if they determine that there is, then they must forward
214 the materials to the OBC, who must then determine whether there is a valid emergency, before
215 doing anything. It is not clear why the LOC must first review the Rule to determine whether
216 there is a valid emergency, if the OBC is then going to do the same thing again. Especially in
217 an emergency situation where a Rule must be implemented quickly. This is a policy call.

218 Other

- 219 • This Law gives Rulemaking Authority to Authorized Agencies, i.e. Tribal boards, committees
220 and commissions, officers and departments. However, it is not clear if this would include OBC
221 standing committees, because although those might be called committees, they are not elected
222 by the membership or appointed by the OBC, and some only consist of OBC members.
223 Recommended: clarify whether the intent is for this to apply to standing committees, which
224 would include the LOC, Audit Committee, Finance committee, Quality of Life Committee and
225 the CDPC.
- 226 • There are various provisions in this Law which are difficult to read (confusing organization,
227 run-on sentences, or redundant and repetitive provisions.) Historically, the Tribe has worked to
228 develop Laws that were streamlined and direct, so that laypersons could clearly understand the
229 intent and requirements. If this is still a goal, it is recommended that this Law be reviewed to
230 determine whether the language of any provisions or sections should be simplified. For
231 example, 17.6-2(g) and 17.7-1 contain run-on sentences, and section 17.7-3 is overly
232 complicated and may be difficult for a layperson to read.
- 233 • Many of the words in the definitions section are capitalized throughout the Law. It is not clear
234 why these words are capitalized, as this is not standard drafting practice. However, if it is the
235 intent of the OBC to change this standard practice and require that all defined words be
236 capitalized in future legislation, then this Law still should be reviewed to ensure all words are
237 consistently capitalized – and to ensure that words which are not defined are not capitalized –
238 for example, “Administrative Record”, and the word “Section” in 17.3-1.
- 239 • Sections 17.2 and 17.3 are not completely compliant with the exact wording required by the
240 LPA.
 - 241 ○ Section 16.11-1(b) of the LPA states “The following shall be the wording of Section 2,
242 unless other sections are necessary to convey needed information [...]”. The required
243 language is then used in section 2 except that 17.2-3 says “does not” instead of “shall
244 not” and 17.2-4 says “controls” instead of “shall control”.
 - 245 ○ For section 3, the LPA [16.11-1(c)] states “the section wording shall be as follows” –
246 and this Law includes the language that follows except 17.3-1 includes the words “are
247 to be” instead of “shall be.”

Chapter 17
Administrative Rulemaking
ThotihΛ·tú lutyaniΛslu·nιhe?

they are the leaders, they are making the laws, policies and rules

17.1. Purpose and Policy
17.2. Adoption, Amendment, Repeal
17.3. Definitions
17.4. General
17.5. Preparation of Proposed Rules
17.6. Public Comment Period on Proposed Rules

17.7. Oneida Legislative Operating Committee Certification of
Procedural Compliance and Business Committee Review
17.8. Effective Date of Rules
17.9. Emergency Rules
17.11. Judicial Review of a Rule

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17.1. Purpose and Policy

17.1-1. *Purpose.* The purpose of this Law is to provide a process for the adoption and amendment of administrative Rules.

17.1-2. *Policy.* It is the policy of the Tribe to ensure:

- (a) There is an efficient, effective and democratic process for enacting and revising administrative Rules.
- (b) That Authorized Agencies act in a responsible and consistent manner when enacting and revising the administrative Rules.

17.2. Adoption, Amendment, Repeal

17.2-1. This Law was adopted by the Oneida Business Committee by resolution _____.

17.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

17.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

17.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law control.

17.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

17.3. Definitions

17.3-1. This Section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday use.

- (a) “Authorized Agency” means any board, committee, commission, department, or officer of the Tribe that has been granted Rulemaking Authority.
- (b) “Business Day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Tribe.
- (c) “Financial Analysis” means an estimate of the total fiscal year financial effects associated with a proposed Rule prepared by the Authorized Agency proposing the Rule. It includes startup costs, personnel, office, documentation costs, an estimate of the amount of time necessary for an individual or agency to comply with the Rule after implementation.
- (d) “Entity” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida

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38 Business Committee or elected by the majority of the Tribe’s eligible voters and also any
39 department of the Tribe.

40 (e) “Oneida Register” means the free legal periodical published on the Tribe’s website
41 by the Legislative Operating Committee which contains, at a minimum, agency Rules,
42 proposed legislation and notices, and either the Oneida Code of Laws or directions to
43 obtain free access to the Oneida Code of Laws.

44 (f) “Rule” means a set of requirements enacted by an Authorized Agency in order to
45 implement, interpret and/or enforce a law of the Tribe, which includes citation fee and
46 penalty schedules.

47 (g) “Rulemaking Authority” means the delegation of authority to Authorized Agencies
48 found in the Tribe’s laws other than this Law which allows Authorized Agencies to
49 implement, interpret and/or enforce a law of the Tribe.

50 (h) “Statement of Effect” means a legislative and legal analysis which explains the
51 effects that adopting a Rule would have on the Tribe.

52 (i) “Tribe” means the Oneida Tribe of Indians of Wisconsin.

53

54 **17.4. General**

55 17.4-1. *Administrative Rulemaking.* Only Authorized Agencies may promulgate Rules; this
56 Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the
57 Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules
58 interpreting the provisions of any law enforced or administered by it; provided that, a Rule may
59 not exceed the Rulemaking Authority granted under the law for which the Rule is being
60 promulgated.

61 (a) This Law does not apply to standard operating procedures, which for the purposes of
62 this section are statements, interpretations, decisions, internal rules, regulations, internal
63 policies, procedures or other matters concerning internal management of an agency,
64 which do not affect the private rights or interests of individuals outside of the agency.

65 (b) Rules developed pursuant to this Law have the same force and effect as the law
66 which delegated the Authorized Agency Rulemaking Authority and must be followed by
67 both the general public and the Authorized Agency promulgating the Rule.

68 17.4-2. *Authorized Agency Solicitation of Comment on General Subject Matter.* For the purpose
69 of soliciting public comment, an Authorized Agency may hold a public meeting on the general
70 subject matter of a possible or anticipated Rule before preparing a proposed Rule. However, a
71 public meeting under this subsection does not satisfy the requirements of Section 17.6 hereof
72 with respect to promulgation of a specific proposed Rule.

73 17.4-3. *Substantial Compliance.* Any Rule hereafter adopted is valid only if adopted in
74 substantial compliance with this Law, however Rules already in effect at the time of this Law’s
75 adoption remain in effect unless directed to be updated based on this Law’s requirements by the
76 Oneida Business Committee. Any amendments made to Rules already in effect must follow the
77 requirements of this Law.

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79 **17.5. Preparation of Proposed Rules**

80 17.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for Rules
81 with which Authorized Agencies shall comply; the said template is not subject to the procedural
82 requirements of this Law.

83 (a) At a minimum, all Rules must be numbered in the following consistent manner “1-
84 1(a)(1)(A)(i)” where:

85 (1) “1-1” means the first section.

86 (2) “(a)” means the first subsection.

87 (3) “(1)” means the second subsection.

88 (4) “(A)” means the third subsection.

89 (5) “(i)” means the fourth subsection.

90 (6) All other numbering after the fourth subsection must be in a logical manner.

91 17.5-2. *Summary Report.* The Authorized Agency shall prepare a summary report regarding
92 each proposed Rule, which must be attached to the proposed Rule when presented for public
93 comment and for approval through the Oneida Legislative Operating Committee and ultimately
94 the Oneida Business Committee. The summary report must include:

95 (a) the name of the proposed Rule;

96 (b) a reference to the law that the proposed Rule interprets, along with a list of any other
97 related laws or rules that may be affected by the proposed Rule;

98 (c) a brief summary of the proposed Rule and any changes made to the proposed Rule
99 based on the public comment period required by Section 17.6 hereof, if applicable;

100 (d) a Statement of Effect for the Rule which the Legislative Reference Office shall
101 prepare upon request by the Authorized Agency; and

102 (e) the Financial Analysis, for which the Authorized Agency shall send a written request
103 to each Entity that may be affected by the proposed Rule soliciting information on how
104 the proposed Rule would financially affect the Entity; each Entity’s response indicating
105 its financial affects must be included in the Financial Analysis.

106 (1) If an Authorized Agency does not receive a response from one (1) or more
107 Entities regarding its request for the Entities’ financial effects of the Rule within
108 ten (10) business days of the date of the request, it may submit a Financial
109 Analysis noting which Entities were non-responsive to its request.

110

111 **17.6. Public Comment Period on Proposed Rules**

112 17.6-1. A proposed Rule, except a Rule promulgated under the emergency Rules exemptions
113 under Section 17.9, must be preceded by a public comment period, which must include a public
114 meeting. Nothing in this Section prohibits or restricts the holding of any other type of
115 community meeting which may be used to gather input on Rules.

116 17.6-2. *Public Meetings.* When a public meeting on a proposed Rule is scheduled by an
117 Authorized Agency, it must be held in accordance with the following requirements.

118 (a) The Authorized Agency shall set a date for the public meeting and have the notice
119 published in the Kalihwisaks and on the Oneida Register not less than ten (10) business
120 days prior to the meeting.

121 (b) The notice must include:

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122 (1) information for electronically accessing the summary report required under
123 Section 17.5-2 and a statement that hard copies will be available with the Entity;
124 (2) the date, time, and place of the scheduled public meeting; and
125 (3) the name, address, phone number, and other appropriate information to
126 submit written comments on the Rule and the time period during which the
127 Authorized Agency shall accept comments.

128 (c) The Authorized Agency shall hold a public meeting at the date, time and place
129 designated in the meeting notice.

130 (d) The Authorized Agency holding the public meeting shall have a representative to
131 preside at the meeting who shall briefly describe the Rule which is the subject of the
132 public meeting and the nature of the Rule's requirements, and then open the meeting for
133 comments. The Authorized Agency's presiding representative is not required to
134 comment or respond to comments at the meeting, but may, at his/her discretion, offer
135 clarity.

136 (e) *Registration.* The Authorized Agency shall create and bring to the public meeting a
137 sign-in sheet; persons attending the public meeting shall register at the meeting by
138 signing the sign-in sheet.

139 (f) The Authorized Agency shall audio record the public meeting and persons who
140 provide oral comments shall state their name for the record.

141 (g) The Authorized Agency shall hold the record open for the submission of written
142 comments for a minimum of five (5) business days following the public meeting,
143 provided that, the Authorized Agency may extend the comment period as it deems
144 appropriate by posting an amended Notice of Public Meeting based on the notice
145 requirements found in Section 17.6-2(b) at any time prior to the close of the original
146 public comment period which identifies the extended comment period ending date.

147 17.6-3. *Public Comments.* The Authorized Agency shall fully consider all comments received
148 during the public comment period and during any public meeting held regarding a proposed
149 Rule.

150
151 **17.7. Oneida Legislative Operating Committee Certification of Procedural Compliance**
152 **and Business Committee Review**

153 17.7-1. After a public meeting is held and the public comment period has expired, the
154 Authorized Agency shall submit the proposed Rule and the items it must contribute for the
155 administrative record pursuant to Section 17.10 to the Legislative Operating Committee, which is
156 responsible for certifying that promulgation of the Rule complies with the procedural
157 requirements contained in this Law.

158 17.7-2. Upon receipt of a complete submission, as required by this Section, the Legislative
159 Operating Committee shall take one (1) of the following actions:

160 (a) If the Legislative Operating Committee is able to certify that the Authorized Agency
161 has complied herewith, it shall forward items (b) and (c) of the Administrative Record
162 under Section 17.10 received by the Legislative Operating Committee to the Oneida
163 Business Committee with a written certification that the requirements of this Law have
164 been fulfilled, and shall publish the Rule on the Oneida Register; or

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165 (b) If the Legislative Operating Committee is not able to certify that the Authorized
166 Agency has complied herewith, it shall return the proposed Rule to the Authorized
167 Agency with specific feedback as to which procedural requirements were not fulfilled by
168 the Authorized Agency.

169 17.7-3. The Oneida Business Committee shall review the proposed Rule, the summary report,
170 the memorandum containing the public comments that were received, both orally and written,
171 and the Authorized Agency’s response to each comment, and the Legislative Operating
172 Committee’s certification of compliance. If upon review the Oneida Business Committee has
173 any concerns and/or requested revisions to the Rule, the Authorized Agency shall work with the
174 Oneida Business Committee to address any concerns.

175 (a) Unless the Oneida Business Committee repeals the Rule, the Rule will remain in
176 effect while the Authorized Agency and the Oneida Business Committee jointly work to
177 amend the existing Rule.

178 (1) Should the Oneida Business Committee repeal the Rule adopted by the
179 Authorized Agency, the Rule that was in effect immediately previous to those
180 repealed, if any, will be automatically reinstated and effective immediately upon
181 the repeal of the Rule adopted by the Authorized Agency.

182 (b) If the Authorized Agency does not receive written notice from the Oneida Business
183 Committee of intent to repeal or amend the Rule within thirty (30) days of the date the
184 Oneida Business Committee is provided notice of the Rule, the Rule will remain in effect
185 as submitted and certified by the Legislative Operating Committee.

186 (c) Should the Oneida Business Committee pursue amendments to the Rule, the
187 amendments must be completed through one (1) of the following actions within six (6)
188 months from the date the amendments are initiated by the Oneida Business Committee:

189 (1) if the Authorized Agency and the Oneida Business Committee reach an
190 agreement as to the content of the amendments, the Authorized Agency shall
191 adopt the revised Rule that has been discussed with and agreed upon by the
192 Oneida Business Committee. Provided that, if substantial revisions are requested
193 by the Oneida Business Committee, where the consideration of a substantial
194 revision is in the Authorized Agency’s best informed discretion, the Authorized
195 Agency shall hold an additional public comment period, which would restart the
196 process beginning in Section 17.6 hereof ; or

197 (2) if the Authorized Agency and the Oneida Business Committee do not reach
198 an agreement as to the content of the amendments, the Oneida Business
199 Committee may defer the Rule to the Legislative Operating Committee for
200 revisions as directed by the Oneida Business Committee. If substantial revisions
201 are requested by the Oneida Business Committee, where the consideration of a
202 substantial revision is in the Legislative Operating Committee’s best informed
203 discretion, the Legislative Operating Committee shall hold an additional public
204 comment period according to the requirements contained in Section 17.6 with the
205 Legislative Operating Committee taking the place of the Authorized Agency.
206 When the Rule is ready for adoption, the Legislative Operating Committee shall
207 forward it to the Oneida Business Committee for consideration.

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208 (d) If a revised Rule is not adopted by either the Authorized Agency or the Oneida
209 Business Committee within six (6) months from the date the amendments are initiated by
210 the Oneida Business Committee, the Rule originally adopted by the Authorized Agency
211 will remain in effect.

212 (e) If revisions are made to the Rule by either the Authorized Agency or the Oneida
213 Business Committee, such party making the revisions shall provide a final version of the
214 Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating
215 Committee shall update the Oneida Register with the final version of the Rule.
216

217 **17.8. Effective Date of Rules**

218 17.8-1. The Authorized Agency shall determine a Rule’s effective date, provided that a Rule
219 may not become effective until the Legislative Operating Committee has provided the
220 Authorized Agency with the written certification required by Section 17.7-2(a). A failure to
221 publish an approved Rule by its effective date does not change the effective date of the Rule.
222

223 **17.9. Emergency Rules**

224 17.9-1. An Authorized Agency may present the Oneida Legislative Operating Committee with a
225 proposed emergency Rule without a public comment period being held if it finds there is an
226 emergency situation that requires the enactment or amendment of a Rule for the immediate
227 preservation of the public health, safety, or general welfare of the Reservation population and the
228 enactment or amendment is required sooner than would be possible under the normal
229 Rulemaking process. The Authorized Agency shall submit to the Legislative Operating
230 Committee the proposed emergency Rule with reasoning to justify the emergency and a
231 summary report, provided that the deadline for Entities’ submission of financial impacts pursuant
232 to Section 17.5-2(e)(1) may be reduced to a minimum of two (2) business days. Upon receipt,
233 the Legislative Operating Committee shall review the submission and take one (1) of the
234 following actions:

- 235 (a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
236 or
237 (b) accept that there is a valid basis for an emergency and forward the emergency Rule to
238 the Oneida Business Committee.

239 17.9-2. If the proposed emergency Rule is forwarded to the Oneida Business Committee, the
240 Oneida Business Committee shall review the proposed emergency Rule, the summary report and
241 the reasoning suggested for the emergency situation and take one (1) of the following actions:

- 242 (a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
243 or
244 (b) accept that there is a valid basis for an emergency and adopt, by motion, the
245 emergency Rule, provided that, if the Oneida Business Committee deems it necessary, it
246 may make revisions to the emergency Rule.

247 (1) If the Oneida Business Committee makes revisions to the emergency Rule
248 that the Authorized Agency does not support, such concerns may be addressed
249 when the Authorized Agency begins the process for enactment of the permanent
250 Rule.

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251 17.9-3. An emergency Rule becomes effective immediately upon its adoption by the Oneida
 252 Business Committee and remains in effect for a period of up to six (6) months, with an
 253 opportunity for a one-time emergency extension of up to six (6) months. Requests for the one-
 254 time emergency extension may be brought by the Authorized Agency directly to the Oneida
 255 Business Committee for consideration and shall become effective upon the Oneida Business
 256 Committee’s approval and adoption by motion. An emergency Rule will:

257 (a) expire when six (6) months have passed since the emergency Rule went into effect
 258 and an emergency Rule extension has not been approved; or

259 (b) expire when six (6) months have passed since the emergency Rule extension went
 260 into effect; or

261 (c) no longer be in effect when a Rule is permanently adopted in the emergency Rule’s
 262 place before the emergency Rule expires under (a) or (b).

263 17.9-4. As soon as possible after emergency adoption, and if permanent adoption is desired, the
 264 Authorized Agency shall follow the regular procedures as provided under this Law to adopt the
 265 permanent Rule.

266 17.9-5. The Legislative Operating Committee shall publish the emergency Rule on the Oneida
 267 Register.

268

269 **17.10. Creating and Maintaining an Administrative Record of Rules**

270 17.10-1. The Legislative Reference Office, with information the Authorized Agencies shall
 271 provide, shall create and maintain a complete record of all proposed and adopted Rules, which
 272 must include the following:

273 (a) A memorandum provided by the Authorized Agency containing the Rule’s procedural
 274 timeline including the dates the requirements of this Law were fulfilled by the Authorized
 275 Agency and any supporting documentation, which includes, but is not limited to:

276 (1) Drafts of the Rule considered for the required Public Meeting;

277 (2) The Public Meeting notice;

278 (3) If the Rule is being amended, redline drafts from the currently effective Rule;

279 (4) Minutes from the agency’s meeting during which the proposed Rule was
 280 considered as an agenda item, or, if the Authorized Agency is not a board,
 281 committee or commission, a memo from the Entity’s highest level of management
 282 approving the proposed Rules; and

283 (5) Any other supporting information that may be requested by the Legislative
 284 Reference Office;

285 (b) The summary report required under Section 17.5-2 provided by the Authorized
 286 Agency;

287 (c) A memorandum provided by the Authorized Agency containing the public comments
 288 that were received, both orally and written, and the Authorized Agency’s response to
 289 each comment; and

290 (d) The effective dates of the original Rules and any Rule amendments subsequently
 291 made as established by the Authorized Agency.

292 17.10-2. Prior to publishing approved Rules on the Oneida Register under either Section 17.7-
 293 3(f) or 17.9-5, the Legislative Operating Committee shall create and/or update the administrative
 294 history on each Rule which must include the original effective date of the Rule and the effective

295 date of any amendments made to the Rule.

296

297 **17.11. Judicial Review of a Rule**

298 17.11-1. The Judiciary may render a declaratory judgment to determine the validity of a Rule in
299 the same manner that the Judiciary may do so for a Law; as identified in section 150.5-2(e) of the
300 Judiciary Law. Provided that, no Rule may be contested based on non-compliance with the
301 procedural requirements of this Law after one (1) year has elapsed from the effective date of the
302 Rule.

303 17.11-2. Upon the Authorized Agency's receipt of notice that an appeal has been filed regarding
304 a Rule of the said agency, the Authorized Agency that promulgated the Rule shall request the
305 Administrative Record of the Rule created under Section 17.10 and shall submit the said record
306 to the Oneida Judiciary.

307

308 **17.12. Standard of Review for Actions Taken by Authorized Agencies**

309 17.12-1. Any Tribal body hearing an appeal or contest of an action taken pursuant to Rules
310 created under Authorized Agencies delegated authority and the requirements of this Law, upon
311 consideration of the Rule and the circumstances regarding the action taken may take any one (1)
312 of the following actions:

- 313 (a) Uphold the action taken;
314 (b) Reverse or modify the action taken;
315 (c) If at the second level of appeal, remand the matter for further consideration.

316 17.12-2. When hearing an appeal or contest of an action as described in this Section, the Tribal
317 hearing body shall recognize that the Authorized Agency is accepted by the Tribe as the subject
318 matter expert in the given field and shall provide the Authorized Agency with deference by
319 upholding the action unless it finds that the action:

- 320 (a) Amounts to a violation of the Tribe's Constitution;
321 (b) Was in excess of the Authorized Agency's Rulemaking Authority or is otherwise
322 unlawful;
323 (c) Was clearly erroneous in view of the entire administrative and factual records; or
324 (d) Was arbitrary or capricious; or
325 (e) Exhibited a procedural irregularity which would be considered a harmful error that
326 may have contributed to the final decision and if said irregularity were not present, the
327 decision would have been different.

328

329 *End.*

330

331

ADMINISTRATIVE RULEMAKING PROCESS

Authorized agencies may develop rules. Tribal entities become authorized agencies when a law other than the Administrative Rulemaking Law delegates them rulemaking authority.

Public Meeting and Comment Required

The Authorized Agency must provide a public comment meeting and accept comments for 5 business days following the meeting. The public meeting must be noticed a minimum of 10 business days prior to the meeting. Among other things, the notice must include information on how to obtain the proposed rule's summary report, which must include (1) the rule's name; (2) the law the rule interprets; (3) rule summary; (4) statement of effect from the Legislative Reference Office (LRO); and (5) a financial analysis.

LOC Certificate of Procedural Compliance

After the authorized agency considers the public meeting comments and makes any necessary revisions, it shall forward the rule and summary report to the Legislative Operating Committee (LOC) to request a certificate of procedural compliance with this Law's requirements. Is the LOC able to issue the certificate?

NO

The LOC shall return the rule to the authorized agency with an explanation of which procedural requirements were not fulfilled. The rule may be resubmitted to the LOC once procedural defects are corrected.

YES

The rule immediately becomes effective and the LOC shall forward the rule and summary report to the Oneida Business Committee (OBC). Does the OBC have any concerns with the rule?

OBC Notice and Consideration

NO

If the OBC does not present any concerns and/or requested revisions to the authorized agency within 30 days, the rules remain in effect as approved and must be sent to the LOC to be published on the Oneida Register.

YES

If the OBC has any concerns and/or requested revisions, it must present them to the authorized agency within 30 business days of its notice of the rule. (All amendments must be made within 6 months of when the OBC initiated amendments. If not complete, the rule remains in effect.) Does the OBC repeal the rule?

If the OBC has Concerns related to the Rule

NO

The authorized agency's rule remains in effect while it works with the OBC to resolve any issues with the rule and amend the rule. Do the authorized agency and the OBC agree on the amendments?

YES

If the proposed rule is an amendment, the rules in place immediately prior go back into effect while the authorized agency works with the OBC to amend the rule. Do the authorized agency and the OBC agree on the amendments?

NO

The OBC shall defer the rule to the LOC for the directed amendments. In the LOC's opinion, were substantial revisions made to the rule?

YES

In the authorized agency's opinion, were substantial revisions made to the rule?

NO

Once the rule is ready, the LOC shall forward the rule to the OBC for consideration. If approved, the OBC shall adopt the rule and the LOC shall update the Oneida Register.

YES

The LOC must provide another public comment period. Once the comments are considered and the rule is ready, the LOC shall forward the rule to the OBC for consideration. If approved, the OBC shall adopt the rule and the LOC shall update the Oneida Register.

NO

The authorized agency must approve the revised rule and provide a copy to the LOC to be posted on the Oneida Register. The rule becomes effective immediately upon the authorized agencies approval.

YES

The authorized agency must provide another public comment period, which restarts the process at LOC certificate of procedural compliance.

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Onondagas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



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
nation, the United States
was made possible.

ONEIDA FINANCE OFFICE
Office: (920) 869-4325 • Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: February 16, 2016
FROM: Rae Skenandore, Project Manger
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Financial Impact of the Rulemaking Law**

I. Background

This is a new law that was originally introduced on April 13, 2012 and again activated on September 17, 2014. The purpose of this Law is to provide a process for the adoption and amendment of administrative Rules. A public meeting was held on December 3, 2015. The following provide a summary of the elements of the law;

- Authorized agencies must prepare rules in the form and style designated by LOC.
- A summary report including the following must be submitted to LOC for certification.
 - Name
 - Reference to Law
 - Summary of proposed rule
 - Statement of effect (prepared by LOC)
 - Financial analysis including the impact to associated agencies
- For non-emergency proposed rules, the authorized agency must conduct a public meeting and hold the rule open for a public comment period.
 - Public meetings must include a 10 day notice
 - Notice of the public meeting must be placed in the Kalihwisaks and the Oneida Register.
 - The authorized agency must have a representative preside at the meeting.
 - An audio recording must be made of the comments.
 - The authorizing agency shall fully consider all comments received.
- The authorizing agency must submit the rules and all back up materials to LOC for certification.
- If certified, the materials are submitted to the Oneida Business Committee for Review.
- The law contains processes to address any BC concerns.

- LRO is responsible for creating and maintaining an administrative record of rules
- Also included is the designation of the effective dates, emergency rules, judicial review and standards of review for actions taken.

II. Executive Summary of Findings

The law places specific requirements on authorized agency to develop rules in the furtherance of laws and polices they are delegated the authority to implement and enforce. An authorized agency is defined in the law as any board, committee, commission, department, or officer of the Tribe that has been granted rulemaking authority. Based on the definition, it is unclear if the authorizing agencies will have the appropriate access to staff, building, equipment, etc. to fulfill the requirements laid out in the law. Also, it is unclear if an administrative court will need to be established prior to the implementation of the law.

Staff/Personnel

Under Rulemaking, the authorizing agency is responsible for preparing the rules, sending notice and conducting a public meeting, recording and receiving comments, considering the comments received, preparing the package according to the LOC requirements and submitting them for certification. It is unclear who would be performing the administrative duties if there were no staff designated to the agency. Any additional costs in stipends for a board committee or commission to develop the rules during a regular, special, or emergency meeting are indeterminable. Finance holds some concerns that an authorizing agency will conduct a financial analysis of their own rules. An objective approach to the analysis should be considered.

Notification

The law requires that notification of a public meeting be given at least 10 days prior to the meeting and include both the Oneida Register and the Kalihwisaks. The register is managed by LRO and there are no additional costs to upload the information. According to the editor of the Kalihwisaks, placement of the notification in the paper would be considered a submission and there would be no additional costs.

Location

Holding a public meeting at a location that is readily accessible to the membership is ideal and can easily be accomplished at many locations within the Tribe. However, holding a meeting during non-working hours provides more challenges to security and access and there may be additional costs for either staff time or a rental fee for a Tribal building such as Parish Hall or the County H recreation facility. The added requirement of recording the meeting comments also presents a challenge. It is not known if the various authorizing agencies will have the equipment necessary to record comments or the personnel available to transcribe the public comments.

Documentation

Existing staff within the Legislative Reference Office (LRO) will be responsible for the recordkeeping of the administrative rules. No personnel will be needed within LRO and there are no other documentation costs.

Administrative Court

It is unknown if the authorizing agencies rules will all fall under the existing civil and appellate courts for Judicial review or if an administrative court will need to be established prior to the implementation of the law. Without a specific plan for the development of an administrative court, no estimated costs can be determined.

Timeline

It is unclear if the various authorizing agencies will have the ability to meet the requirements of rulemaking process without additional budgeted funds for staff, rental fees, or equipment costs. Also, the timeline and costs associated with an administrative court are unknown. Therefore, a timeline for implementation is also indeterminable.

III. Financial Impact

The fiscal impact of implementing this law is indeterminate at this time.

III. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.

Chapter 17
Administrative Rulemaking
Thotihá·tú lutyánłslu·níhe?

they are the leaders, they are making the laws, policies and rules

17.1. Purpose and Policy	17.7. Oneida Legislative Operating Committee Certification of
17.2. Adoption, Amendment, Repeal	Procedural Compliance and Business Committee Review
17.3. Definitions	17.8. Effective Date of Rules
17.4. General	17.9. Emergency Rules
17.5. Preparation of Proposed Rules	17.11. Judicial Review of a Rule
17.6. Public Comment Period on Proposed Rules	

1
2 **17.1. Purpose and Policy**

3 17.1-1. *Purpose.* The purpose of this Law is to provide a process for the adoption and
4 amendment of administrative Rules.

5 17.1-2. *Policy.* It is the policy of the Tribe to ensure:
6 (a) There is an efficient, effective and democratic process for enacting and revising
7 administrative Rules.
8 (b) That Authorized Agencies act in a responsible and consistent manner when enacting
9 and revising the administrative Rules.

10
11 **17.2. Adoption, Amendment, Repeal**

12 17.2-1. This Law was adopted by the Oneida Business Committee by resolution
13 _____.

14 17.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
15 the procedures set out in the Legislative Procedures Act.

16 17.2-3. Should a provision of this Law or the application thereof to any person or circumstances
17 be held as invalid, such invalidity does not affect other provisions of this Law which are
18 considered to have legal force without the invalid portions.

19 17.2-4. In the event of a conflict between a provision of this Law and a provision of another law,
20 the provisions of this Law control.

21 17.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
22 of Wisconsin.

23
24 **17.3. Definitions**

25 17.3-1. This Section governs the definitions of words and phrases used within this Law. All
26 words not defined herein are to be used in their ordinary and everyday use.

27 (a) “Authorized Agency” means any board, committee, commission, department, or
28 officer of the Tribe that has been granted Rulemaking Authority.

29 (b) “Business Day” means Monday through Friday from 8:00 a.m. to 4:30 p.m.,
30 excluding holidays recognized by the Tribe.

31 (c) “Financial Analysis” means an estimate of the total fiscal year financial effects
32 associated with a proposed Rule prepared by the Authorized Agency proposing the Rule.
33 It includes startup costs, personnel, office, documentation costs, an estimate of the
34 amount of time necessary for an individual or agency to comply with the Rule after
35 implementation.

36 (d) “Entity” means a board, committee or commission created by the General Tribal
37 Council or the Oneida Business Committee whose members are appointed by the Oneida

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38 Business Committee or elected by the majority of the Tribe’s eligible voters and also any
39 department of the Tribe.

40 (e) “Oneida Register” means the free legal periodical published on the Tribe’s website
41 by the Legislative Operating Committee which contains, at a minimum, agency Rules,
42 proposed legislation and notices, and either the Oneida Code of Laws or directions to
43 obtain free access to the Oneida Code of Laws.

44 (f) “Rule” means a set of requirements enacted by an Authorized Agency in order to
45 implement, interpret and/or enforce a law ~~or policy~~ of the Tribe, which includes citation
46 fee and penalty schedules.

47 (g) “Rulemaking Authority” means the delegation of authority to Authorized Agencies
48 found in the Tribe’s laws other than this Law which allows Authorized Agencies to
49 implement, interpret and/or enforce a law ~~or policy~~ of the Tribe.

50 (h) “Statement of Effect” means a legislative and legal analysis which explains the
51 effects that adopting a Rule would have on the Tribe.

52 (i) “Tribe” means the Oneida Tribe of Indians of Wisconsin.

53

54 **17.4. General**

55 17.4-1. *Administrative Rulemaking.* Only Authorized Agencies may promulgate Rules; this
56 Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the
57 Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules
58 interpreting the provisions of any law enforced or administered by it; provided that, a Rule may
59 not exceed the Rulemaking Authority granted under the law for which the Rule is being
60 promulgated.

61 (a) This Law does not apply to standard operating procedures, which for the purposes of
62 this section are statements, interpretations, decisions, internal rules, regulations, internal
63 policies, procedures or other matters concerning internal management of an agency,
64 which do not affect the private rights or interests of individuals outside of the agency.

65 (b) Rules developed pursuant to this Law have the same force and effect as the law
66 which delegated the Authorized Agency Rulemaking Authority and must be followed by
67 both the general public and the Authorized Agency promulgating the Rule.

68 17.4-2. *Authorized Agency Solicitation of Comment on General Subject Matter.* For the purpose
69 of soliciting public comment, an Authorized Agency may hold a public meeting on the general
70 subject matter of a possible or anticipated Rule before preparing a proposed Rule. However, a
71 public meeting under this subsection does not satisfy the requirements of Section 17.6 hereof
72 with respect to promulgation of a specific proposed Rule.

73 17.4-3. *Substantial Compliance.* Any Rule hereafter adopted is valid only if adopted in
74 substantial compliance with this Law, however Rules already in effect at the time of this Law’s
75 adoption remain in effect unless directed to be updated based on this Law’s requirements by the
76 Oneida Business Committee. Any amendments made to Rules already in effect must follow the
77 requirements of this Law.

78

79 **17.5. Preparation of Proposed Rules**

80 17.5-1. *Form and Style.* ~~In preparing a proposed Rule, Authorized Agencies shall substantially~~
81 ~~adhere to the form and style required by t~~The Legislative Operating Committee shall create a

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template for Rules with which Authorized Agencies shall comply; the said template is not subject to the procedural requirements of this Law.-

(a) At a minimum, all Rules must be numbered in the following consistent manner “1-1(a)(1)(A)(i)” where:

- (1) “1-1” means the first section.
- (2) “(a)” means the first subsection.
- (3) “(1)” means the second subsection.
- (4) “(A)” means the third subsection.
- (5) “(i)” means the fourth subsection.
- (6) All other numbering after the fourth subsection must be in a logical manner.

17.5-2. *Summary Report.* The Authorized Agency shall prepare a summary report regarding each proposed Rule, which must be attached to the proposed Rule when presented for public comment and for approval through the Oneida Legislative Operating Committee and ultimately the Oneida Business Committee. The summary report must include:

- (a) the name of the proposed Rule;
- (b) a reference to the law that the proposed Rule interprets, along with a list of any other related laws, policies or rules that may be affected by the proposed Rule;
- (c) a brief summary of the proposed Rule and any changes made to the proposed Rule based on the public comment period required by Section 17.6 hereof, if applicable;
- (d) a Statement of Effect for the Rule which the Legislative Reference Office shall prepare upon request by the Authorized Agency; and
- (e) the Financial Analysis, for which the Authorized Agency shall send a written request to each Entity that may be affected by the proposed Rule soliciting information on how the proposed Rule would financially affect the Entity; each Entity’s response indicating its financial affects must be included in the Financial Analysis.

- (1) If an Authorized Agency does not receive a response from one (1) or more Entities regarding its request for the Entities’ financial ~~affects~~effects of the Rule within ten (10) business days of the date of the request, it may submit a Financial Analysis noting which Entities were non-responsive to its request.

17.6. Public Comment Period on Proposed Rules

17.6-1. A proposed Rule, except a Rule promulgated under the emergency Rules exemptions under Section 17.9, must be preceded by a public comment period, which must include a public meeting. Nothing in this Section prohibits or restricts the holding of any other type of community meeting which may be used to gather input on Rules.

17.6-2. *Public Meetings.* When a public meeting on a proposed Rule is scheduled by an Authorized Agency, it must be held in accordance with the following requirements.

- (a) The Authorized Agency shall set a date for the public meeting and have the notice published in the Kalihwisaks and ~~in~~on the Oneida Register not less than ten (10) business days prior to the meeting.
- (b) The notice must include:
 - (1) information for electronically accessing the summary report required under Section 17.5-2 and a statement that hard copies will be available with the Entity;
 - (2) the date, time, and place of the scheduled public meeting; and

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126 (3) the name, address, phone number, and other appropriate information to
127 submit written comments on the Rule and the time period during which the
128 Authorized Agency shall accept comments.

129 (c) The Authorized Agency shall hold a public meeting at the date, time and place
130 designated in the meeting notice.

131 (d) The Authorized Agency holding the public meeting shall have a representative to
132 preside at the meeting who shall briefly describe the Rule which is the subject of the
133 public meeting and the nature of the Rule's requirements, and then open the meeting for
134 comments. The Authorized Agency's presiding representative is not required to
135 comment or respond to comments at the meeting, but may, at his/her discretion, offer
136 clarity.

137 (e) *Registration.* The Authorized Agency shall create and bring to the public meeting a
138 sign-in sheet; persons attending the public meeting shall register at the meeting by
139 signing the sign-in sheet.

140 (f) The Authorized Agency shall audio record the public meeting and persons who
141 provide oral comments shall state their name for the record.

142 (g) The Authorized Agency shall hold the record open for the submission of written
143 comments for a minimum of five (5) business days following the public meeting,
144 provided that,– the Authorized Agency may extend the comment period as it deems
145 appropriate by posting an amended Notice of Public Meeting based on the notice
146 requirements found in Section 17.6-2(b) at any time prior to the close of the original
147 public comment period which identifies the extended comment period ending date.

148 17.6-3. *Public Comments.* The Authorized Agency shall fully consider all comments received
149 during the public comment period and during any public meeting held regarding a proposed
150 Rule.

151
152 **17.7. Oneida Legislative Operating Committee Certification of Procedural Compliance**
153 **and Business Committee Review**

154 17.7-1. After a public meeting is held and the public comment period has expired, the
155 Authorized Agency shall submit the proposed Rule and the items it must contribute for the
156 administrative record pursuant to Section 17.10 to the Legislative Operating Committee, which is
157 responsible for certifying that promulgation of the Rule complies with the procedural
158 requirements contained in this Law.

159 17.7-2. Upon receipt of a complete submission, as required by this Section, the Legislative
160 Operating Committee shall take one (1) of the following actions:

161 (a) If the Legislative Operating Committee is able to certify that the Authorized Agency
162 has complied herewith, it shall forward items (b) and (c) of the Administrative Record
163 under Section 17.10 received by the Legislative Operating Committee to the Oneida
164 Business Committee with a written certification that the requirements of this Law have
165 been fulfilled, and shall publish the Rule on the Oneida Register; or

166 (b) If the Legislative Operating Committee is not able to certify that the Authorized
167 Agency has complied herewith, it shall return the proposed Rule to the Authorized
168 Agency with specific feedback as to which procedural requirements were not fulfilled by
169 the Authorized Agency.

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170 17.7-3. The Oneida Business Committee shall review the proposed Rule, the summary report,
171 the memorandum containing the public comments that were received, both orally and written,
172 and the Authorized Agency’s response to each comment, and the Legislative Operating
173 Committee’s certification of compliance. If upon review the Oneida Business Committee has
174 any concerns and/or requested revisions to the Rule, the Authorized Agency shall work with the
175 Oneida Business Committee to address any concerns.

176 (a) Unless the Oneida Business Committee repeals the Rule, the Rule will remain in
177 effect while the Authorized Agency and the Oneida Business Committee jointly work to
178 amend the existing Rule.

179 (1) Should the Oneida Business Committee repeal the Rule adopted by the
180 Authorized Agency, the Rule that was in effect immediately previous to those
181 repealed, if any, will be automatically reinstated and effective immediately upon
182 the repeal of the Rule adopted by the Authorized Agency.

183 (b) If the Authorized Agency does not receive written notice from the Oneida Business
184 Committee of intent to repeal or amend the Rule within thirty (30) days of the date the
185 Oneida Business Committee is provided notice of the Rule, the Rule will remain in effect
186 as submitted and certified by the Legislative Operating Committee.

187 (c) Should the Oneida Business Committee pursue amendments to the Rule, the
188 amendments must be completed through one (1) of the following actions within six (6)
189 months from the date the amendments are initiated by the Oneida Business Committee:

190 (1) if the Authorized Agency and the Oneida Business Committee reach an
191 agreement as to the content of the amendments, the Authorized Agency shall
192 adopt the revised Rule that has been discussed with and agreed upon by the
193 Oneida Business Committee. Provided that, if substantial revisions are requested
194 by the Oneida Business Committee, where the consideration of a substantial
195 revision is in the Authorized Agency’s best informed discretion, the Authorized
196 Agency shall hold an additional public comment period, which would restart the
197 process beginning in Section 17.6 hereof; or

198 (2) if the Authorized Agency and the Oneida Business Committee do not reach
199 an agreement as to the content of the amendments, the Oneida Business
200 Committee may ~~adopt a revised Rule that incorporates the amendments it deems~~
201 ~~necessary~~ defer the Rule to the Legislative Operating Committee for revisions as
202 directed by the Oneida Business Committee. If substantial revisions are requested
203 by the Oneida Business Committee, where the consideration of a substantial
204 revision is in the Legislative Operating Committee’s best informed discretion, the
205 Legislative Operating Committee shall hold an additional public comment period
206 according to the requirements contained in Section 17.6 with the Legislative
207 Operating Committee taking the place of the Authorized Agency. When the Rule
208 is ready for adoption, the Legislative Operating Committee shall forward it to the
209 Oneida Business Committee for consideration.

210 ~~(d) If substantial revisions are requested by the Oneida Business Committee, where the~~
211 ~~consideration of a substantial revision is in the Authorized Agency’s best informed~~
212 ~~discretion, the Authorized Agency shall hold an additional public comment period, which~~
213 ~~would restart the process beginning in Section 17.6 hereof.~~

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(ed) If a revised Rule is not adopted by either the Authorized Agency or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rule originally adopted by the Authorized Agency will remain in effect.

(fe) If revisions are made to the Rule by either the Authorized Agency or the Oneida Business Committee, such party making the revisions shall provide a final version of the Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating Committee shall update the Oneida Register with the final version of the Rule.

17.8. Effective Date of Rules

17.8-1. The Authorized Agency shall determine a Rule’s effective date, provided that a Rule may not become effective until the Legislative Operating Committee has provided the Authorized Agency with the written certification required by Section 17.7-2(a). A failure to publish an approved Rule by its effective date does not change the effective date of the Rule.

17.9. Emergency Rules

17.9-1. An Authorized Agency may present the Oneida Legislative Operating Committee with a proposed emergency Rule without a public comment period being held if it finds there is an emergency situation that requires the enactment or amendment of a Rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment is required sooner than would be possible under the normal Rulemaking process. The Authorized Agency shall submit to the Legislative Operating Committee the proposed emergency Rule with reasoning to justify the emergency and a summary report, provided that the deadline for Entities’ submission of financial impacts pursuant to Section 17.5-2(e)(1) may be reduced to a minimum of two (2) business days. Upon receipt, The~~the~~ Legislative Operating Committee shall review ~~the proposed emergency Rule, the summary report and the reasoning suggested for the emergency situation and~~the submission and take one (1) of the following actions:

- (a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
- or
- (b) accept that there is a valid basis for an emergency and forward the emergency Rule to the Oneida Business Committee.

17.9-2. If the proposed emergency Rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed emergency Rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

- (a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
- or
- (b) accept that there is a valid basis for an emergency and adopt, by motion, the emergency Rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency Rule.

- (1) If the Oneida Business Committee makes revisions to the emergency Rule that the Authorized Agency does not support, such concerns may be addressed when the Authorized Agency begins the process for enactment of the permanent Rule.

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258 17.9-3. An emergency Rule becomes effective immediately upon its adoption by the Oneida
259 Business Committee and remains in effect for a period of up to six (6) months, with an
260 opportunity for a one-time emergency extension of up to six (6) months. Requests for the one-
261 time emergency extension may be brought by the Authorized Agency directly to the Oneida
262 Business Committee for consideration and shall become effective upon the Oneida Business
263 Committee's approval and adoption by motion. An emergency Rule will:

264 (a) expire when six (6) months have passed since the emergency Rule went into effect
265 and an emergency Rule extension has not been approved; or

266 (b) expire when six (6) months have passed since the emergency Rule extension went
267 into effect; or

268 (c) no longer be in effect when a Rule is permanently adopted in the emergency Rule's
269 place before the emergency Rule expires under (a) or (b).

270 17.9-4. As soon as possible after emergency adoption, and if permanent adoption is desired, the
271 Authorized Agency shall follow the regular procedures as provided under this Law to adopt the
272 permanent Rule.

273 | 17.9-5. The Legislative Operating Committee shall publish the emergency Rule ~~in~~on the Oneida
274 Register.

275

276 **17.10. Creating and Maintaining an Administrative Record of Rules**

277 17.10-1. The Legislative Reference Office, with information the Authorized Agencies shall
278 provide, shall create and maintain a complete record of all proposed and adopted Rules, which
279 must include the following:

280 (a) A memorandum provided by the Authorized Agency containing the Rule's procedural
281 timeline including the dates the requirements of this Law were fulfilled by the Authorized
282 Agency and any supporting documentation, which includes, but is not limited to:

283 (1) Drafts of the Rule considered for the required Public Meeting;

284 (2) The Public Meeting notice;

285 (3) If the Rule is being amended, redline drafts from the currently effective Rule;

286 (4) Minutes from the agency's meeting during which the proposed Rule was
287 considered as an agenda item, or, if the Authorized Agency is not a board,
288 committee or commission, a memo from the Entity's highest level of management
289 approving the proposed Rules; and

290 (5) Any other supporting information that may be requested by the Legislative
291 Reference Office;

292 (b) The summary report required under Section 17.5-2 provided by the Authorized
293 Agency;

294 (c) A memorandum provided by the Authorized Agency containing the public comments
295 that were received, both orally and written, and the Authorized Agency's response to
296 each comment; and

297 (d) The effective dates of the original Rules and any Rule amendments subsequently
298 made as established by the Authorized Agency.

299 17.10-2. Prior to publishing approved Rules on the Oneida Register under either Section 17.7-
300 | 3(f) or 17.9-5, the Legislative ~~Reference Office~~Operating Committee shall create and/or update
301 the administrative history on each Rule which must include the original effective date of the Rule

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302 and the effective date of any amendments made to the Rule.

303

304 **17.11. Judicial Review of a Rule**

305 17.11-1. The Judiciary may render a declaratory judgment to determine the validity of a Rule in
306 the same manner that the Judiciary may do so for a Law; as identified in section 150.5-2(e) of the
307 Judiciary Law. Provided that, no Rule may be contested based on non-compliance with the
308 procedural requirements of this Law after one (1) year has elapsed from the effective date of the
309 Rule.

310 17.11-2. Upon the Authorized Agency's receipt of notice that an appeal has been filed regarding
311 a Rule of the said agency, the Authorized Agency that promulgated the Rule shall request the
312 Administrative Record of the Rule created under Section 17.10 and shall submit the said record
313 to the Oneida Judiciary.

314

315 **17.12. Standard of Review for Actions Taken by Authorized Agencies**

316 17.12-1. Any Tribal body hearing an appeal or contest of an action taken pursuant to Rules
317 created under Authorized Agencies delegated authority and the requirements of this Law, upon
318 consideration of the Rule and the circumstances regarding the action taken may take any one (1)
319 of the following actions:

320

(a) Uphold the action taken;

321

(b) Reverse or modify the action taken;

322

(c) If at the second level of appeal, remand the matter for further consideration.

323

324 17.12-2. When hearing an appeal or contest of an action as described in this Section, the Tribal
325 hearing body shall recognize that the Authorized Agency is accepted by the Tribe as the subject
326 matter expert in the given field and shall provide the Authorized Agency with deference by
327 upholding the action unless it finds that the action:

327

(a) Amounts to a violation of the Tribe's Constitution;

328

(b) Was in excess of the Authorized Agency's Rulemaking Authority or is otherwise
329 unlawful;

330

(c) Was clearly erroneous in view of the entire administrative and factual records; or

331

(d) Was arbitrary or capricious; or

332

(e) Exhibited a procedural irregularity which would be considered a harmful error that
333 may have contributed to the final decision and if said irregularity were not present, the
334 decision would have been different.

335

336 *End.*

337

338

February 2016

February 2016							March 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	8	9	10	11	12	13	6	7	8	9	10	11	12
14	15	16	17	18	19	20	13	14	15	16	17	18	19
21	22	23	24	25	26	27	20	21	22	23	24	25	26
28	29						27	28	29	30	31		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jan 31 - Feb 6	Jan 31	Feb 1	2	3 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - L 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - D	4	5 1:30pm 4:30pm Employee Handbook (OLO_LIBRARY) - LOC	6
	7 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Douglass A. McIntyre	8 3:00pm 4:00pm Vendor Licensing Law (BC_Small_Conf_Room) - Douglass A. McIntyre	9	10	11	12	13
Feb 7 - 13	14	15 1:30pm 4:00pm FW: Guardianship Law (BC_Conf_Room) - Douglass A. McIntyre	16	17 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	18 12:15pm 2:15pm Garnishment Law Amendments - Public Meeting (BC_Conf_Room) - Douglass A. McIntyre	19	20
	21	22	23	24	25	26	27
Feb 14 - 20							
	28	29	Mar 1	2	3	4	5
Feb 21 - 27							
Feb 28 - Mar 5							

March 2016

March 2016							April 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Feb 28	29	Mar 1	2	3	4	5
Feb 28 - Mar 5				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - L 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - D			
	6	7	8	9	10	11	12
Mar 6 - 12		9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Douglass A. McIntyre					
	13	14	15	16	17	18	19
Mar 13 - 19				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar			
	20	21	22	23	24	25	26
Mar 20 - 26							
	27	28	29	30	31	Apr 1	2
Mar 27 - Apr 2							