

Title 1. Government and Finances– Chapter 127
CEMETERY LAW
Tsi? Lotiya?ata Olihwa'ke
The matters concerning when they bury the body

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127.1. Purpose and Policy

127.1-1. *Purpose.* The purpose of this law is to establish administrative authority for Oneida Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots, establish who is eligible for interment, establish a process for disinterment, and delegate authority pursuant to Oneida laws.

127.1-2. *Policy.* It is the policy of the Nation that all enrolled Oneida Nation members, their families and descendants may be interred in an Oneida Nation cemetery.

127.2. Adoption, Amendment, Repeal

127.2-1. 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, BC-07-23-14-B and BC-07-26-17-K.

127.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

127.2-3. 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.

127.2-4. 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.

127.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

127.3. Definitions

127.3-1. 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) “Decedent” means a person who has died.

(b) “Descendant” means a person who is not enrolled in the Nation, but is a blood relative in the direct line of descent of an Oneida Nation member.

(c) “Disinterment” means to exhume interred human remains or cremated human remains.

(d) “Disinterment permit” means the form established by Land Management to authorize removal of a human corpse from a grave or tomb.

(e) “Family” means husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, step-parent and step-children as established through a certified copy of the original marriage license, foster children, adopted children, kinship and fictive kinship relationships and/or a person who accepts legal responsibility for the decedent.

- (f) “Interment” means to bury remains.
- (g) “Judiciary” means the judicial system that was established by Oneida General Tribal Council to administer the judicial authorities and responsibilities of the Oneida Nation.
- (h) “Nation” means the Oneida Nation.
- (i) “Reinterment” means to rebury remains.
- (j) “Remains” means the body of a deceased person, regardless of its state, and includes cremated remains. “Remains” is synonymous and may be used interchangeably with “decedent” and “corpse”.
- (k) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (l) “Rule” means a set of requirements, including citation fees and penalty schedules, in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

127.4. Administration and Authority

127.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burial Grounds, also known as Tsi? Tyeya?Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

127.4-2. *Land Designation Responsibilities.* The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Oneida Nation cemeteries.

127.4-3. *Administrative Responsibilities.* Land Management shall be responsible for the administrative duties for all Oneida Nation cemeteries. These duties include:

- (a) Issuance of disinterment permits, where appropriate. An approved disinterment permit constitutes authorization to transport the remains and reinter the disinterred remains at an approved location within the boundaries of the Oneida Reservation. If the remains are being transported outside the boundaries of the Oneida Reservation and/or reinterment is occurring at a location outside the boundaries of the Oneida Reservation, other laws may apply and the parties involved are responsible for compliance. Permits shall include:
 - (1) Information that is necessary to identify the decedent;
 - (2) The date and place of death;
 - (3) The current place of interment;
 - (4) The intended place of interment, the name of the person requesting the disinterment; and
 - (5) The name of the person in charge of the disinterment.
- (b) Maintaining vital statistics of decedents interred, disinterred, and/or reinterred in an Oneida Nation cemetery including data derived from certificates death, fetal death reports or related reports, a report for final disposition, authorization for disinterment or reinterment or related judicial order or any other data as determined by Land Management.
- (c) Creating long-term strategic plans for Oneida Nation cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.
- (d) Causing portions of land designed to be used for an Oneida Nation cemetery to be surveyed and mapped into plots, drives and walks.
- (e) Maintain records concerning all plots.

- (f) Requesting additional portions of land to be designated for use as an Oneida Nation cemetery, if needed.
- (g) Selling and transferring plots and restricting the use of plots.
- (h) Administering accounting activities related to the sale or transfer of a plot.
- (i) Determining how to utilize gifts to an Oneida Nation cemetery.
- (j) Establishing rules, entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this law.

127.4-4. *Maintenance Responsibilities.* Land Management shall be responsible for cemetery maintenance duties including:

- (a) Maintaining Oneida Nation cemetery grounds.
- (b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any established rules.
- (c) Entering into agreements and communication with person(s) or entities, where needed, in order to meet the maintenance responsibilities.
- (d) Oversight of any position created to care for the cemetery.

127.4-5. *Public Health Emergency and Communicable Diseases.* The Community Public Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonable and necessary to provide for the safe disposal of remains in an Oneida Nation cemetery. This includes the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal. Additionally, the Community Public Health Officer may:

(a) Determine conditions and order a specific method of disposal of remains in an Oneida Nation cemetery of a decedent who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Community Public Health Officer.

(1) The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.

(b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with all available identifying information and information concerning the circumstances of death and, in addition, require the remains of a decedent with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(c) Maintain or require the maintenance of a written or electronic record of all remains that are disposed of in an Oneida Nation cemetery, including all available identifying information and information concerning the circumstances of death and disposal. These written and electronic records shall be safeguarded following applicable privacy standards and may only be released in accordance with applicable laws. If it is impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public Health Office or designee may request that the local coroner or medical examiner obtain any fingerprints, photographs, or identifying dental information, and/ or collect a specimen of deoxyribonucleic acid from the remains and transmit this information to any interested public health authority.

127.4-6. *Other requirements.* Neither this section nor any other section of this law relieves any person from all applicable legal, professional, or other requirements.

127.5. Eligibility and Ownership

127.5-1. *Eligibility.* The following persons may be interred in an Oneida Nation cemetery:

- (a) An Oneida Nation member, his or her family, or descendants.
- (b) Remains that are:
 - (1) Returned to the Nation;
 - (2) Repatriated; or
 - (3) Discovered on the Reservation if Oneida's Cultural Heritage Department, along with any other appropriate Oneida entity has determined that the most suitable place for interment of the remains is an Oneida Nation cemetery.

127.5-2. *Ownership of Plots.* Plots in an Oneida Nation cemetery may be purchased by anyone for individuals eligible to be interred in an Oneida Nation cemetery, as defined in section 127.5-1, but the owner of the plot shall be the individual for whom the plot was purchased, if living, and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this law.

- (a) In the event the owner of a plot becomes ineligible to be interred in an Oneida Nation cemetery, the plot shall be resold to the Nation in accordance with section 127.5-2(c).
- (b) A plot is not inheritable, but may be transferred from the owner to an individual eligible to be interred in an Oneida Nation cemetery. The transfer of a plot from one owner to another shall be processed through Land Management.
- (c) A plot may only be resold by the owner of the plot to the Nation through Land Management. Plots resold to the Nation shall be bought for the original purchase price. The following owners of plots may resell a plot to the Nation:

- (1) Competent individuals who are at least eighteen (18) years of age;
- (2) Individuals who are less than eighteen (18) years of age, with the written permission of the original purchaser of the plot; and
- (3) Incompetent individuals who are at least eighteen (18) years of age, with the permission of their guardian or appropriate power of attorney.

127.6. Interment and Plots

127.6-1. All interments shall be approved by Land Management prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked, and to provide information to any company or contractor providing services for the interment.

- (a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land Management shall report any known situations involving communicable diseases to Oneida's Community Public Health Officer for investigation. The Community Public Health Officer may determine conditions for disposal of the remains in accordance with section 127.4-5.

127.6-2. No interments will be scheduled on the observance of any Holiday recognized by the Nation.

127.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment, or disinterment or re-interment, including all the below listed fees, are the responsibility of the decedent's estate, if any, family assuming responsibility, or other individual assuming legal responsibility for the remains, unless otherwise stated. Land Management shall create rules regarding plot and marking fees.

- (a) Plot fees shall be paid prior to interment.

(b) Marking fees for the plot or monument location shall be assessed and required each time an interment occurs, regardless of container use or method of disposition.

(c) Opening and closing fees shall be determined by the vendor chosen.

(1) Any such vendor is required to have the qualifications and experience to perform opening and closings. Family members or private persons lacking qualifications or experience to perform burial related openings may not perform openings for the burial of caskets.

(d) There shall be no plot fees or marking fees assessed for remains interred in accordance with section 127.7-4. If the Nation or its contracted vendor opens or closes a plot for the interment of human remains in accordance with section 127.7-4, no fees shall be assessed for the opening or closing of the plot.

127.6-4. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment. Land Management shall provide information concerning the potential effects if a burial container is not used.

127.6-5. *Division of Plots.* Each plot may only be used for the interment of:

(a) one (1) human corpse;

(b) one (1) human corpse along with the cremated remains of one (1) other decedent; or

(c) the cremated remains of up to four (4) decedents.

127.6-6. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers shall be allowed per plot. If a plot is designated for more than two (2) decedents, only flush markers can be installed outside of the designated headstone area. Land Management shall establish rules regarding maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, Land Management may establish the types of materials that may be used for monuments or flush markers.

(a) No monuments/markers will be installed from November 1st through May 1st.

127.7. Disinterment

127.7-1. Disinterment from an Oneida Nation cemetery may occur pursuant to any of the following; requirements for each are listed below:

(a) Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary;

(b) Land Management's issuance of a disinterment permit; or

(c) Reburial required by Land Management in accordance with section 127.7-4. .

127.7-2 Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary. The Oneida Judiciary may issue an Order for Authorization for Disinterment and/or Reinterment as follows:

(a) When a petition for an Order for Authorization for Disinterment and/or Reinterment is filed with the Oneida Judiciary, unless a hearing is held determining circumstances exist that would reasonably justify dispensing of the notice requirement, the petitioner shall serve a copy of the Petition for an Order for Authorization for Disinterment and/or Reinterment upon Land Management and all members of the same or a prior class as listed in section 127.7-3(b). A Petition for an Order for Authorization for Disinterment and/ or Reinterment shall include all of the following:

(1) The decedent's name, date of death, and burial location;

(2) The requester's name, address, telephone number, and relationship with the decedent;

(3) The requester's intent to obtain an order of disinterment/reinterment;

- (4) The reason for the disinterment;
 - (5) The location of reinterment and/or certification that the petitioner will have the remains cremated;
 - (6) Individual or entity responsible for the disinterment/reinterment; and
 - (7) That any objections shall be filed with the Judiciary within five (5) business days of the notification, or may be presented at the hearing.
- (b) Unless the Judiciary has found that grounds exist to dispense with Notice requirements, the Judiciary shall set a hearing date on the Petition for Order for Authorization for Disinterment and/or Reinterment at the earliest possible time after the deadline for filing objections has passed and shall issue an Order on the matter within ten (10) days after the hearing. The Judiciary may, for good cause, extend the time for issuance of an Order for an additional ten (10) days. When entering its decision, the Judiciary may also take into consideration:
- (1) The cause and manner of the decedent's death, including whether the Petitioner was convicted for a murder or homicide related offense in connection with the decedent's death;
 - (2) Whether disinterment would create a known public health risk;
 - (3) The decedent's will or other evidence of the decedent's wishes concerning final disposition, if known;
 - (4) Any objections filed with the Judiciary or presented at the hearing;
 - (5) Whether an order of disinterment or similar order from a court other than the Judiciary has been issued;
 - (6) Whether any required permits regarding re-interment have been obtained; or
 - (7) Any other factor requiring consideration.
- (c) The Judiciary may deny the Petition for Order for Authorization for Disinterment and/or Reinterment based solely on an objection to the disinterment either filed or presented by an individual with the same or a higher priority than the requester.
- (d) *Appeals.* An appeal of an Order issued under this section shall be filed with the Judiciary within five (5) business days after the order is issued. The Judiciary may modify the appeal time frame if it is determined exigent circumstances exist requiring more immediate disinterment. If no appeal is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a stay of the disinterment may be ordered, but only after inquiry into the facts and a finding that based on the facts it is reasonable to stay disinterment pending appeal.

127.7-3. *Land Management's issuance of a disinterment permit.* Land Management shall issue a Permit for Disinterment when all of the following occur:

- (a) The person in charge of the disinterment submits a complete Application for Disinterment Permit to Land Management.
- (b) The person in charge of the disinterment submits a complete Land Management Consent Form, signed by any of the following persons, in the order of priority stated below, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:
 - (1) An individual, as designated in writing by the decedent as listed in the Authorization for Final Disposition;
 - (2) The decedent's spouse;
 - (3) An adult son or daughter of the decedent;

- (4) Either parent of the decedent;
- (5) An adult brother or sister of the decedent;
- (6) A guardian of the person of the decedent at the time of the decedent's death;
- (7) Any other person authorized, under obligation, or agreeing to dispose of the decedent's corpse.

(c) Land Management shall deny the request for a Disinterment Permit when an objection to the disinterment is either filed or presented by an individual with the same or a higher priority than the requester. In such cases, Land Management shall refer the requester to the Judiciary.

127.7-4. *Reinterment by Land Management.* Land Management may reinter or disinter human remains that are interred in an Oneida cemetery in another plot in the same cemetery under the following circumstances:

- (a) Reinterment is necessary to correct a recordkeeping error made by the Nation or its designee when the human remains were first buried; and
- (b) Notification concerning the need for reinterment is made to one of the following, in descending order, by registered mail:
 - (1) The decedent's spouse;
 - (2) An adult son or daughter of the decedent;
 - (3) Either parent of the decedent; or
 - (4) An adult brother or sister of the decedent.

(c) Land Management shall maintain a record of its attempt to provide notification under this section as part of Land Management's permanent records.

127.7-5. The Nation shall be responsible for making all arrangements and incurring all costs associated with disinterment and reinterment due to a recordkeeping error on the Nation's behalf.

127.8. Prohibited Items and Behavior on Cemetery Grounds

127.8-1. Land Management shall promulgate rules concerning the maintenance and appearance of Oneida Nation cemetery grounds which shall be publically posted, including on Oneida Nation cemetery grounds. Land Management shall notify the Environmental Resource Board of the current rules and any changes to such rules.

- (a) Land Management or its designee may remove and dispose of any non-conforming objects from plots and/or cemetery grounds.

127.8-2. In accordance with applicable Oneida law, the Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds.

- (a) The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law.
- (b) Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law.

127.9. Complaint Process

127.9-1. Any individual may file a complaint with Land Management regarding the implementation and enforcement of this law.

127.9-2. Within five (5) business days of the receipt of a complaint, Land Management shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, if the address is known, to the Oneida Land Commission, and to the Environmental Resource Board.

End.

BC-09-02-88-A (Adoption of the Burial Ordinance)
BC-05-19-89-E (Adoption of Burial Ordinance)
BC-02-23-05-F (Emergency Adoption of Amendments)
BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
BC-1-14-09-E (Adoption of Cemetery Law)
BC-10-09-13-B (Adoption of Emergency Amendments)
BC-03-26-14-C (Extension of Emergency Amendments)
BC-07-23-14-B (Adoption of Amendments)
BC-07-26-17-K (Adoption of Amendments)