



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

November 16, 2016 9:00 a.m.

### **I. Call to Order and Approval of the Agenda**

### **II. Minutes to be approved**

1. November 2, 2016 LOC Meeting Minutes

### **III. Current Business**

1. Tobacco Law Amendments
2. Hunting, Fishing and Trapping Law Amendments
3. Oneida Business Committee Meetings Law
4. Budget Management and Control Law
5. Per Capita Law Amendments

### **IV. New Submissions**

### **V. Additions**

### **VI. Administrative Updates**

1. GTC Annual Report
2. OBC Meeting Agenda Memo

### **VII. Executive Session**

### **VIII. Recess/Adjourn**



## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

November 2, 2016 9:00 a.m.

**Present:** Brandon Stevens, Tehassi Hill, Jennifer Webster, Fawn Billie

**Others Present:** Jennifer Falck, Tani Thurner, Clorissa Santiago, Maureen Perkins, Rhiannon Metoxen, Krystal John, Terry Cornelius, Dianne McLester-Heim, Ed Delgado, Danelle Wilson

### I. Call to Order and Approval of the Agenda

Brandon Stevens called the November 2, 2016 Legislative Operating Committee meeting to order at 9:05 a.m.

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

### II. Minutes to be approved

#### 1. October 20, 2016 LOC Meeting Minutes

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

### III. Current Business

#### 1. Oneida Nation Seal & Flag Law

Motion by Jennifer Webster to approve the Oneida Nation Seal & Flag law public meeting packet, and to direct the Legislative Reference Office to hold a second public meeting on December 1, 2016; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to accept the legislative analysis for the Oneida Nation Seal and Flag law; seconded by Jennifer Webster. Motion carried unanimously.

#### 2. Real Property Law Amendments

Motion by Fawn Billie to accept the public meeting comments for the Real Property Law Amendments, and make the changes recommended in the public comment review memo, and to change the wording in section 601.5 from “mechanism” to “method”; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to forward the Real Property Law Amendments to a public meeting to be held on December 1, 2016 and to authorize an e-poll for approval of the public meeting packet; seconded by Tehassi Hill. Motion carried unanimously.

#### 3. Per Capita Law Amendments

Motion by Fawn Billie to defer the Per Capita Law Amendments to the November 16, 2016 Legislative Operating Committee meeting; seconded by Jennifer Webster.

Legislative Operating Committee Meeting Minutes of November 2, 2016

Motion carried unanimously.

**IV. New Submissions**

**1. Drug and Alcohol Free Law for Elected & Appointed Officials**

Motion by Jennifer Webster to add the Drug and Alcohol Free Law for Elected & Appointed Officials to the active files list as a high priority with Fawn Billie and Jennifer Webster as co-sponsors; seconded by Fawn Billie. Motion carried unanimously.

**V. Additions**

**VI. Administrative Updates**

**1. Post Law Adoption SOP**

Motion by Jennifer Webster to accept the Post Law Adoption Standard Operating Procedure as information; seconded by Tehassi Hill. Motion carried unanimously.

**2. Election Law Amendments Analysis E-Poll**

Motion by Tehassi Hill to enter into the record the support of the Election Law Amendments Analysis e-poll conducted on October 20, 2016; seconded by Fawn Billie. Motion carried unanimously.

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by Tehassi Hill to adjourn the November 2, 2016 Legislative Operating Committee meeting at 9:37 a.m.; seconded by Fawn Billie. Motion carried unanimously.



## Legislative Operating Committee November 16, 2016

# Tobacco Amendments

<b>Submission Date:</b> 7/22/16	<b>Public Meeting:</b>
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** A member of the Oneida Nation requested changes to the Tobacco Ordinance in order to enable both Oneida Nation descendants and sixteen (16) and seventeen (17) year olds to be eligible for employment in Oneida businesses that sell tobacco.

**8/17/16 LOC:** Motion by Tehassi Hill to add Tobacco Ordinance Amendments to the active files list as medium priority, listing Tehassi Hill as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

**10/10/16:** *Quarterly Sponsor Update meeting.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John. Item was assigned to Clorissa Santiago as Drafter and Maureen Perkins as Analyst.

**11/03/16:** *Work Meeting held.* Present: Tehassi Hill, Kathy King, Maureen Perkins, Geraldine Danforth, Bob Keck, JoAnne House, Jen Falck, and Clorissa Santiago. Michelle Doxtator will complete a memo and provide it to the LRO to update an analysis and the Drafter will update a draft. Should be on the 11/16/16 LOC agenda.

### Next Steps:

- Approve the public meeting packet and have the LRO hold a public meeting on December 15, 2016.

Oneida Nation - Retail

## interoffice

### MEMORANDUM

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**To:** Jennifer Falck, Legislative Reference Office - Director  
**From:** Michele Doxtator, Retail Area Profit Manager  
**Date:** November 7, 2016  
**Subject:** Emergency Amendment to the Tobacco Ordinance

Oneida Retail Enterprise (ORE) is requesting that the Oneida Tobacco Ordinance be amended to allow the Human Resource Department to hire qualified Retail Associates that are not enrolled Oneida Tribal members.

### Current Situation Analysis

The Oneida Tobacco Ordinance requires that Retail Employees be enrolled members of the Oneida Nation.

### Challenges

Oneida Retail has been experiencing challenges hiring and retaining Retail Associates in our current market. Local retailers are hiring Associates type positions at a higher rate of starting pay with incentive pay or premium pay for weekends. The hiring of only Tribal Members has limited our ability to fully staff the Oneida One Stops, Smokeshops, Travel Center and the Oneida Market.

A number of steps ORE has taken to attract applicants are as follows:

- Increase starting wage to \$10.10 an hour
- Free Uniforms
- Flexible scheduling for students
- Premium Pay for Non Holidays
- Third shift differential

On November 3, 2016 the Retail Associate Job Description was changed to allow the hiring of 16 & 17 year olds (with a work permit). ORE will be working closely with the Human Resource Department to implement work standards for the youth workers.

Below is a break out of the number of applicants for the past six (6) months that demonstrates some of the challenges ORE and HRD has experienced in the hiring of Associates. In May, 2016 ORE attempted to hire 18 Associates to prepare for the opening of Oneida One Stop 54 in June, since that time ORE has been short 5-8 Associates. The ORE staff shortages began 18 months ago with consistently being 5-8 Associate positions vacant.

	# of Applications	Hires	Incomplete Applications	Withdrew	Positive Pre-Employment Test	Failed Back-grounds	No Call Back	Declined
May	22	10	2	1	4	3	1	1
June	11	5	0	2	1	1	0	1
July	23	7	0	0	1	4	8	0
August	10	0	0	2	1	2	4	1
September	9	2	0	0	2	2	2	0
October	13	4	0	0	0	0	0	0
Totals	<b>88</b>	<b>28</b>	<b>2</b>	<b>5</b>	<b>9</b>	<b>12</b>	<b>15</b>	<b>3</b>

## Opportunities

The ability to hire non-tribal members into the Associate positions within Oneida Retail Enterprise will increase and improve our ability to fill entry level positions as needed by having a wider reach than strictly Oneida Tribal Members. The Oneida Indian Preference Law will protect the ability of Tribal Members who choose to work for Oneida Retail.

## Recommendation

Amend Chapter 60 Tobacco Ordinance with the following changes;

### 60.2. Adoption, Amendment, Repeal

60.2-5 This Law is adopted under the authority of the Constitution of the Oneida Nation.

### 60.3 Definitions

- c. "Manager" shall mean an enrolled member of the Oneida Nation employed by Oneida Retail.
- d. "Reservation" shall mean all land within the exterior boundaries on the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566 and any land added thereto pursuant to federal law.
- e. "Stamped Cigarettes" shall mean cigarettes bearing valid Wisconsin tax stamp.

- f. "Oneida Retail Location" shall mean an Oneida Nation business that sells stamped cigarettes within the Oneida Nation Reservation.
- g. "Employee" shall mean an employee of the Oneida Nation working in or managing an Oneida Retail Location.
- h. "Tribal Member" shall mean an enrolled member of the Oneida Nation.
- i. "Tribe" shall mean the Oneida Nation.

#### **60.4 Oneida Retail**

60.4-1 The Oneida Nation shall maintain Oneida Retail Locations within the Reservation as it deems necessary to provide adequate service of stamped cigarettes to consumers.

60.4-1. Each Oneida Retail Location established hereunder shall be an Oneida Retail Location and shall be managed by a Tribal Member and/or operated for the tribe by Employees

#### **60.5 Purchase of, Title to And Possession of Tobacco Products**

60.5-1. The Tribe shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on to an Oneida Retail store on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the of the Oneida Retail store to be held for sale to the consumers. The Tribe shall retain title to stamped cigarettes until sold to a consumer.

I can be reached at 920.496.7301 or at [mdoxat3@oneidanation](mailto:mdoxat3@oneidanation) if you have any questions.

Cc     Retail Administration  
        Maureen Perkins, LRO Analyst

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 07/22/2016
- 2) Contact Person(s): Dawn Moon-Kopetsky Dept: OBC-Admin  
 Phone Number: 920-901-2015 Email: dmoonkop@oneidanation.org
- 3) Agenda Title: Employee 16 Year old and descendants at the One-Stops
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Changing hiring requirements to at all Oneida One Stops to be 16 years old as well as hire Oneida descendants.  
This will get more income into Oneida homes and help bring an awareness to our youth and getting them  
ready for the work force and finance responsibility. There is an employee turnover at One-Stops because  
they transfer into other areas in the Tribe once hired. This will retain employees due to their age.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Email dated May 23, 2016 from myself
- 2) Responses back from this email
- 3) Job Description
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
Chapter 60 Tobacco Ordinance
- 6) Please List all other departments or person(s) you have brought your concern to:  
Michele Doxtator, Retail Manager, Chairwoman Cristina Danforth, OBC,
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
 If yes, please indicate why: retain employees....Save money

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: \_\_\_\_\_

*Dawn Moon-Kopetsky*

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**

or

**Legislative Operating Committee (LOC)**

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376



NOTICE OF  
**PUBLIC MEETING**  
TO BE HELD  
**Thursday, DECEMBER 15th at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> 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: TOBACCO**

**This is a proposal to amend the existing Tobacco Ordinance which would:**

- ◆ Replace the term “tobacco outlet” with “Oneida retail location;”
- ◆ Eliminate the requirement that employees of Oneida retail locations be enrolled members of the Oneida Nation;
- ◆ Update the language and ensure compliance with drafting style and formatting requirements;
- ◆ Retitle the Tobacco Ordinance as a law in alignment with the Legislative Operating Committee’s directive that all policies be classified as laws; and
- ◆ Reformat the law to align with the approved reorganization of the laws.

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](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD**  
**OPEN UNTIL DECEMBER 22, 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



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## Tobacco

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Tobacco				
<b>Sponsor</b>	Tehassi Hill	<b>Drafter</b>	Clorissa N. Santiago	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	Dawn Moon-Kopetsky and Retail Division Amend law to allow Oneida Retail to hire non-Oneida employees due to inability to keep positions filled with current restrictions to only hire Oneida members in retail.				
<b>Purpose</b>	Regulates the sale, possession and distribution of cigarettes within the Reservation.				
<b>Authorized/ Affected Entities</b>	Oneida Retail Enterprise, Oneida Human Resources Department				
<b>Related Legislation</b>	Legislative Procedures Act				
<b>Enforcement &amp; Due Process</b>	All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer [see 115.8-1]. Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation [see 115.8-1(a)]. Oneida Nation employees who violate this law shall be subject to disciplinary action in accordance with the Nation's laws, rules, and policies governing employment [see 115.8-1(b)].				
<b>Public Meeting Status</b>	A public meeting has not been held.				

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### Overview

8 Amendments to the Tobacco Ordinance were requested by a Tribal member and the  
 9 Oneida Retail Enterprise to remove restrictions that Oneida Retail employees be enrolled Tribal  
 10 Members. The Oneida Retail Enterprise has had difficulty hiring and retaining Retail Associates  
 11 and the restrictions in the law requiring employees of Oneida Retail be enrolled Members has  
 12 limited their ability to fully staff the Oneida Retail locations. The Retail Enterprise has operated  
 13 with between 5-8 positions vacant for the past 18 months (see attached memo from the Oneida  
 14 Retail Enterprise).

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### Proposed Amendments

- 17 • “Manager” was amended to remove the requirement that managers be enrolled members  
 18 of the Oneida Nation.
  - 19 ○ Indian Preference in hiring will govern and provide Oneida applicants preference in  
 20 Retail positions.
- 21 • “Tribal Employee” was removed and replaced with “Employee” which is defined as a

person employed by the Oneida Nation working in an Oneida retail location. This change removed restrictions that employees of Oneida Retail be enrolled members of the Nation.

- Indian Preference in hiring will govern and provide Oneida applicants with preference in Retail positions.
- “Tribal Employee” was removed from the definitions to remove the restrictions that employees of Oneida Retail be enrolled Oneida Nation members. Section 115.4-2 was updated to remove the requirement that Oneida retail locations be managed and operated by a Tribal Employee and instead states that Oneida retail locations be managed and operated by the Oneida Nation.

### Other

- Minor changes:
  - Retitle the Tobacco Ordinance as a law in alignment with the Legislative Operating Committee’s directive that all policies be classified as laws.
  - Replace the term “tobacco outlet” with “Oneida retail location.”
  - Update the language and ensure compliance with drafting style and formatting requirements.
  - To reflect the 2015 Constitutional Amendments, various references to the “Tribe” have been replaced with references to the “Nation.”
  - Section 115-2 has been revised to ensure compliance with the language required by the Legislative Procedures Act.
  - Reformat the law to align with the approved reorganization of the laws.

### Considerations

- The job descriptions for the Oneida Retail Enterprise positions will need to be updated to reflect changes in this law.
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**Title 1. Government and Finances - Chapter 60115**

**TOBACCO ORDINANCE**

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matters concerning tobacco

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|--|--------------------------------------|
| 60115.1. Purpose and Policy  | Products                             |
| 60115.2. Adoption, Amendment, Repeal                               | 60115.6. Restrictions on Sales       |
| 60115.3. Definitions   | 60115.7. <del>Tribal</del> Liability |
| 60115.4. <del>Tobacco Outlets</del> <u>Oneida Retail Locations</u> | 60115.8. Violations                  |
| 60115.5. Purchase of, Title to And Possession of Tobacco           |                                      |

**60115.1. Purpose and Policy**

60115.1-1. *Purpose.* The purpose of this Lawlaw is to regulate the sale, possession and distribution of cigarettes within the Reservation.

60115.1-2. *Policy.* It is the policy of the TribeNation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

**60115.2. Adoption, Amendment, Repeal**

60115.2-1. This Lawlaw was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A ~~and~~ BC-04-09-14-F, and BC.

60115.2-2. This Lawlaw 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.

60115.2-3. 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.

60115.2-4. In the event of a conflict between a provision of this Lawlaw and a provision of another law, the provisions of this Lawlaw shall control.

60115.2-5. This Lawlaw is adopted under authority of the Constitution of the Oneida ~~Tribe of~~ Indians of WisconsinNation.

**60115.3. Definitions**

60115.3-1. This section shall govern the definitions of words and phrases used within this Lawlaw. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Cigarette" ~~shall mean~~ means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) "Electronic cigarette" ~~shall mean~~ means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. "Electronic cigarette" shall not include any device that is prescribed by a healthcare professional.

(c) "Manager" ~~shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin~~ means a person employed by the TribeNation to manage an Oneida retail location. ~~Tobacco outlet.~~

(d) "Reservation" ~~shall mean~~ means all land within the exterior boundaries of the Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to

federal law.

(e) "Stamped Cigarettes" ~~shall mean~~means cigarettes bearing valid Wisconsin tax stamps.

(f) ~~"Tobacco Outlet"~~Oneida Retail Location ~~shall mean a Tribal~~means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida ~~Indian~~Nation Reservation.

(g) "Employee" means a person employed by the Oneida Nation working in an Oneida retail location.

~~(g) "Tribal Employee" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin employed to work in or manage a Tobacco outlet.~~

~~(h) "Tribal Member" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin.~~

~~(i) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.~~

60 (h) "Nation" means the Oneida Nation.

#### **115.4. ~~Tobacco Outlets~~Oneida Retail Locations**

~~60~~115.4-1. The ~~Tribe~~Nation shall maintain ~~tobacco outlets~~Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

~~60~~115.4-2. Each ~~tobacco Oneida retail location~~ ~~outlet~~ established hereunder shall be ~~a Tribal Tobacco Outlet and shall be managed and/or operated for by~~ the ~~Tribe by a Tribal employee~~Oneida Nation.

#### **60115.5. Purchase of, Title to ~~A~~ and Possession of Tobacco Products**

~~60~~115.5-1. The ~~Tribe~~Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to ~~an tobacco outlet~~Oneida retail location on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the tobacco outlet to be held for sale to the consumers. The ~~Tribe~~Nation shall retain title to stamped cigarettes until sold to a consumer.

#### **60115.6. Restrictions on Sales**

~~60~~115.6-1. The ~~Tribe~~Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the ~~Tribe~~Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

~~60~~115.6-2. The ~~Tribe~~Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at a ~~tobacco outlet~~Oneida retail location.

~~60~~115.6-3. Cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18). Cigarettes and electronic cigarettes for sale at ~~an tobacco outlet~~Oneida retail location shall be on display behind a counter. No person other than an authorized ~~Tribal~~Oneida Nation employee shall sell cigarettes and electronic cigarettes at ~~an tobacco outlet~~Oneida retail location.

~~60~~115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### **60115.7. ~~Tribal~~ Liability**

~~60~~115.7-1. The ~~Tribe~~Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a

beneficiary any person owning a purchase money security interest in the products to the extent his interest may appear.

### **~~60~~115.8 Violations**

~~60~~115.8-1. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this ~~Law~~law are unlawful property and subject to seizure by any Oneida law enforcement officer.

(a) Violators subject to the jurisdiction of the ~~Tribe~~Nation shall be subject to a fine of not more than ~~\$ten dollars (\$10)~~ per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the ~~Tribe~~Nation.

(b) ~~Tribal~~Oneida Nation employees who violate this ~~Law~~law shall be subject to disciplinary action in accordance with the ~~Tribe's~~Nation's laws, rules, and policies governing employment, personnel policies and procedures.

~~60~~115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the ~~Tribe's~~Nation's judicial system before the fine is to be paid.

*End.*

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Adopted - BC-3-15-76-A

Adopted - BC-11-18-81-A

Adopted - BC-9-7-77-B

Amended - BC-10-10-07-A

Adopted - BC-9-4-79-C

Amended - BC-04-09-14-F

## **Title 1. Government and Finances - Chapter 115**

### **TOBACCO**

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matters concerning tobacco

115.1. Purpose and Policy

115.2. Adoption, Amendment, Repeal

115.3. Definitions

115.4. [Oneida Retail Locations](#)

115.5. Purchase of, Title to And Possession of Tobacco Products

115.6. Restrictions on Sales

115.7. Liability

115.8. Violations

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#### **115.1. Purpose and Policy**

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

#### **115.2. Adoption, Amendment, Repeal**

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, and BC\_\_\_\_\_.

115.2-2. 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.

115.2-3. 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.

115.2-4. 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.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **115.3. Definitions**

115.3-1. 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) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) "Electronic cigarette" means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. "Electronic cigarette" shall not include any device that is prescribed by a healthcare professional.

(c) "Manager" means a person employed by the Nation to manage an Oneida retail location.

(d) "Reservation" means all land 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 land added thereto pursuant to federal law.

(e) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.

(f) "Oneida Retail Location" means an Oneida Nation retail sales business selling

stamped cigarettes within the Oneida Nation Reservation.

(g) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(h) “Nation” means the Oneida Nation.

#### **115.4. Oneida Retail Locations**

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### **115.5. Purchase of, Title to And Possession of Tobacco Products**

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the tobacco outlet to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### **115.6. Restrictions on Sales**

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at a Oneida retail location.

115.6-3. Cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18). Cigarettes and electronic cigarettes for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized Oneida Nation employee shall sell cigarettes and electronic cigarettes at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### **115.7. Liability**

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his interest may appear.

#### **115.8 Violations**

115.8-1. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer.

(a) Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation.

(b) Oneida Nation employees who violate this law shall be subject to disciplinary action in accordance with the Nation’s laws, rules, and policies governing employment.

115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the Nation’s judicial system before the fine is to be paid.



*End.*

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Adopted - BC-3-15-76-A	Adopted - BC-11-18-81-A
Adopted - BC-9-7-77-B	Amended - BC-10-10-07-A
Adopted - BC-9-4-79-C	Amended - BC-04-09-14-F



Legislative Operating Committee  
November 16, 2016

# Hunting, Fishing and Trapping Law Amendments

<b>Submission Date:</b> 1/21/15	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> N/A

**Summary:** *Amendments were requested to update and streamline the Law and to remove various requirements from the Law, instead authorizing the Environmental Resources Board and the Conservation Department to establish those requirements instead through the Administrative Rulemaking process; in order to reduce the frequency with which future amendments will be made to the law.*

**1/21/15 LOC:** Motion by Tehassi Hill to add the Hunting, Fishing and Trapping Law Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Tehassi Hill will be the sponsor for this item.*

**3/18/15 LOC:** Motion by Jennifer Webster to defer the Hunting, Fishing and Trapping Law Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

**4/8/15:** *Work meeting held.* Attendees include Tani Thurner, Rebecca Webster, Terry J Metoxen, Jacy A. Rasmussen, Eugene Schubert.

**5/11/15:** *Work meeting held.* Attendees include Tani Thurner, Rebecca Webster, Terry J Metoxen, Eugene Schubert, Richard Baird (ERB Chair)

**6/17/15:** *Work meeting held.* Attendees include Tani Thurner, Rebecca Webster, Terry J Metoxen, Eugene Schubert.

**10/15/15:** *Work meeting held.* Attendees include Tehassi Hill, Krystal John, Laura Manthe, and Shad Webster.

**10/21/15 LOC:** Motion by David P. Jordan to defer the Hunting, Fishing and Trapping Law Amendments for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

- 8/2/16:** Update meeting held with sponsor, drafter, analyst, LRO director. Work meeting scheduled for 8/11/16.
- 8/11/16:** *Work meeting held.* Drafting attorney will provide updated draft to LRO Director in a few days.
- 10/10/16:** *Quarterly Update Meeting held.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John. Draft is complete. Waiting for an updated analysis, which should be complete the week of 10/17/16.

**Next Steps:**

- Approve the Public Meeting packet and forward to a Public Meeting scheduled to be held December 15, 2016.

**Title 4. Environment and Natural Resources – Chapter 45406**

**HUNTING, FISHING AND TRAPPING LAW**

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*Our laws concerning hunting, fishing and trapping*

45.1. Purpose and Policy  
45.2. Adoption, Amendment, Repeal  
45.3. Definitions  
45.4. Jurisdiction  
45.5. Administration and Supervision  
45.6. Licenses and Permits  
45.7. General Regulations  
45.8. Wildlife Damage and Nuisance Control  
45.9. Hunting  
45.10. Enforcement and Penalties

406.1. Purpose and Policy  
406.2. Adoption, Amendment, Repeal  
406.3. Definitions  
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406.6. Licenses and Permits  
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406.8. Wildlife Damage and Nuisance Control  
406.9. Hunting  
406.10. Enforcement and Penalties

**45406.1. Purpose and Policy**

45406.1-1. Purpose. The purpose of this Law is to protect and conserve Wildlife on the Reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

45406.1-2. Policy. It is the policy of this Law to provide:

(a) ~~an~~ An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all Wildlife and natural resources on the Reservation; and

(b) ~~an~~ An enforceable system of licensing and permitting which establishes clear Rules pursuant to the Administrative Rulemaking law related to Hunting, Fishing, and Trapping, and associated fines and penalties for violations of this Law and the said Rules.

**45406.2. Adoption, Amendment, Repeal**

45406.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC-6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and \_\_\_\_\_.

45406.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

45406.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

45406.2-4. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law controls. Provided that, nothing in this Law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion law shall control.

45406.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

~~45.2-6. The Oneida Tribe of Indians of Wisconsin is a sovereign nation and reserves all sovereign rights, authority, and jurisdiction consistent with being a sovereign nation. This Law does not and should not be construed to waive the Tribe's sovereign immunity.~~

**406.3. Definitions**

~~45406.3-1.~~ 3-1. This section ~~governs~~shall govern the definitions of words and phrases used within this ~~Law~~law. All words not defined herein ~~are to~~shall be used in their ordinary and everyday sense.

(a) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of ~~Wildlife~~wildlife that a person may take during a twenty-four (24) hour period measured from midnight to midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal ~~Member~~member or who lives with a Tribal ~~Member~~member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest ~~Wildlife~~wildlife on behalf of the permittee pursuant to the ~~Permit~~permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of ~~Wildlife~~wildlife within the ~~Reservation~~reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law, which is payable to ERB or the Department within the amount of time designated by the ~~Rules~~rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any ~~Wildlife~~wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this ~~Law~~law and the ~~Rules~~rules created pursuant to this ~~Law~~law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) ~~Muzzleloading~~ firearms may not be considered ~~Loaded~~loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered ~~Loaded~~loaded if the flash pan is cleaned of powder.

~~(o)~~ (o) “Nation” means the Oneida Nation.

~~(p)~~ (p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

~~(p-q)~~ (q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this ~~Tribe~~Nation.

(~~qr~~) “Nuisance Animal” means any ~~Wildlife~~wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or ~~Endangered~~endangered or ~~Threatened~~threatened species of ~~Wildlife~~wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(~~r~~–~~s~~) “Penalty” means a punishment, other than a ~~Fine~~fine, imposed on a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law and may include, but is not limited to, the confiscation of equipment and/or ~~Wildlife~~wildlife with return of the same at the discretion of ERB, the imposition of a ~~Wildlife~~wildlife protection assessment (civil recovery value), revocation and/or ineligibility for ~~Licenses~~licenses and/or ~~Permits~~permits for a specified period of time, and restitution.

(~~s~~–~~t~~) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a ~~License~~license.

(~~t~~–~~u~~) “Protected Species” means any species of ~~Wildlife~~wildlife that is not ~~Endangered~~endangered or ~~Threatened~~threatened, but for which ERB has established seasons, ~~Daily Bag Limits~~daily bag limits, or otherwise restricted the ~~Taking~~taking of.

(~~u~~–~~v~~) “Reservation” means all the property within the exterior boundaries of the ~~Reservation~~reservation of the ~~Oneida Tribe of Indians of Wisconsin~~Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(~~v~~–~~w~~) “Rule” means ~~any exercise a set of authority delegated to~~requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department ~~pursuant to this Law in accordance with the form of a rule, regulation, policy or any other tool designed to exercise ERB’s and/or the Department’s delegated authority~~Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this ~~Law. A Rule does not include any statements, interpretations, decisions, rules, regulations, policies, procedures or other matters concerning internal management of a department or division, or, which do not affect the private rights or interests of individuals outside of the said department or division~~law.

(~~w~~–~~x~~) “Take” or “Taking” means pursuing, shooting, ~~Hunting, Fishing~~hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or ~~Trapping~~trapping any ~~Wildlife~~wildlife, or attempting any of the foregoing.

(~~x~~–~~y~~) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a ~~Vehicle, Aircraft~~vehicle, aircraft or boat.

(~~y~~–~~z~~) “Trapping” means the ~~Taking~~taking of, or attempting to ~~Take~~take, any ~~Wildlife~~wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture ~~Wildlife~~wildlife.

(~~z~~–~~aa~~) “Tribal Land” means any land within the ~~Reservation~~reservation that is held in fee or in trust and is owned by the ~~Tribe~~Nation, a Tribal ~~Member~~member, or a ~~Non-Member~~non-member Indian.

(~~aa~~–~~bb~~) “Tribal Member” means an enrolled member of the ~~Oneida Tribe of~~

~~Indians of Wisconsin Nation.~~

~~(bb) “Tribe” or “Tribal” means the Oneida Tribe of Indians of Wisconsin.~~

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

~~(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian pursuant to Domestic Animal Ordinance,~~ or any part or carcass of the same.<sup>1</sup>

#### **45406.4. Jurisdiction**

45406.4-1. This law applies to the following persons:

(a) ~~All Tribal Members~~members,

(b) ~~All Non-Member~~non-member Indians, and

(c) ~~All Non~~non-Indians who:

(1) enter Tribal ~~Land~~land, or

(2) apply for and receive a ~~Tribal License~~license and ~~Permit/or permit~~.

(d) All persons as otherwise permitted under federal law.

45406.4-2. This law applies:

(a) within the boundaries of the ~~Reservation~~reservation, and

(b) on lands held in trust for the ~~Tribe~~Nation outside the boundaries of the ~~Oneida Reservation~~reservation.

45406.4-4. *Lack of State Jurisdiction.* The ~~Tribe~~Nation and the federal government have sole jurisdiction over the management and regulation of the ~~Tribe’s~~Nation’s natural resources. Accordingly, licenses, permits, tags and the like issued by the state have no legal effect ~~on~~ lands over which the ~~Tribe~~Nation exercises its jurisdiction under Section 45406.4-2.

~~(a) State back tags may not be filled or utilized on lands over which the Tribe exercises its jurisdiction under Section 45.4 2.~~

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#### **406.5. Administration and Supervision**

45406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all ~~Wildlife~~wildlife within the ~~Reservation~~reservation. ERB and the Department shall jointly establish and maintain the ~~Rules~~rules that are required to implement this ~~Law~~law. The Department shall administer and enforce this ~~Law~~law and the ~~Rules~~rules created pursuant to this ~~Law~~law.

45406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this ~~Law~~law, jointly, ERB and the Department are hereby ~~jointly~~ delegated ~~to~~ the ~~rulemaking~~ authority to:

(a) Determine the types and number of ~~Licenses~~licenses and ~~Permits~~permits that may be issued by the Department, including how many ~~Licenses~~licenses and ~~Permits~~permits that may be issued to ~~Non~~non-Indian hunters.

(b) Establish a fee schedule and application requirements and deadlines for obtaining

<sup>1</sup> For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.



~~Licenses~~licenses and/or ~~Permits~~permits.

(c)-Establish or amend ~~Daily Bag Limits~~daily bag limits and possession limits based on the supply of ~~Wildlife~~wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such ~~Rules~~rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.

(d)-\_\_Based on the monitoring and supervision of all ~~Wildlife~~wildlife, when necessary, declare any species in need of protection a ~~Protected Species~~protected species or an ~~Endangered~~endangered or ~~Threatened~~threatened species, and thereafter modify or revoke such declarations as may be appropriate.

(e)-\_\_Fix, shorten, extend or close seasons and ~~Hunting~~hunting hours on any ~~Wildlife~~wildlife. Provided that, ERB and the Department shall base the open season for the ~~Hunting~~hunting of migratory birds ~~must be based on the Tribe's~~Nation's agreement with the U.S. Fish and Wildlife Service.

(f)-Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:

(1) the taking of ~~Wildlife~~wildlife;

(2) other specified areas, pursuant to the ~~Rules~~rules jointly developed by ERB and the Department.

(g)-\_\_Establish methods for checking persons into and out of areas specified under subsection (f) above.

(i)-Regulate the operation of boats upon ~~Reservation~~reservation waters and the operation of ~~Vehicles~~vehicles and ~~Aircraft~~aircraft used while ~~Hunting, Fishing~~hunting, fishing or ~~Trapping~~trapping.

(j)-Regulate and prescribe the means and methods by which ~~Wildlife~~wildlife may be ~~Taken~~taken, including, but not limited to, the use of:

(1) bait,;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

(k)-Regulate the ~~Transportation~~transportation, registration, tagging, and storage of all ~~Wildlife~~wildlife within the ~~Reservation~~reservation and the shipment or transportation of ~~Wildlife~~wildlife off the ~~Reservation~~reservation.

(l)-Prescribe safety and fire control measures and other ~~regulations~~rules as may be necessary for range, forest or ~~Wildlife~~wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the ~~Tribe~~Nation.

(m)-\_\_Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this ~~Law~~law and the ~~Rules~~rules established pursuant to this ~~Law~~law.

(n)-\_\_Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(o) Create ~~Rules~~other rules as specifically directed throughout this ~~Law~~law or as may be necessary to implement this ~~Law~~law. ERB shall provide notice of said ~~Rules~~rules both



on ERB's website and ERB and/or the Department shall develop a ~~Rule~~rule booklet, which the Department shall provide to each person receiving a ~~License~~license or ~~Permit~~permit pursuant to this ~~Law~~law.

~~45406.5-3. Approval of Fines and Penalties.~~ ~~ERB and the Department shall jointly create a citation schedule setting the monetary Fines and Penalties for violations of this Law and/or the Rules established pursuant to this Law. The said schedule must be noticed to the Oneida Business Committee before it may be implemented.~~

~~45.5 4. Oneida Conservation Wardens.~~ ~~Oneida Conservation Wardens~~Department wardens shall enforce this ~~Law and the Rules established pursuant to this Law~~law and corresponding rules on the ~~Reservation~~reservation, and, accordingly shall:

(a) ~~Observe~~ persons engaged in ~~Hunting, Fishing~~hunting, fishing and/or ~~Trapping~~trapping in order to ensure that the methods and equipment utilized are lawful.

(b) ~~Investigate~~ reports of violations of ~~Wildlife~~wildlife and environmental laws, including, but not limited to, this ~~Law~~law and corresponding rules.

(c) ~~Work~~ to prevent persons from violating this ~~Law~~law and/or the ~~Rules established pursuant to this Law~~corresponding rules.

(d) ~~Issue~~ warnings and/or citations, which may include ~~Fines~~fines and/or ~~Penalties~~penalties, for violations of this ~~Law~~law and/or the ~~Rules established pursuant to this Law~~corresponding rules.

~~45406.5-5. 4. Oneida Police Department.~~ Any Oneida Police Department officer, who observes a violation of this ~~Law~~law and/or ~~the Rules established pursuant to this Law~~corresponding rules, shall report such violation to the Department and/or a ~~Conservation Warden~~Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

## **~~45406.6. Licenses and Permits~~**

~~45406.6-1. Sportsman License.~~

(a) ~~A Sportsman License~~sportsman license is required for all persons ~~Hunting, Fishing~~hunting, fishing or ~~Trapping~~trapping on Tribal ~~Land~~land, except:

(1) ~~Fishing~~ is permitted without a ~~Sportsman License~~sportsman license for Tribal ~~Members, Dependents~~members, dependents, and ~~Non-Member~~non-member Indians whom are sixteen (16) years of age or younger.

(2) ~~Landowners and lessees and their family members, guests with the permission of the landowners or lessees,~~ may ~~Hunt~~hunt and ~~Trap~~trap the following species on the property they own or lease, year-round, without a ~~Sportsman License~~sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any ~~Nuisance Animal~~nuisance animal that is not an ~~Endangered~~endangered or ~~Threaten~~threaten species and is also not a ~~Protected Species~~regulated or protected species.

(b)–\_\_\_ Anyone born on or after January 1, 1973 ~~must~~shall successfully complete a state-certified ~~Hunter–Safety~~hunter safety course to be eligible for a ~~Sportsman License~~sportsman license, except that:

(1)–*Fishing Only Sportsman License.* A ~~Sportsman License~~sportsman license may be issued which permits ~~Fishing~~fishing only. In such circumstances, successful completion of a state-certified ~~Hunter–Safety~~hunter safety course is not required and the Department shall internally record such ~~Licenses~~licenses as permitting ~~Fishing~~fishing only.

(A) A person issued a “~~Fishing~~fishing only” ~~Sportsman License~~sportsman license may not ~~Hunt~~hunt or ~~Trap~~trap, or be eligible to ~~Hunt~~hunt or ~~Trap~~trap, until the licensee provides the Department with proof of successful completion of a state-certified ~~Hunter–Safety~~hunter safety course.

(A)–(B) Any licensee holding a ~~Fishing~~fishing only ~~Sportsman License~~sportsman license may name a ~~Designated–Hunter~~designated hunter to fill the ~~Hunting~~hunting or ~~Trapping Permits~~trapping permits that regularly accompany a ~~Sportsman License~~sportsman license based on the ~~Rules~~rules established pursuant to this Law. For the requirements related to naming a ~~Designated–Hunter~~designated hunter, refer to ~~Section 45~~section 406.9-4.

~~45~~406.6-2.–\_\_\_ *Ceremonial and/or Feast Permit.* Tribal ~~Members~~members may apply for a ceremonial and/or feast ~~Permit~~permit to group ~~Hunt–Wildlife~~hunt wildlife outside of the regular applicable seasons.

(a)–\_\_\_ When the ceremonial and/or feast ~~Permit~~permit is for deer ~~Hunting~~hunting, it may only be issued for antlerless deer.

(b)–\_\_\_ A ceremonial and/or feast ~~Permit~~permit may be issued to a group and/or organization meeting each of the following requirements:

(1)–~~The group and/or organization must consist of at~~ \_\_\_ ~~At~~ At least eighty-five ~~(85)–percent (85%) of the group and/or organization members are~~ Tribal ~~Members~~members;

—(2)–\_\_\_ The agent of the group/organization ~~must–be~~is a Tribal ~~Member~~member;

(3)–\_\_\_ The occasion for the ceremonial and/or feast requiring the ~~Hunt~~hunt out of season ~~must–be~~is recognized by the Oneida community; and

(4)–\_\_\_ The ~~Hunt–must–take~~hunt takes place on the ~~Reservation~~reservation.

(c)–\_\_\_ All persons participating in the ceremonial and/or feast ~~Hunt–must–hunt~~ shall be named hunters on the ceremonial and/or feast ~~Permit~~permit.

(d)–\_\_\_ The agent of the group ceremonial and/or feast ~~Hunt–must–hunt~~ shall notify the ~~Conservation Warden~~Department warden of the time and place where the ~~Hunt~~hunt will take place no later ~~then~~than twenty-four (24) hours prior to the ~~Hunt~~hunt. The ~~Conservation Warden~~Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast ~~Hunt~~hunt.

~~45~~406.6-3.–\_\_\_ *Other permits, tags* ~~Permits, Tags and stamps~~Stamps. In accordance with this ~~Law~~law and ~~the Rules established pursuant to this Law~~corresponding rules, the Department may issue ~~Permits~~permits authorizing a person to engage in specific ~~Hunting, Fishing~~hunting, fishing and/or ~~Trapping~~trapping activities, including ~~Nuisance Animal Removal Permits~~nuisance animal

removal permits pursuant to ~~Section 45~~section 406.8-2.

~~45406.6-4.~~ It is unlawful for any person to:

(a) ~~provide~~ Provide false information or fail to report relevant information as requested by the Department, -when applying for a ~~License~~license or ~~Permit~~permit; or

(b) ~~aid~~ Aid another in fraudulently securing a ~~License~~license or ~~Permit~~permit.

~~45406.6-5.~~ Except as provided under ~~Sections 45~~sections 406.6-1(b)(1)(A), ~~45406.9-4~~ and ~~45406.9-6~~, ~~Licenses~~licenses and/or ~~Permits~~permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the ~~License~~license and/or ~~Permit~~permit is issued.

~~45406.6-6.~~ Disabled Hunter Permits. The Department may issue a ~~Disabled Hunter Permit~~disabled hunter permit to any person who is physically disabled, upon a showing of medical verification of a physical disability. ~~A Disabled Hunter Permit~~hunters shall display the disabled hunter permit sticker ~~must be displayed~~ in a manner and location as required by the Department. ~~A Disabled Hunter Permit~~A disabled hunter permit authorizes a person to ~~Hunt~~hunt:

(a) ~~—~~ within fifty (50) feet of the center of a road; and/or.

(b) ~~—~~ from within a ~~Vehicle~~vehicle, provided that the vehicle may not be moving and the engine of the ~~Vehicle~~vehicle may not be running.

~~45406.6-7.~~ Denial of a License or Permit.

(a) ~~The~~ Department may decline to issue a ~~License~~license and/or ~~Permit~~permit to an applicant if:

(1) ~~The~~ applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this ~~Law~~law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the ~~License~~license and/or ~~Permit~~permit poses a risk to the health, safety, and/or welfare of the ~~Tribe~~Nation, to natural resources on the ~~Reservation~~reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) ~~—~~ At the time of the request, the applicant's ~~Hunting, Fishing~~hunting, fishing or ~~Trapping License, Permit~~trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) ~~—~~ Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) ~~—~~ violated this ~~Law, the Rules established pursuant to this Law, law~~ and/or ~~the Hunting, Fishing, corresponding rules and/or Trapping~~the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) ~~—~~ violated other ~~Tribal~~laws or rules of the Nation while engaged in ~~Hunting~~hunting, fishing or ~~Trapping~~trapping activities; or

(iii) ~~—~~ demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while ~~Hunting, Fishing~~hunting, fishing or ~~Trapping~~trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

~~(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of~~

this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b)– Any person who has had a ~~License~~license or ~~Permit~~permit denied in accordance with ~~Section 45~~section 406.6-7(a) may appeal the Department’s decision by requesting a hearing before ERB pursuant to ~~Section 45~~section 406.10-4.

#### **45406.7. General RegulationsRequirements**

~~45406.7-1.~~ Persons may not:

(a)–~~Enter onto private lands and/or waters to~~ Take~~take~~ or retrieve ~~Wildlife~~wildlife, without permission from the landowner, lessee or occupant.

(b)– ~~Leave, deposit, place or throw litter, debris,~~ Wildlife~~wildlife~~, or any other waste material, on the ~~Reservation’s~~reservation’s lands and waters.

(c)– ~~Cause damage to land or property belonging to another, including but not limited to, the Department’s decoys placed for law enforcement purposes by~~ Conservation Wardens~~Department wardens~~ or other law enforcement officers, and signs that give notice of a Hunting~~hunting~~ and/or trespass restriction.

(d)–~~Carelessly waste Wildlife. Every~~wildlife. Persons hunting, trapping or fishing shall make every reasonable effort ~~must be made~~ to retrieve all ~~Wildlife~~wildlife killed or crippled, provided that ~~said retrieval must abide by 45~~all persons shall comply with section 406.7-1(a).

(e)– ~~Knowingly disturb any den, nest, lodge, hut, dam or house that~~ Wildlife~~wildlife~~ may build to shelter themselves and their young.

(f)–~~Take~~ No person may take, pursue, injure, or disturb ~~Wildlife~~harass small game while on or in its ~~den, nest, lodge, hut, dam or house, or~~ den, or remove any eggs or young, except as may ~~occur~~be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural, recreational, or horticultural, practices or ~~Wildlife and fisheries~~wildlife research practices, ~~and as expressly authorized by the Department.~~

(g)– ~~Harvest Wildlife~~wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h)– ~~Take another person’s Wildlife~~wildlife or disturb another person’s Hunting, Fishing~~hunting, fishing, or Trapping~~trapping equipment without permission; or otherwise interfere with the lawful Hunting, Fishing~~hunting, fishing, or Trapping~~trapping of another person.

(i)–~~Stock or possess any live Wildlife~~wildlife on the ~~Reservation~~reservation without a Permit~~permit~~.

(j)–~~Introduce or release Wildlife~~wildlife, fish eggs, or receptacles containing bait, on the ~~Reservation~~reservation or into ~~Reservation~~reservation waters without a Permit~~permit~~.

(k)– ~~Use in a reckless manner any device typically used for the harvesting of Wildlife~~wildlife, including but not limited to, firearms, bows, traps and knives.

(l)–~~Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.~~

(m) ~~Use a gas powered motorboat on Tribal~~the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) ~~Hunt, Trap~~trap, or possess any ~~Hunting~~hunting, or ~~Trapping~~trapping equipment while on Tribal ~~Land~~land where ~~Hunting~~hunting or ~~Trapping~~trapping is expressly prohibited by ~~Tribal~~the Nation's laws, ~~policies~~rules, or ~~regulations~~rules.

(o) ~~Sell or purchase Wildlife~~wildlife that was harvested on the ~~Reservation~~reservation, except as may be expressly allowed by ~~the Rules established pursuant to this Law~~law and corresponding rules.

(1) ~~Under no circumstances may trading, gifting, or sharing of Wildlife~~wildlife for traditional or ceremonial purposes may not be considered a violation of this ~~Section~~section.

~~(p) Refuse to obey a Conservation Warden's~~Department warden's lawful order.

45(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2.- Possession, Registration and Transportation of Carcasses. No person may hunt, trap, possess or ~~Transport~~transport any ~~Wildlife~~wildlife unless he or she ~~also~~ possesses the appropriate ~~License~~license and any required ~~Permit~~permit, including tags, for harvesting and/or possessing such ~~Wildlife~~wildlife.

~~(a) While Fishing, and prior to returning to his or her residence, no person may possess:~~

~~(1) Dressed fish, unless those fish can be readily counted; or~~

~~(2) Any fish carcass or fish fillet unless at least one (1) square inch of skin with scales intact remains naturally attached to each carcass or fillet.~~

45406.7-3.- ~~Any person who accidentally collides with and kills a deer while operating a Vehicle~~vehicle on a roadway, may retain possession of the said deer, provided that the person ~~must~~shall have the deer tagged by the Department, or the Department's designee.

45406.7-4.- Carcass Tags. Except as otherwise provided in this ~~Law~~law and ~~the Rules established pursuant to this Law~~corresponding rules, any person ~~Hunting~~hunting a species of ~~Wildlife~~wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the ~~Rules created pursuant to this Law~~rules. No person may possess or ~~Transport~~transport harvested ~~Wildlife~~wildlife that is not properly tagged in accordance with this ~~Law~~law and ~~the Rules established pursuant to this Law~~corresponding rules.

45406.7-5.- Health Advisory. ~~All Hunting~~ERB and ~~Fishing Rule~~the Department shall ensure that all hunting and fishing rule booklets ~~must~~ contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other ~~Wildlife~~wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

#### 45406.8.- Wildlife Damage and Nuisance Control

45406.8-1. ~~Landowners and lessees may remove Wildlife~~wildlife considered a ~~Nuisance Animal~~nuisance animal from land under their control and their associated structures, provided that ~~landowners and lessees shall satisfy~~ all requirements of this ~~Law and the Rules created pursuant to this Law must be satisfied~~law and corresponding rules, including, but not limited to



the permitted methods of ~~Taking~~taking and ~~Hunting~~hunting hours. Further, live-captured ~~Nuisance Animals~~nuisance animals may not be relocated to Tribal ~~Lands~~lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

~~45406.8-2. \_\_\_ Nuisance Animal Removal Permit. A Nuisance Animal Removal Permit~~A nuisance animal removal permit is required to ~~Hunt, Trap~~hunt, trap, or live-capture and relocate any ~~Endangered~~endangered or ~~Threatened~~threatened and ~~Protected Species~~protected species.

(a) ~~In order to be eligible for a Nuisance Animal Removal Permit~~nuisance animal removal permit, the applicant shall demonstrate that:

(1) ~~he~~He or she has the authority to control ~~Hunting~~hunting and ~~Trapping~~trapping access to the lands ~~being subject to the~~nuisance or being damaged as well as any contiguous lands;

(A) ~~In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control~~Hunting and ~~Trapping~~trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) ~~he~~He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) ~~the Wildlife~~The wildlife sought to be removed is a ~~Nuisance Animal~~nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) ~~he~~He or she has complied with this ~~Law~~law and corresponding rules and the conditions of any previously-issued ~~Nuisance Animal Removal Permit~~nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the ~~Permit~~permit;

(5) ~~the Nuisance Animal Removal Permit~~The nuisance animal removal permit applied for does not conflict with any provisions of the ~~Tribe's~~Nation's agreement with the United States Fish and Wildlife Service regarding the ~~Taking~~taking of birds classified as migratory under 50 CFR 10.13.

(b) ~~Each permittee shall keep a record of all~~Permit activities and shall provide the said ~~Permit~~permit record to the Department within ten (10) days of the ~~Permit's~~permit's expiration. At a minimum, the ~~Permit~~permittee shall include in the record ~~must contain~~any agents assigned under ~~Section 45~~section 406.8-4 and the total number of ~~Nuisance Animals~~nuisance animals removed pursuant to the ~~Permit~~permit, provided that, the Department may name additional items required to be included in the record. All ~~Permit~~permit records may be inspected by the Department at any time.

(c) ~~The permittee shall return all unused~~Permits, including carcass tags, to the Department within ten (10) days of the ~~Permit's~~permit's expiration.

~~45406.8-3.- \_\_\_ Nuisance Animal Removal Permit Not Required. A Nuisance Animal Removal Permit~~A nuisance animal removal permit is not required if the ~~Nuisance Animal~~nuisance animal would otherwise be exempt from the ~~License~~license and ~~Permit~~permit requirements under ~~Section 45~~section 406.6-1(a)(2). Also, a ~~Nuisance Animal Removal Permit~~nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver.* ~~A Nuisance Animal Removal Permit~~A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to ~~Hunt~~hunt or ~~Trap~~trap beaver(s) that are ~~Nuisance Animals~~nuisance animals, or to remove a beaver dam.

However, only the landowner and the Department may set traps on a beaver dam on Tribal ~~Land~~land; this privilege may not be transferred to an agent.

~~(b) Emergencies.~~ Nuisance ~~Animals~~animals for which a ~~Nuisance Animal Removal Permit~~nuisance animal removal permit is otherwise required, may be removed without the required ~~Permit~~permit if such removal is necessary to maintain a person's immediate health and safety. ~~All Takings of Nuisance Animals occurring~~

~~(b)(1) Persons taking a nuisance animal~~ under emergency circumstances ~~must be reported~~shall report the emergency taking to the Department on the required form ~~available with the Department.~~

~~(b)(2)~~ The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the ~~Taking~~taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the ~~Taking~~taking an unlawful ~~Taking~~taking without a ~~Permit~~permit and shall take the appropriate corrective measures.

~~45406.8-4.-~~ Designated Agents. A landowner may utilize an agent to remove a ~~Nuisance Animal~~nuisance animal pursuant to the provisions of this ~~Law~~law. If the requirements of this ~~Law~~law and ~~the Rules created pursuant to this Law~~corresponding rules are satisfied, the landowner's ~~Nuisance Animal Removal Permit~~nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) ~~In order for an agent to be assigned to remove a Nuisance Animal~~nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid ~~License~~license for ~~Hunting~~hunting or ~~Trapping~~trapping that ~~Nuisance Animal's~~nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) ~~the~~The location of the ~~Nuisance Animal~~nuisance animal where the removal activities are sought to occur;

(B) ~~an~~An authorized time period for the removal of the ~~Nuisance Animal~~nuisance animal; and

(C) ~~any~~Any other information as may be required by the ~~Rules~~rules established pursuant to this ~~Law~~law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner ~~or~~ lessee permittee may not charge any assigned agent any form of fee.

~~45406.8-5.-~~ Annual Migratory Bird Report. Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such ~~Takings~~takings occurring within the previous January to December.

~~45406.8-6.-~~ Conservation Warden Department Warden's Access. Any landowner or lessee pursuing the removal of a ~~Nuisance Animal~~nuisance animal shall grant ~~Conservation Wardens~~Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a ~~Conservation Warden~~Department warden relating to the said removal.

~~45406.8-6.~~ Retaining Fur, Carcasses and other Parts of Nuisance Animals. The following applies to ~~Nuisance Animals~~nuisance animals removed in accordance with this ~~Section~~section:

(a) ~~—~~ The permittee and each agent assigned under ~~Section 45~~section 406.8-4 may retain no more than one (1) deer removed pursuant to a ~~Nuisance Animal Removal Permit~~nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained ~~in accordance with~~by offering them to Tribal members in the Rules developed pursuant to this Law following order:

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

(b) ~~—~~ In order to keep, either for oneself or for sale, the furs of a ~~Nuisance Animal Taken~~nuisance animal taken pursuant to a ~~Nuisance Animal Removal Permit~~nuisance animal removal permit, the ~~said Permit must~~permittee shall be explicitly and separately ~~authorize~~authorized by the ~~permittee~~permit to retain the ~~Wildlife~~wildlife and to sell the ~~Wildlife~~wildlife.

~~(c)~~ Furs from ~~Nuisance Animals~~nuisance animals which did not require a ~~Nuisance Animal Removal Permit~~nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent. ~~However, he~~without a permit. Provided that the landowner, lessee or she must assigned agent shall have a valid ~~License~~license and/or ~~Permit~~permit in order to commercialize in, sell, trade, ship or ~~Transport~~transport any ~~Wildlife~~wildlife, except that any squirrels' parts retained may be sold during the closed season.

## **~~45406.9.~~ Hunting**

~~45406.9-1.~~ General Firearm and Archer ~~Regulations~~Restrictions. Persons may not:

(a) ~~Hunt~~ using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this ~~Law~~law and ~~the Rules created hereunder~~corresponding rules for the ~~Taking~~taking of a particular species.

(b) ~~Discharge~~ a firearm, air rifle, bow or crossbow:

(1) ~~into Reservation~~ Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land ~~Law~~law, except for the purpose of ~~Hunting~~hunting migratory birds during established seasons, in accordance with the ~~Rules~~rules created pursuant to this ~~Law~~law;

(2) ~~across~~ Across any roadway; or

(3) ~~within~~ Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) ~~Transport~~ any ~~Loaded~~loaded firearm, air rifle, or cocked bow or crossbow in a ~~Vehicle~~vehicle.

~~45406.9-2.~~ General Hunting Restrictions. Persons may not, unless specifically authorized by a ~~Permit~~permit, if applicable, do any of the following:

(a) ~~Hunt~~ with the use of ~~Aircraft~~aircraft;

(b) ~~Hunt~~ within fifty (50) feet of the center of a paved road;

(c) ~~Hunt~~ from a ~~Vehicle~~vehicle;

(d) ~~Hunt~~ while under the influence of alcohol or a controlled substance;

(e) ~~Hunt~~ with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while ~~Hunting~~hunting on foot, at the point of harvest of coyote,



raccoon, fox, or any other authorized unprotected species, ~~at the point of harvest~~;

(f) ~~Shine~~ between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;

(g) ~~Hunt~~ in a party of more than ten (10) persons;

(h) ~~Hunt~~ with, or possess while ~~Hunting~~ hunting:

(1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;

(2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated ~~Permit~~ permit;

(3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin; and/or

(5) Any of the following without a valid federal permit:

(A) ~~\_\_\_~~ A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;

(B) ~~\_\_\_~~ A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;

(C) ~~\_\_\_~~ A fully-automatic firearm;

(D) ~~\_\_\_~~ Any mechanism designed to muffle, silence or minimize the report of any firearm.

~~45406.9-3.~~ ~~\_\_\_~~ *Accidents*. Any person, who discharges a firearm, bow, or crossbow while ~~Hunting~~ hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

~~45406.9-4.~~ ~~\_\_\_~~ *Designated Hunters*. A permittee may name a ~~Designated Hunter~~ designated hunter to ~~Hunt, Fish~~ hunt, fish, or ~~Trap~~ trap on behalf of the permittee in the event that the permittee is physically or legally unable to ~~Take~~ take pursuant to his or her own ~~Permit~~ permit, provided that, the designated hunter shall provide his or her name and contact information ~~of the Designated Hunter must be provided~~ to the Department, and along with a signed statement from the original permittee naming the ~~Department must approve~~ designated hunter. The designated hunter shall receive the Department's approval of the designation before ~~the Designated Hunter is able to utilize~~ using the ~~Permits~~ permits of the original permittee.

(a) ~~To be eligible to be named a Designated Hunter, the named person must~~ shall:

(1) ~~Possess a valid Hunting License~~ hunting license;

(2) Be eligible for the ~~Permits~~ permits for which the person is named the ~~Designated Hunter~~ designated hunter; and

(3) Meet any other requirements of ~~Rules~~ the rules created pursuant to this ~~Law~~ law.

(b) ~~Designated Hunters~~ hunters may only ~~Hunt~~ hunt for one (1) permittee per season and may fill the number of tags as authorized by the ~~Rules~~ rules developed pursuant to this ~~Law~~ law.

(c) ~~\_\_\_~~ Any ~~Wildlife~~ wildlife taken by a ~~Designated Hunter~~ designated hunter remains the property of the original permittee ~~and must be transferred to his or her~~; the designated hunter shall transfer any wildlife taken by designation to the original permittee's

possession as soon as practicable following the ~~Taking~~taking.

~~45406.9-5.-~~ Age Restrictions.

~~(a) Persons between the ages of fifteen (12) and eighteen (18) years of age may only Hunt if they have obtained the required License and Permits and are under the immediate supervision of (a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities.~~

~~(b)-~~ (b) Persons between the ages of twelve (12) and ~~fourteen (14)~~seventeen (17) years old may only ~~Hunt~~hunt if they have obtained the required ~~License~~license and ~~Permits~~permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this ~~Section~~section shall remain within voice and sight contact of the youth hunters at all times.

~~(d)-b)~~ Tribal ~~Members~~members, descendants, ~~Non~~<sup>2</sup>, ~~non~~-member Indians and ~~Dependents~~dependents aged ten (10) or eleven (11) years old may ~~Hunt~~hunt if they have a mentor present while ~~Hunting~~hunting and have obtained any required ~~Licenses~~licenses and ~~Permits~~permits.

~~(+)(c)~~ (c) Tribal members, descendants<sup>3</sup>, non-member Indians and dependents having less than ten (10) years of age may hunt if they have a mentor present while hunting, provided that youth under the age of ten (10) may not use a weapon while hunting.

(d) The following limitations apply to youth hunters and their mentors ~~Hunting~~hunting pursuant to this ~~Section~~section:

~~(A)-1)~~ (1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

~~(B)-2)~~ (2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

~~(C)-3)~~ (3) The mentor ~~must~~shall remain within an arm's grasp of each youth hunter at all times.

~~(2) Eligible mentors must:~~

~~(A)-~~ (e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

~~(B)-2)~~ (2) Have a valid ~~License~~license and any required ~~Permits~~permits; and

~~(C) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.~~

~~(e) Tribal Members, descendants, Non-member Indians and Dependents having less than ten (10) years of age may Hunt if they have a mentor present while Hunting, provided that youth under the age of ten (10) may not use a weapon while Hunting.~~

~~(1) The following limitations apply to youth hunters and their mentors Hunting pursuant to this Section:~~

~~(A) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s) and the;~~

~~(B) Mentors may mentor a maximum of two (2) youth hunters at the same time; and~~

<sup>2</sup> Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

<sup>3</sup> See footnote 2.

~~(C) The mentor must remain within an arm's grasp of each youth hunter at all times.~~

~~(2) Eligible mentors must:~~

~~(A) Be at least eighteen (18) years old;~~

~~(B) Have a valid License and any required Permits; and~~

~~(C) (3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.~~

~~45406.9-6.~~ Deer Hunting Parties. A deer ~~Hunting~~hunting party consists of a minimum of two (2) ~~persons~~people, but may not exceed ten (10) ~~persons~~people legally ~~Hunting~~hunting deer in a group.

~~(a)~~ Any member of a deer ~~Hunting~~hunting party may harvest deer on behalf of another member of the deer ~~Hunting~~hunting party under the following circumstances:

~~(1)~~ a At the time and place of the harvest, the member of the ~~Hunting~~hunting party who harvests the deer shall be in contact with the member of the ~~Hunting~~hunting party on whose behalf the deer was harvested.

~~(A)~~ For the purpose of this ~~Section~~section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid; ~~provided that, hand.~~ Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

~~(2)~~ b The member of the ~~Hunting~~hunting party for whom the deer was harvested ~~must~~shall possess a valid, ~~License~~license and carcass tag for the deer.

~~(3)~~ c The member of the hunting party who ~~harvest~~harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that ~~harvested~~harvests the deer may not leave said deer unattended until it has been properly tagged.

#### ~~45406.10.~~ Enforcement and Penalties

~~45406.10-1.~~ Reporting Violations. All persons shall report any violation(s) of this ~~Law~~law and/or the ~~Rules created pursuant to this Law~~corresponding rules to the Department or the Oneida Police Department. The ~~departments~~department receiving ~~such~~ information regarding violations shall keep the information confidential.

~~45406.10-2.~~ Suspension of ~~Licenses/Permits.~~ Suspension, Revocation and/or Ineligibility. The Department may suspend, revoke or deem a party ineligible for a ~~License~~license or ~~Permit~~permit as a ~~Penalty~~penalty for committing any one (1) of the following acts or any combination thereof:

~~(a)~~ Has committed an act causing any of his or hers ~~Hunting, Fishing~~hunting, fishing or ~~Trapping~~trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal; where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

~~(1) For the purposes of this Section, a person's right to possess firearms is considered a Hunting privilege.~~

~~(b)~~ Provides false information, or assists other in providing false information, when applying for a ~~License~~license or ~~Permit~~permit;

~~(c)~~ Fails to timely pay a ~~Fine~~fine or abide by a ~~Penalty~~penalty assessed against him or her as a consequence for violating the provisions of this ~~Law~~law and/or the ~~Rules created pursuant to this Law~~corresponding rules; and/or

(d)-Violates this ~~Law~~law and/or the ~~Rules created pursuant to this Law~~corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a ~~License~~license or ~~Permit~~permit as an available ~~Penalty~~penalty.

~~45406.10-3.-~~ Warning and Citations. ~~Conservation Wardens~~Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this ~~Law~~law and/or the ~~Rules created pursuant to this Law~~corresponding rules. ~~The Department shall ensure that all~~ warning and citations ~~must~~ identify the relevant violation and, if applicable, the ~~Fine~~fine and/or ~~Penalties~~penalties imposed as a consequence of the violation.

~~45406.10-4.-~~ Appeal of a Denial to Issue a License and/or Permit Decision. Any person wishing to contest a decision of the Department related to ~~deny~~ a ~~License~~license and/or ~~Permit~~permit may appeal such action by requesting a hearing before ERB.

(a)-In order to be considered timely, ~~an appeal~~the person contesting an action of the Department ~~must be filed~~shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.

(b)-ERB shall schedule a hearing for all timely filed appeal, ~~which must be~~and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.

(c)-ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, ~~Rules~~rules, laws or policies governing ~~Tribal~~the Nation's administrative hearings.

(d) - ERB's determination related to a ~~denial of a License~~license and/or ~~Permit~~permit is final; no further review is available.

~~45406.10-5.-~~ Contested Action Hearings. All citations issued pursuant to this ~~Law~~must law ~~shall~~ include a ~~Prehearing~~prehearing date ~~which must be~~ set for the next scheduled monthly ~~Prehearing~~prehearing date that is at least thirty (30) calendar days after the citation was issued. Persons wishing to contest a citation ~~must~~shall appear at the ~~Prehearing~~prehearing, at which time the Environmental Resource Board shall accept pleas which either contest or admit committing the act for which the citation was issued. ~~The Environmental Resource Board shall schedule a Hearing as expeditiously as possible, provided that it must be scheduled within ninety (90) days of the date of the Prehearing, for~~For all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ERB shall schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing. In addition to scheduling requested ~~Hearings, the Environmental Resource Board~~hearings, ERB may also make conditional orders at the ~~Prehearing~~prehearing which are effective until the matter is resolved.

(a)-~~The Environmental Resource Board~~ ERB shall conduct ~~Prehearings~~prehearings and ~~Hearings~~hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, ~~Rules~~rules, laws or policies governing ~~Tribal~~the Nation's administrative hearings.

(b)-Community Service. Community service may be substituted for ~~monetary~~ fines at ~~the Environmental Resource Board's~~ERB's discretion, provided that, if so substituted, ~~the Board~~ERB shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(c)- All ~~Fines~~fines and ~~Penalties~~penalties issued by citations ~~must be paid to the Environmental Resource Board~~are payable to ERB or its designee, the proceeds of which ~~must be contributed to General Fund~~ERB shall contribute to the Nation's general fund.

(d) ~~The Environmental Resource Board~~ ERB may pursue payment from parties who have failed to ~~makes~~make the required payments through the garnishment process contained in the Garnishment ~~Law~~law and/or by attaching ~~the judgment to~~ a Tribal ~~Member's~~member's per capita payment pursuant to the Per Capita ~~Law~~law.

~~(d) Community Service. Community service may be substituted for monetary Fines and Penalty assessments at ERB's discretion, provided that if so substituted, ERB shall use the rate of one (1) hour per ten dollars (\$10) of the Fine or Penalty assessment.~~

(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure, ~~provided that the appeal must be filed within thirty (30) days of the date of the Environmental Resource Board's determination.~~

*End.*

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Adopted - BC-8-31-94-C  
Adopted - BC-4-24-96-A  
Adopted - BC-07-22-98-A  
Amended - BC-09-13-00-D  
Amended - BC-6-04-03-A  
Amended - BC-6-30-04-I  
Amended - BC-7-13-05-E  
Amended - BC-8-29-07-F  
Amended - BC-06-24-09-E  
Amended - BC-08-26-10-I  
Emergency Amended - BC-06-22-11-H (Expired)  
Amended – BC-12-14-11-E  
Amended – BC-05-22-13-A

NOTICE OF

# PUBLIC MEETING

TO BE HELD

**THURSDAY, DECEMBER 15 at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM**

**(2<sup>nd</sup> 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: Hunting, Fishing and Trapping Amendments

**This is a proposal for amendments to an existing law which would:**

- Remove many of the specific and detail oriented aspects of hunting, fishing and trapping regulations from the law and move them to a rule handbook which the Environmental Resource Board and Conservation Department are delegated the joint rulemaking authority to create [see 406.5-2].
- Clarify that the state of Wisconsin has no jurisdiction related to hunting, fishing and trapping matters within the Reservation and create a requirement that non-Tribal members be licensed through the Nation to hunt within the Reservation (previously non-Tribal members used their state license and requested a land use permit) [see 406.4-4].
- Change the age requirements related to hunting. For hunters twelve (12) to seventeen (17) a parent, guardian or authorized adult must be present [see 406.9-5(a)]. Only Tribal members, descendants, non-member Indians and dependents may hunt between the ages ten (10) to eleven (11) and a mentor is required to accompany the youth hunter with a maximum of one (1) weapon shared between the youth and the mentor [see 406.9-5(b)].
- Allow minors under the age of ten (10) to hunt with a mentor, provided that a weapon may not be used [see 406.9-5(c)].
- Clarify that suspension, revocation and/or future ineligibility for a license/permit is an available penalty under this law [see 406.10-2].
- Updates the Environmental Resource Board's hearing process for contested actions under this law [406.10-5].

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](http://www.oneida-nsn.gov/Register/PublicMeetings)  
 or contact the Legislative Reference Office.

## PUBLIC COMMENT PERIOD

### OPEN UNTIL DECEMBER 22, 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**





## Hunting, Fishing, Trapping Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Hunting, Fishing, Trapping Law (the Law)				
<b>Sponsor</b>	Tehassi Hill	<b>Drafters</b>	Rebecca Webster, Krystal John	<b>Analyst</b>	Tani Thurner
<b>Requester &amp; Reason for Request</b>	Originally, the Conservation Department requested updates to the law for upcoming hunting seasons, however additional changes were made.				
<b>Purpose</b>	The Law governs hunting, fishing, and trapping on the Reservation/Tribal trust land.				
<b>Authorized/ Affected Entities</b>	Environmental Resource Board, Conservation Department, Oneida Police Department				
<b>Related Legislation</b>	Domestic Animals Law, Public Use of Tribal Land law, Administrative Rulemaking law				
<b>Enforcement &amp; Due Process</b>	Fines/penalties for violations; denial/revocation of licenses/permits. These actions are appealable to ERB; some of ERB's decisions appealable to Judiciary.				
<b>Public Meeting Status</b>	A public meeting has not been held.				

### Overview

Initially, amendments to the Hunting, Fishing, Trapping law (the Law) were requested in order to update various requirements for upcoming hunting and trapping seasons. However, it was determined that various requirements which may change regularly, would be more appropriately set out in rules so that they could be changed in the future as needed, without needing to amend the entire Law each time.

Various changes were also made to some of the requirements that remain in the Law.

### Jurisdiction

This Law now applies on Tribal trust land outside of the Reservation; as well as on the Reservation. [406.4-2] A new provision clarifies that all state-issued licenses, permits, tags and the like have no legal effect lands over which the Nation exercises its jurisdiction. [406.4-4, current 45.10-6]

### Rulemaking

The Environmental Resource Board (ERB) and the Conservation Department (Department) are given joint rulemaking authority; instead of ERB having primary authority to establish rules after consulting with the Department. [406.5-1]

ERB and the Department are more clearly delegated broad authority to regulate hunting, fishing, and trapping-related activities. Many types of requirements, including penalty schedules, are removed from the law and would be established through rules instead. [406.5-2]

### Licensing Requirements

The amendments clarify that (with certain exceptions) all persons are required to obtain a Sportsman License in order to hunt, fish or trap under this Law – non-Indians must now obtain a Sportsman License in addition to a Land Use Permit. [406.6-1(a)] In addition to a Sportsman License, persons may also be required to obtain other permits for more specific activities that fall under this Law.

- All persons – not just hunters – born in 1973 or later must now complete a hunter safety course to be eligible for a regular Sportsman License; but the Law now establishes a new “Fishing Only” Sportsman License, for which a hunter safety course is not required.
- Currently, persons age 15 or younger, who are enrolled members of any tribe or dependents of Oneida members, may fish without a Sportsman License. The amendments expand this to include those 16-year-olds, as well.
- Landowners and lessees are no longer required to obtain a Sportsman License to hunt or trap certain species on their own property. This applies to coyote, fox, raccoon, woodchuck, rabbit, squirrel, and any nuisance animal that is an unprotected species.
  - In addition, any “guest” (regardless of age or tribal affiliation) of the landowner/lessee, may now also hunt or trap those species on the landowner/lessee’s property without a Sportsman License, as long as the landowner/lessee has granted permission. [406.6-1]

### **Hunting - Age Requirements and Mentors**

- Persons under the age of 12 are now only allowed to hunt if they are enrolled members of any tribe, Oneida descendants, or if they live with an enrolled Oneida member at least half of the year. [406.9-5(c) and (d) and 406.3-1(f)]. There are no similar restrictions for any hunters over the age of 12.
  - Since this is the only time descendants are mentioned in the Law, footnotes are added which state that “requirements for descendency are determined by the Oneida Trust Enrollment Committee.”
- Persons aged 9 and younger are now legally allowed to hunt, but may not use a weapon while hunting and must be accompanied by a mentor. [406.9-5(d)]
- Persons aged 10 or 11 years old may still hunt with a mentor. Mentors can now mentor a maximum of two (instead of just one) youth hunters at a time; only one weapon may be possessed between the mentor and both mentees. The mentor must remain within arms’ grasp of both youth hunters at all times, even if the youth hunter is under the age of ten and is not permitted to hunt with a weapon. Persons are no longer required to complete a hunter safety course in order to be a mentor (but must complete the hunter safety course if they are otherwise required to under this law). [406.9-5(c) to (f)]
- 12-14 year olds are currently only permitted to hunt with a parent or guardian. The amended law also allows them to hunt with another responsible adult.
- 12-14 year old hunters must not only be “accompanied” by an adult, but now must also *remain within sight and voice contact* of the adult at all times. [406.9-5(b)]
- It is now illegal for 15-18 year-olds to hunt unless they are under the *immediate supervision* of a parent, guardian or person who has been delegated supervisory authorities. Currently, 15-18 year olds are not restricted and may hunt alone. [406.9-5(a)]

### **Nuisance Animal Removal**

- Instead of identifying specific levels of damage that must be caused for a nuisance removal permit; the Law adds a broader definition for nuisance animal [406.3-1(r)] and no longer limits the Department to only assisting with removal where a specific amount of damage has occurred. [Current 45.6-4(f)]
- Landowners and lessees may still remove nuisance animals from their land; “occupants” are no longer allowed to do so. [406.6-1(a)(2)]
- The amended law identifies two new situations where a nuisance permit is not required:



- To hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; not an agent.
- When there is a legitimate threat to a person's immediate health and safety. The taking must be reported, and the Department must investigate. [406.8-3]
- It is now illegal to live-trap/relocate nuisance animals to other Tribal land or private property without written authorization. [406.8-1]
- A person no longer qualifies for a nuisance removal permit if s/he has violated this law or rules within the past 12 months, "at a minimum." [406.8-2(a)(4)]
- Currently, a landowner/lessee may have other persons assist in the removal of nuisance animals. Under the amendments, a permittee is allowed to assign "an agent" to handle the removal; using the landowner/lessee's permit. [406.8-4] This appears to mean the landowner/lessee may no longer use the nuisance removal permit themselves. Unlike designated hunters, agents are not required to be pre-approved by the Department. [406.8-4 (b)]
- Persons killing certain nuisance birds are now required to provide an annual report to the U.S. Fish and Wildlife Service for all such takings occurring within the previous year. This reflects the Wisconsin DNR Nuisance Guidelines Rule Booklet. [406.8-5]
- Keeping the Furs of Nuisance Animals. New provisions address what happens to nuisance animals once they are killed:
  - **If a Nuisance Permit was required:** Permittees/agents may not keep the furs unless the permit explicitly and separately authorizes them to keep and sell the wildlife. [406.8-6(b)] There are no restrictions for any other parts of a nuisance animal.
  - **If a Nuisance Permit was not required:** Permittees/agents may keep the furs, but cannot commercialize in, sell, trade, ship or transport any wildlife without a separate license or permit authorizing them to do so - except that squirrel parts may be sold during "the closed season." [406.8-7]
- Currently, when a person obtains a permit to remove a nuisance animal, s/he is required to open his/her lands for public access for hunting and trapping of that species for one year afterwards. The Law no longer specifically requires lands to be opened for public access, but the Law still requires that an applicant for a nuisance permit must demonstrate that s/he has the authority to control hunting and trapping access to the lands subject to the nuisance, as well as any contiguous lands (or written consent from the owner/lessor of those lands.) [406.8-2 (a), current 45.6-4]
- The law now requires all landowners and lessees who are removing nuisance animals/structures, to do the following, even if a nuisance removal permit is not required:
  - follow this Law/rules, including permitted methods of taking and hunting hours.
  - grant wardens free and unrestricted access to the premises, and
  - promptly furnish any related, requested information. [406.8-6 and 406.8-1]

### Enforcement and Hearings

- All persons are now required, instead of encouraged, to report violations of this Law (and now, Rules) [406.10-1 and the current law, 45.16-5]
- The law now prohibits inflicting or threatening to inflict, bodily harm on a Department warden. [406.7-1(q)]
- Oneida Police Department (OPD) is no longer authorized to enforce this law. Instead, OPD officers must report violations to the Department. But, if immediate action is necessary to

- 100 prevent imminent danger to life or serious damage to property, the officer may issue a  
101 warning/citation, and/or prevent persons from committing a violation of this Law. [406.5-4]
- 102 • The amendments add several reasons why the Department may decline to issue a  
103 license/permit; [406.6-7(a)] and a new, separate list of reasons the Department may suspend,  
104 revoke, or declare a person ineligible for a license/permit. [406.10-2] The two lists are  
105 different – for example, the Department is authorized to decline to issue a license or permit,  
106 but cannot suspend an already-issued license or permit; if the applicant was ever found guilty  
107 of imposing or threatening to impose great bodily harm on another; or if the applicant has,  
108 within the past three years, egregiously and repeatedly demonstrated poor judgment,  
109 disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including  
110 while interacting with other sportsmen or any wardens.
  - 111 • This Law authorizes ERB to hear appeals of decisions to decline to issue a license/permit;  
112 and to conduct pre-hearings and hearings when a person is issued a citation.
    - 113 ○ **Licensing/Permitting Actions.** The Department’s decisions “related to” a  
114 license/permit can now be appealed to ERB, which must conduct a hearing. ERB’s  
115 decision is final and cannot be appealed. [406.10-4]
    - 116 ○ **Contesting Citations.** ERB must now schedule monthly pre-hearings where ERB  
117 will accept “pleas” from persons who were issued a citation. Pleas may be entered  
118 either contesting or admitting each violation, and when a plea is entered to contest a  
119 citation, ERB conducts the regular hearing.[406.10-5] The amendments add that  
120 ERB’s decision can be appealed to the Judiciary Court of Appeals in accordance with  
121 the Rules of Appellate Procedure. [406.10-5(e)]
  - 122 • New language adds that ERB may pursue unpaid fines through garnishment or attaching per  
123 capita payments. [406.10-5(d)]
- 124

### 125 Other Changes

- 126 • Currently, disabled hunter permits exempt a hunter from certain hunting restrictions, but  
127 disabled permittees are still required to be a minimum of 50 feet from the center of a  
128 roadway while hunting. [45.6-2(a) and 45.10-5] Under the amendments, disabled hunter  
129 permittees can shoot from within 50 feet of a road. [406.6-6] By comparison, under  
130 Wisconsin law, it is still illegal to hunt within 50 feet of the center of a roadway; or to shoot  
131 from or across a highway, or within 50 feet of the roadway’s center. [See, for example, the  
132 2016 Deer Hunting Regulations pamphlet, page 16]
- 133 • Designated hunters are limited to only hunting for one permit holder per “season” but are no  
134 longer specifically limited to only hunting deer for others. [406.9-4]
- 135 • A permit is now required in order to hunt from a snowmobile, ATV, moped or similar  
136 conveyance; or to use hovercraft, drones, or any other aircraft while hunting. [45.5-1(i)]
- 137 • Various firearms that are currently prohibited, would be allowed to be used for hunting if the  
138 hunter possesses a valid state or federal permit. 406.9-2(h) and 45.9-2(h)(4).
- 139 • Various restrictions that only applied to particular weapons are expanded. It would be illegal  
140 to:
  - 141 ○ transport any cocked bow or crossbow in a vehicle, as well as loaded firearms.
  - 142 ○ use any device typically used for the harvesting of wildlife in a reckless manner, not  
143 just firearms and bows. [406.7-1(k)]
  - 144 ○ discharge air rifles, bows and crossbows (in addition to firearms) into Reservation  
145 lakes, reservoirs or public use areas, except in limited situations. [406.9-1(b)]
  - 146 ○ shoot air rifles, bows, crossbows, or any traps except live traps, within 100 yards of

- 147 buildings, without permission; instead of just certain firearms or traps. 406.7-1(l) and  
148 406.9-1(b).
- 149 • It is now illegal to provide false information or fail to report relevant information as  
150 requested by the Department, when applying for a license or permit. 45.6-4(a).
  - 151 • Shining is still prohibited after 10:00 p.m. each year from September 1- December 31.  
152 This is different from state law, which prohibits shining after 10:00 p.m. from September  
153 15 - December 31. [406.9-2(e).]
  - 154 • Persons may now use any artificial light, instead of only flashlights, to find one's way  
155 while hunting on foot at the point of harvest of coyote, raccoon, fox or unprotected  
156 species. By comparison, under state DNR regulations, only a flashlight or firearm-  
157 mounted light may be used in these situations. [See for example, the 2016 Small Game  
158 hunting regulation pamphlet, p. 6.] The amendments to the Law also add that light may  
159 only be used in these situations for "authorized" unprotected species, instead of any  
160 unprotected species. [406.9-2(e)]
  - 161 • "Wildlife" is now defined as any animal that does not fall under the definition of  
162 "domestic animal" in the Nation's "Domestic Animal" law. This means that any creature  
163 that falls under that definition would not be subject to regulation under this Law –  
164 including weasels, rabbits, turtles, pigeons, various reptiles and amphibians. [34.3-1(c)]  
165

#### 166 Other

167 To reflect the 2015 Constitutional amendments, throughout the law, the word "Tribe" is  
168 replaced with the word "Nation." However, enrolled members are now referred to as "Tribal  
169 Members" instead of just "members." Members of other Indian nations/tribes are now referred to  
170 as non-member Indians, instead of as "persons affiliated with another tribe" [406.3-1]

171 Various minor revisions were made to improve the language and organization of the Law,  
172 and to comply with standard drafting and formatting practices. These changes do not affect the  
173 content of the Law.

174 Section 406-2 has been revised to ensure compliance with the language required by the  
175 Legislative Procedures Act. This Law no longer states that it can be amended/repealed by  
176 General Tribal Council; only by the OBC. [45.2-2]  
177  
178

**Title 4. Environment and Natural Resources – Chapter 406**  
**HUNTING, FISHING AND TRAPPING**  
**Lutol@tha>, Latsyw@aha> O>kh@le Atlist@y< Tsi> Kayanl^hsla**  
*Our laws concerning hunting, fishing and trapping*

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
406.3.	Definitions	406.8.	Wildlife Damage and Nuisance Control
406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

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**406.1. Purpose and Policy**

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

- (a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and
- (b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

**406.2. Adoption, Amendment, Repeal**

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and \_\_\_\_\_.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. 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.

406.2-4. 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.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**406.3. Definitions**

406.3-1. 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) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.<sup>1</sup>

#### **406.4. Jurisdiction**

406.4-1. This law applies to the following persons:

- (a) All Tribal members,
- (b) All non-member Indians, and
- (c) All non-Indians who:
  - (1) enter Tribal land, or
  - (2) apply for and receive a license and/or permit.
- (d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

- (a) within the boundaries of the reservation, and
- (b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-4. *Lack of State Jurisdiction.* The Nation and the federal government have sole jurisdiction over the management and regulation of the Nation’s natural resources. Accordingly, licenses, permits, tags and the like issued by the state have no legal effect on lands over which

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<sup>1</sup> For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

the Nation exercises its jurisdiction under Section 406.4-2.

**406.5. Administration and Supervision**

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

(a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.

(b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.

(c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.

(d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.

(e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.

(f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:

(1) the taking of wildlife;

(2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.

(g) Establish methods for checking persons into and out of areas specified under subsection (f) above.

(i) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.

(j) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:

(1) bait;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

(k) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.



(l) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.

(m) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.

(n) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(o) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules both on ERB's website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

(a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.

(b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.

(c) Work to prevent persons from violating this law and/or the corresponding rules.

(d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

## **406.6. Licenses and Permits**

406.6-1. *Sportsman License.*

(a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:

(1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.

(2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any nuisance animal that is not an endangered or threaten species and is also not a regulated or protected species.

(b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:

(1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.

(A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.

(B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.

406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.

(a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.

(b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:

(1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;

(2) The agent of the group/organization is a Tribal member;

(3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and

(4) The hunt takes place on the reservation.

(c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.

(d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.

406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.

406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any

person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt:

(a) within fifty (50) feet of the center of a road; and/or.

(b) from within a vehicle, provided that the vehicle may not be moving and the engine of the vehicle may not be running.

**406.6-7. Denial of a License or Permit.**

(a) The Department may decline to issue a license and/or permit to an applicant if:

(1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or

(iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

**406.7. General Requirements**

**406.7-1. Persons may not:**

(a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.

(b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.

(c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes may not be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any

person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

406.7-5. *Health Advisory.* ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

#### **406.8. Wildlife Damage and Nuisance Control**

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules , including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit.* A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the

record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required.* A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver.* A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies.* Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents.* A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report.* Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a

nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-6. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

- (1) Elders;
- (2) Disabled persons; and
- (3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

#### **406.9. Hunting**

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

- (1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;
- (2) Across any roadway; or
- (3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

- (a) Hunt with the use of aircraft;
- (b) Hunt within fifty (50) feet of the center of a paved road;
- (c) Hunt from a vehicle;
- (d) Hunt while under the influence of alcohol or a controlled substance;
- (e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;
- (f) Shine between the hours of 10:00 p.m. and sunrise during the months of September,



October, November and December; during all other months, shining is allowed at any hour;

(g) Hunt in a party of more than ten (10) persons;

(h) Hunt with, or possess while hunting:

(1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;

(2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated permit;

(3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin; and/or

(5) Any of the following without a valid federal permit:

(A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;

(B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;

(C) A fully-automatic firearm;

(D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

(1) Possess a valid hunting license;

(2) Be eligible for the permits for which the person is named the designated hunter; and

(3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may only hunt for one (1) permittee per season and may fill the number of tags as authorized by the rules developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and seventeen (17) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants<sup>2</sup>, non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants<sup>3</sup>, non-member Indians and dependents having less than ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people, but may not exceed ten (10) people legally hunting deer in a group. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

#### **406.10. Enforcement and Penalties**

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any

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<sup>2</sup> Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

<sup>3</sup> See footnote 2.

one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by requesting a hearing before ERB.

(a) In order to be considered timely, the person contesting an action of the Department shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.

(b) ERB shall schedule a hearing for all timely filed appeal, and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.

(c) ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(d) ERB's determination related to a license and/or permit is final; no further review is available.

406.10-5. *Contested Action Hearings.* All citations issued pursuant to this law shall include a prehearing date set for the next scheduled monthly prehearing date that is at least thirty (30) calendar days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Environmental Resource Board shall accept pleas which either contest or admit committing the act for which the citation was issued. For all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ERB shall schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing. In addition to scheduling requested hearings, ERB may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) ERB shall conduct prehearings and hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(b) *Community Service.* Community service may be substituted for fines at ERB's discretion, provided that, if so substituted, ERB shall use the rate of one (1) hour per ten

dollars (\$10.00) of the fine.

(c) All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(d) ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

*End.*

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Adopted - BC-8-31-94-C  
Adopted - BC-4-24-96-A  
Adopted - BC-07-22-98-A  
Amended - BC-09-13-00-D  
Amended - BC-6-04-03-A  
Amended - BC-6-30-04-I  
Amended - BC-7-13-05-E  
Amended - BC-8-29-07-F  
Amended - BC-06-24-09-E  
Amended - BC-08-26-10-I  
Emergency Amended - BC-06-22-11-H (Expired)  
Amended – BC-12-14-11-E  
Amended – BC-05-22-13-A



## Hunting, Fishing, Trapping Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Hunting, Fishing, Trapping Law (the Law)				
<b>Sponsor</b>	Tehassi Hill	<b>Drafters</b>	Rebecca Webster, Krystal John	<b>Analyst</b>	Tani Thurner
<b>Requester &amp; Reason for Request</b>	Originally, the Conservation Department requested updates to the law for upcoming hunting seasons, however additional changes were made.				
<b>Purpose</b>	The Law governs hunting, fishing, and trapping on the Reservation/Tribal trust land.				
<b>Authorized/ Affected Entities</b>	Environmental Resource Board, Conservation Department, Oneida Police Department				
<b>Related Legislation</b>	Domestic Animals Law, Public Use of Tribal Land law, Administrative Rulemaking law				
<b>Enforcement &amp; Due Process</b>	Fines/penalties for violations; denial/revocation of licenses/permits. These actions are appealable to ERB; some of ERB's decisions appealable to Judiciary.				
<b>Public Meeting Status</b>	A public meeting has not been held.				

### Overview

Initially, amendments to the Hunting, Fishing, Trapping law (the Law) were requested in order to update various requirements for upcoming hunting and trapping seasons. However, it was determined that various requirements which may change regularly, would be more appropriately set out in rules so that they could be changed in the future as needed, without needing to amend the entire Law each time.

Various changes were also made to some of the requirements that remain in the Law.

### Jurisdiction

This Law now applies on Tribal trust land outside of the Reservation; as well as on the Reservation. [406.4-2] A new provision clarifies that all state-issued licenses, permits, tags and the like have no legal effect lands over which the Nation exercises its jurisdiction. [406.4-4, current 45.10-6]

### Rulemaking

The Environmental Resource Board (ERB) and the Conservation Department (Department) are given joint rulemaking authority; instead of ERB having primary authority to establish rules after consulting with the Department. [406.5-1]

ERB and the Department are more clearly delegated broad authority to regulate hunting, fishing, and trapping-related activities. Many types of requirements, including penalty schedules, are removed from the law and would be established through rules instead. [406.5-2]

### Licensing Requirements

The amendments clarify that (with certain exceptions) all persons are required to obtain a Sportsman License in order to hunt, fish or trap under this Law – non-Indians must now obtain a Sportsman License in addition to a Land Use Permit. [406.6-1(a)] In addition to a Sportsman License, persons may also be required to obtain other permits for more specific activities that fall under this Law.

- All persons – not just hunters – born in 1973 or later must now complete a hunter safety course to be eligible for a regular Sportsman License; but the Law now establishes a new “Fishing Only” Sportsman License, for which a hunter safety course is not required.
- Currently, persons age 15 or younger, who are enrolled members of any tribe or dependents of Oneida members, may fish without a Sportsman License. The amendments expand this to include those 16-year-olds, as well.
- Landowners and lessees are no longer required to obtain a Sportsman License to hunt or trap certain species on their own property. This applies to coyote, fox, raccoon, woodchuck, rabbit, squirrel, and any nuisance animal that is an unprotected species.
  - In addition, any “guest” (regardless of age or tribal affiliation) of the landowner/lessee, may now also hunt or trap those species on the landowner/lessee’s property without a Sportsman License, as long as the landowner/lessee has granted permission. [406.6-1]

### **Hunting - Age Requirements and Mentors**

- Persons under the age of 12 are now only allowed to hunt if they are enrolled members of any tribe, Oneida descendants, or if they live with an enrolled Oneida member at least half of the year. [406.9-5(c) and (d) and 406.3-1(f)]. There are no similar restrictions for any hunters over the age of 12.
  - Since this is the only time descendants are mentioned in the Law, footnotes are added which state that “requirements for descendency are determined by the Oneida Trust Enrollment Committee.”
- Persons aged 9 and younger are now legally allowed to hunt, but may not use a weapon while hunting and must be accompanied by a mentor. [406.9-5(d)]
- Persons aged 10 or 11 years old may still hunt with a mentor. Mentors can now mentor a maximum of two (instead of just one) youth hunters at a time; only one weapon may be possessed between the mentor and both mentees. The mentor must remain within arms’ grasp of both youth hunters at all times, even if the youth hunter is under the age of ten and is not permitted to hunt with a weapon. Persons are no longer required to complete a hunter safety course in order to be a mentor (but must complete the hunter safety course if they are otherwise required to under this law). [406.9-5(c) to (e)]
- 12-14 year olds are currently only permitted to hunt with a parent or guardian. The amended law also allows them to hunt with another responsible adult. [406.9-5(a)]
- 12-14 year old hunters must not only be “accompanied” by an adult, but now must also *remain within sight and voice contact* of the adult at all times. [406.9-5(a)]
- It is now illegal for 15-17 year-olds to hunt unless they are under the *immediate supervision* of a parent, guardian or other person who has been delegated supervisory authorities, and they are now required to remain within voice and sight contact of the adult at all times. Currently, 15-17 year olds are not restricted and may hunt alone. [406.9-5(a)]

### **Nuisance Animal Removal**

- Instead of identifying specific levels of damage that must be caused for a nuisance removal permit; the Law adds a broader definition for nuisance animal [406.3-1(r)] and no longer limits the Department to only assisting with removal where a specific amount of damage has occurred. [Current 45.6-4(f)]
- Landowners and lessees may still remove nuisance animals from their land; “occupants” are no longer allowed to do so. [406.6-1(a)(2)]

- The amended law identifies two new situations where a nuisance permit is not required:
  - To hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; not an agent.
  - When there is a legitimate threat to a person's immediate health and safety. The taking must be reported, and the Department must investigate. [406.8-3]
- It is now illegal to live-trap/relocate nuisance animals to other Tribal land or private property without written authorization. [406.8-1]
- A person no longer qualifies for a nuisance removal permit if s/he has violated this law or rules within the past 12 months, "at a minimum." [406.8-2(a)(4)]
- Currently, a landowner/lessee may have other persons assist in the removal of nuisance animals. Under the amendments, a permittee is allowed to assign "an agent" to handle the removal; using the landowner/lessee's permit. [406.8-4] This appears to mean the landowner/lessee may no longer use the nuisance removal permit themselves. Unlike designated hunters, agents are not required to be pre-approved by the Department. [406.8-4 (b)]
- Persons killing certain nuisance birds are now required to provide an annual report to the U.S. Fish and Wildlife Service for all such takings occurring within the previous year. This reflects the Wisconsin DNR Nuisance Guidelines Rule Booklet. [406.8-5]
- Keeping the Furs of Nuisance Animals. New provisions address what happens to nuisance animals once they are killed:
  - **If a Nuisance Permit was required:** Permittees/agents may not keep the furs unless the permit explicitly and separately authorizes them to keep and sell the wildlife. [406.8-6(b)] There are no restrictions for any other parts of a nuisance animal.
  - **If a Nuisance Permit was not required:** Permittees/agents may keep the furs, but cannot commercialize in, sell, trade, ship or transport any wildlife without a separate license or permit authorizing them to do so - except that squirrel parts may be sold during "the closed season." [406.8-7]
- Currently, when a person obtains a permit to remove a nuisance animal, s/he is required to open his/her lands for public access for hunting and trapping of that species for one year afterwards. The Law no longer specifically requires lands to be opened for public access, but the Law still requires that an applicant for a nuisance permit must demonstrate that s/he has the authority to control hunting and trapping access to the lands subject to the nuisance, as well as any contiguous lands (or written consent from the owner/lessor of those lands.) [406.8-2 (a), current 45.6-4]
- The law now requires all landowners and lessees who are removing nuisance animals/structures, to do the following, even if a nuisance removal permit is not required:
  - follow this Law/rules, including permitted methods of taking and hunting hours.
  - grant wardens free and unrestricted access to the premises, and
  - promptly furnish any related, requested information. [406.8-6 and 406.8-1]

### **Enforcement and Hearings**

- All persons are now required, instead of encouraged, to report violations of this Law (and now, Rules) [406.10-1 and the current law, 45.16-5]
- The law now prohibits inflicting or threatening to inflict, bodily harm on a Department warden. [406.7-1(q)]
- Oneida Police Department (OPD) is no longer authorized to enforce this law. Instead, OPD



officers must report violations to the Department. But, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the officer may issue a warning/citation, and/or prevent persons from committing a violation of this Law. [406.5-4]

- The amendments add several reasons why the Department may decline to issue a license/permit; [406.6-7(a)] and a new, separate list of reasons the Department may suspend, revoke, or declare a person ineligible for a license/permit. [406.10-2] The two lists are different – for example, the Department is authorized to decline to issue a license or permit, but cannot suspend an already-issued license or permit; if the applicant was ever found guilty of imposing or threatening to impose great bodily harm on another; or if the applicant has, within the past three years, egregiously and repeatedly demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or any wardens.
- This Law authorizes ERB to hear appeals of decisions to decline to issue a license/permit; and to conduct pre-hearings and hearings when a person is issued a citation.
  - **Licensing/Permitting Actions.** The Department’s decisions “related to” a license/permit can now be appealed to ERB, which must conduct a hearing. ERB’s decision is final and cannot be appealed. [406.10-4]
  - **Contesting Citations.** ERB must now schedule monthly pre-hearings where ERB will accept “pleas” from persons who were issued a citation. Pleas may be entered either contesting or admitting each violation, and when a plea is entered to contest a citation, ERB conducts the regular hearing.[406.10-5] The amendments add that ERB’s decision can be appealed to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. [406.10-5(e)]
- New language adds that ERB may pursue unpaid fines through garnishment or attaching per capita payments. [406.10-5(d)]

#### Other Changes

- Currently, disabled hunter permits exempt a hunter from certain hunting restrictions, but disabled permittees are still required to be a minimum of 50 feet from the center of a roadway while hunting. [45.6-2(a) and 45.10-5] Under the amendments, disabled hunter permittees can shoot from within 50 feet of a road. [406.6-6] By comparison, under Wisconsin law, it is still illegal to hunt within 50 feet of the center of a roadway; or to shoot from or across a highway, or within 50 feet of the roadway’s center. [See, for example, the 2016 Deer Hunting Regulations pamphlet, page 16]
- Designated hunters are limited to only hunting for one permit holder per “season” but are no longer specifically limited to only hunting deer for others. [406.9-4]
- A permit is now required in order to hunt from a snowmobile, ATV, moped or similar conveyance; or to use hovercraft, drones, or any other aircraft while hunting. [45.5-1(i)]
- Various firearms that are currently prohibited, would be allowed to be used for hunting if the hunter possesses a valid state or federal permit. 406.9-2(h) and 45.9-2(h)(4).
- Various restrictions that only applied to particular weapons are expanded. It would be illegal to:
  - transport any cocked bow or crossbow in a vehicle, as well as loaded firearms.
  - use any device typically used for the harvesting of wildlife in a reckless manner, not just firearms and bows. [406.7-1(k)]
  - discharge air rifles, bows and crossbows (in addition to firearms) into Reservation lakes, reservoirs or public use areas, except in limited situations. [406.9-1(b)]

- shoot air rifles, bows, crossbows, or any traps except live traps, within 100 yards of buildings, without permission; instead of just certain firearms or traps. 406.7-1(l) and 406.9-1(b).
- It is now illegal to provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit. 45.6-4(a).
  - Shining is still prohibited after 10:00 p.m. each year from September 1- December 31. This is different from state law, which prohibits shining after 10:00 p.m. from September 15 - December 31. [406.9-2(e).]
  - Persons may now use any artificial light, instead of only flashlights, to find one's way while hunting on foot at the point of harvest of coyote, raccoon, fox or unprotected species. By comparison, under state DNR regulations, only a flashlight or firearm-mounted light may be used in these situations. [See for example, the 2016 Small Game hunting regulation pamphlet, p. 6.] The amendments to the Law also add that light may only be used in these situations for "authorized" unprotected species, instead of any unprotected species. [406.9-2(e)]
  - "Wildlife" is now defined as any animal that does not fall under the definition of "domestic animal" in the Nation's "Domestic Animal" law. This means that any creature that falls under that definition would not be subject to regulation under this Law – including weasels, rabbits, turtles, pigeons, various reptiles and amphibians. [34.3-1(c)]

#### Other

To reflect the 2015 Constitutional amendments, throughout the law, the word "Tribe" is replaced with the word "Nation." However, enrolled members are now referred to as "Tribal Members" instead of just "members." Members of other Indian nations/tribes are now referred to as non-member Indians, instead of as "persons affiliated with another tribe" [406.3-1]

Various minor revisions were made to improve the language and organization of the Law, and to comply with standard drafting and formatting practices. These changes do not affect the content of the Law.

Section 406-2 has been revised to ensure compliance with the language required by the Legislative Procedures Act. This Law no longer states that it can be amended/repealed by General Tribal Council; only by the OBC. [45.2-2]

**Title 4. Environment and Natural Resources – Chapter 406**  
**HUNTING, FISHING AND TRAPPING**  
**Lutol@tha>, Latsyw@aha> O>kh@le Atlist@y< Tsi> Kayanl^hsla**  
*Our laws concerning hunting, fishing and trapping*

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
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406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

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**406.1. Purpose and Policy**

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

(a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and

(b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

**406.2. Adoption, Amendment, Repeal**

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and \_\_\_\_\_.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. 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.

406.2-4. 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.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**406.3. Definitions**

406.3-1. 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) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.<sup>1</sup>

#### **406.4. Jurisdiction**

406.4-1. This law applies to the following persons:

(a) All Tribal members,

(b) All non-member Indians, and

(c) All non-Indians who:

(1) enter Tribal land, or

(2) apply for and receive a license and/or permit.

(d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

(a) within the boundaries of the reservation, and

(b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-4. *Lack of State Jurisdiction.* The Nation and the federal government have sole jurisdiction over the management and regulation of the Nation’s natural resources. Accordingly, licenses, permits, tags and the like issued by the state have no legal effect on lands over which

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<sup>1</sup> For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

the Nation exercises its jurisdiction under Section 406.4-2.

**406.5. Administration and Supervision**

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

- (a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.
- (b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.
- (c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.
- (d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.
- (e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.
- (f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:
  - (1) the taking of wildlife;
  - (2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.
- (g) Establish methods for checking persons into and out of areas specified under subsection (f) above.
- (i) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.
- (j) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:
  - (1) bait;
  - (2) decoys;
  - (3) hunting dogs
  - (4) traps;
  - (5) firearms;
  - (6) ammunition;
  - (7) laser sights; and
  - (8) night vision.
- (k) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.

(l) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.

(m) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.

(n) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(o) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules both on ERB's website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

(a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.

(b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.

(c) Work to prevent persons from violating this law and/or the corresponding rules.

(d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

## **406.6. Licenses and Permits**

406.6-1. *Sportsman License.*

(a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:

(1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.

(2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any nuisance animal that is not an endangered or threaten species and is also not a regulated or protected species.

(b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:

(1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.

(A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.

(B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.

406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.

(a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.

(b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:

(1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;

(2) The agent of the group/organization is a Tribal member;

(3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and

(4) The hunt takes place on the reservation.

(c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.

(d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.

406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.

406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any



person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt:

- (a) within fifty (50) feet of the center of a road; and/or.
- (b) from within a vehicle, provided that the vehicle may not be moving and the engine of the vehicle may not be running.

**406.6-7. Denial of a License or Permit.**

- (a) The Department may decline to issue a license and/or permit to an applicant if:
  - (1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.
  - (2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:
    - (A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.
    - (B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:
      - (i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;
      - (ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or
      - (iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.
    - (C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

**406.7. General Requirements**

**406.7-1. Persons may not:**

- (a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.
- (b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.

(c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes may not be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any

person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

406.7-5. *Health Advisory.* ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

#### **406.8. Wildlife Damage and Nuisance Control**

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules , including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit.* A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the

record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required.* A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver.* A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies.* Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents.* A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report.* Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a

nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-6. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

- (1) Elders;
- (2) Disabled persons; and
- (3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

#### **406.9. Hunting**

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

- (1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;
- (2) Across any roadway; or
- (3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

- (a) Hunt with the use of aircraft;
- (b) Hunt within fifty (50) feet of the center of a paved road;
- (c) Hunt from a vehicle;
- (d) Hunt while under the influence of alcohol or a controlled substance;
- (e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;
- (f) Shine between the hours of 10:00 p.m. and sunrise during the months of September,

October, November and December; during all other months, shining is allowed at any hour;

(g) Hunt in a party of more than ten (10) persons;

(h) Hunt with, or possess while hunting:

(1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;

(2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated permit;

(3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin; and/or

(5) Any of the following without a valid federal permit:

(A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;

(B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;

(C) A fully-automatic firearm;

(D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

(1) Possess a valid hunting license;

(2) Be eligible for the permits for which the person is named the designated hunter; and

(3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may only hunt for one (1) permittee per season and may fill the number of tags as authorized by the rules developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and seventeen (17) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants<sup>2</sup>, non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants<sup>3</sup>, non-member Indians and dependents having less than ten (10) years of age may hunt if they have a mentor present while hunting, provided that youth under the age of ten (10) may not use a weapon while hunting.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people, but may not exceed ten (10) people legally hunting deer in a group. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

#### **406.10. Enforcement and Penalties**

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any

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<sup>2</sup> Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

<sup>3</sup> See footnote 2.

one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by requesting a hearing before ERB.

(a) In order to be considered timely, the person contesting an action of the Department shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.

(b) ERB shall schedule a hearing for all timely filed appeal, and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.

(c) ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(d) ERB's determination related to a license and/or permit is final; no further review is available.

406.10-5. *Contested Action Hearings.* All citations issued pursuant to this law shall include a prehearing date set for the next scheduled monthly prehearing date that is at least thirty (30) calendar days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Environmental Resource Board shall accept pleas which either contest or admit committing the act for which the citation was issued. For all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ERB shall schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing. In addition to scheduling requested hearings, ERB may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) ERB shall conduct prehearings and hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(b) *Community Service.* Community service may be substituted for fines at ERB's discretion, provided that, if so substituted, ERB shall use the rate of one (1) hour per ten



dollars (\$10.00) of the fine.

(c) All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(d) ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

*End.*

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Adopted - BC-8-31-94-C  
Adopted - BC-4-24-96-A  
Adopted - BC-07-22-98-A  
Amended - BC-09-13-00-D  
Amended - BC-6-04-03-A  
Amended - BC-6-30-04-I  
Amended - BC-7-13-05-E  
Amended - BC-8-29-07-F  
Amended - BC-06-24-09-E  
Amended - BC-08-26-10-I  
Emergency Amended - BC-06-22-11-H (Expired)  
Amended – BC-12-14-11-E  
Amended – BC-05-22-13-A



## Legislative Operating Committee November 16, 2016

# Business Committee Meetings Law

<b>Submission Date:</b> 8/27/15	<b>Public Meeting:</b> None yet
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.*

**9/2/15 LOC:** Motion by Jennifer Webster to add the Business Committee Meetings Law to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

**11/4/15 LOC:** Motion by Fawn Billie to accept the memorandum for the Business Committee Meetings Law as FYI and defer to the sponsor to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**5/4/16 LOC:** Motion by Fawn Billie to make the Business Committee Meeting law a priority item on the Active Files List and to direct the sponsor to schedule a strategy meeting to discuss possible solutions to mitigate tension and improve the communication process at Business Committee meetings; seconded by Jennifer Webster. Motion carried unanimously.

**9/21/16 LOC:** Motion by Jennifer Webster to accept the Oneida Business Committee Meetings law and send to the Legislative Reference Office for legislative and fiscal analysis; seconded by Tehassi Hill, seconded by Fawn Billie. Motion carried unanimously.

### Next Steps:

- Accept the legislative analysis and public meeting packet and direct the LRO to hold a public meeting on December 15, 2016.

**Title 1. Government and Finances – Chapter 117**  
**BUSINESS COMMITTEE MEETINGS LAW**

4	117.1. Purpose and Policy	8	117.5. Schedule of Meetings
5	117.2. Adoption, Amendment, Repeal	9	117.6. Agenda
6	117.3. Definitions	10	117.7. Additional Responsibilities
7	117.4. Rules of Order	11	117.8. Enforcement

**117.1. Purpose and Policy**

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Nation.

117.1-2. *Policy.* It is the policy of the Nation that the Oneida Business Committee to be clear and consistent in its actions and to be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views-

117.1-3. *Roles and Responsibilities.* The Oneida Business Committee are elected by the membership and are delegated legislative responsibility under Article IV of the Constitution of the Oneida Nation, resolution # GTC-2-15-82, adoption of job descriptions in July of 1990, and a motion at the October 1998 General Tribal Council meeting. The work associated with this legislative responsibility is carried out through various subcommittees such as the LOC, CDPC, and QOL in order to obtain the broadest and most informed discussion. The action regarding this legislative responsibility is taken at a Regular, Special, or Emergency Oneida Business Committee meeting, or where necessary, by e-poll in accordance with approved processes. The goal of this law is to formalize the action of legislative responsibility taking place at Oneida Business Committee meetings and the work of legislative responsibility within subcommittees.

**117.2. Adoption, Amendment, Repeal**

117.2-1. This law was adopted by the Oneida Business Committee by resolution BC #-

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. 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.

117.2-4. 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, the following resolutions/actions are affected as follows.

- (a) BC-08-14-91-A (Resolution regarding discussion of individuals is specifically superseded by this law)

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**117.3. Definitions**

117.3-1. 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) “Board, Committee or Commission” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.

(b) “Constitution” means the Constitution and By-laws of the Oneida Nation, as amended.

(c) “Nation” means the Oneida Nation.

(d) “Roberts Rules of Order” means a handbook for running meetings effectively and efficiently that sets the guidelines for such issues as leading debates; recognizing speakers; defining the role of the chair and other officers; proposing, seconding, and voting on motions; and writing and amending constitutions and bylaws.

~~(b)~~(e) “Tribal Entities” means boards, committees, commissions, corporations, and organizational units of the Nation.

#### 117.4. Rules of Order

117.4-1. *General.* The Oneida Business Committee shall utilize Robert’s Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution. The Oneida Business Committee may, by resolution:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

117.4-2. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee and other Tribal entities. Such discussions often include personal observations, evaluations, and judgments of other personnel and individuals and that discussions of this nature in open session undermines the morale and trust of employees and members. *Cf. Resolution # BC-08-14-91-A.*

(a) It is the policy of the Oneida Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All Tribal members and employees whose performance responsibilities or activities will be discussed at open meetings of the Oneida Business Committee will be given adequate notice to appear at the meeting or that matter must be reserved for ~~e~~Executive ~~s~~Session.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a Tribal member or employee, such information shall be immediately referred to ~~e~~Executive ~~s~~Session without action or further discussion.

117.4-3. *Public Comment.*

(a) The Oneida Business Committee meetings ~~are~~is conducted for the purposes of giving direction to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) A Public Comment period is set forth on the agenda which will allow individuals to make comments. All comments are subject to the limitations of 117.4-2 when discussing

individuals or groups. The comment period is not a question and answer period, it may be extended upon request of any individual during the comment period and such request must be approved by the Oneida Business Committee by majority vote identifying the amount of time the comment period is extended ~~by the Chairperson upon request and approval of the Oneida Business Committee.~~ No action is required to accept or otherwise take action regarding a comment being made. Comments may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action.
2. A comment on an item on the agenda.
3. Praise regarding a Tribal entity, an individual, an employee, a board, committee, commission, program or group.
4. A public notice about an activity or fundraising event.
5. Other comments deemed pertinent by the Chairperson.

(c) Public comments shall not be entertained on any other portion of the agenda. Upon conclusion of the public comment period, the Oneida Business Committee shall, by motion, close the public comment period and open the regular business session of the agenda.

(d) Individuals speaking during the comment period are limited to 3 minutes each, which may be extended by request and approval of the Chairperson an additional 2 minutes.

#### **117.5. Schedule of Meetings**

117.5-1. *Annual Schedule.* The Tribal Secretary shall present, on or around August of each year, a proposed schedule for regular meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt its annual meeting schedule by resolution.

117.5-2. *Reporting Schedule.* The Tribal Secretary shall present, on or around August of each year, a proposed schedule for presentation of quarterly reports by Tribal entities boards, committees, commissions, corporations, and organizational units of the Nation's operations ~~at~~ regular meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt the annual reporting schedule by resolution.

#### **117.6. Agenda**

117.6-1. *Agenda – Regular Meetings.* The agenda of regular meetings of the Oneida Business Committee shall contain the following sections and the general characteristics of each section is defined.

(a) *I. Call to Order.* The meeting shall be called to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *II. Adopt the Agenda.* The agenda for the meeting shall contain necessary subsections so as to identify each item. If there are amendments to the agenda, they should be made during this item, but are not required to be done under this item.

(c) *III. Oath of Office.* Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken, or an agent or member of a corporate board, shall be given the oath of office,

(d) *IV. Public Comment.* This section of the agenda shall be one hour in length and open to any comment presented by an individual; after which time the meeting will be closed

to public comment and the Business Committee shall begin the official business on the agenda.

(e) *V. Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section.

(f) *VI. Resolutions.* Any resolution approving or adopting an action, supporting or appointing a position or individual, and all other resolutions to be acted upon by the Oneida Business Committee shall be presented in this section.

(g) *VII. Appointments.* Actions regarding appointments to boards, committees, commissions, corporate entities, and other membership on entities shall be taken in this section in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions and other laws, policies and rules.

(h) *VIII. Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(i) *IX. General Tribal Council.* This section shall be utilized to address issues related to scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings.

(j) *X. Standing Items.* This section shall be utilized to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.

(k) *XI. Unfinished Business.* This section shall be utilized when agenda items from prior regular, special, or emergency meetings were unable to be completed.

(l) *XII. Tabled Business.* This section shall be utilized when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(m) *XIII. New Business.* Any business brought before the Oneida Business Committee that does not otherwise fit in any of the categories listed in this section shall be placed in this section.

(n) *XIV. Travel Reports.* This section shall be used to present reports regarding approved travel required to be presented to or approved by the Oneida Business Committee.

(o) *XV. Travel Requests.* This section shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(p) *XVI. Reports.* This section shall be used to present quarterly reports as directed by the Oneida Business Committee.

(q) *XVII. Executive Session.* This section shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section may be organized to meet the needs of the Oneida Business Committee.

117.6-2. *Requests to Present Agenda Items.* In general, the following officers and individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members*. Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.

(b) *Chairpersons of Boards, Committees or Commissions*. Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports; and

(2) contracts for the entity itself requiring Oneida Business Committee approval.

All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

(c) *Direct Reports*. Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts of the entity requiring Oneida Business Committee approval; and

(3) requests for actions under the section "XIII. New Business."

(d) *Corporations*. Chairs or Agents on behalf of corporate entities shall be authorized to submit the quarterly reports of the corporation, as directed by the corporate charter to be placed on the agenda. All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

## **117.7. Additional Responsibilities**

117.7-1. *Sergeant-at-Arms*. The Oneida Business Committee shall designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.7-2. *Oneida Business Committee Meeting Attendees*.

(a) Keeping in line with the Oneida principle of Kalihwi-yó, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees who wish to audio or video record an OBC meeting will be required to register on a sign-up sheet prior to recording in order to make the recording obvious to those in attendance and in order for the OBC to regulate the placement of recording devices. Such recordings are not considered part of the official record. Attendees shall not:

(1) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees.

(2) Be under the influence of alcohol or illegal drugs.

(3) Have a weapon on their person in violation of any applicable law.

(4) Take action that violates the laws of the Nation.

(5) ~~Videotaping or recording any meeting of the Oneida Business Committee without expressed permission.~~

(b) *Removal of a Disorderly or Disruptive Person*. If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.7-2(a) and/or 117.4-2(a), the Oneida Business Committee shall inform the person he or she will be removed from the meeting. After a warning, the Chairperson may order the sergeant-at-arms to remove the person from the meeting. No person shall be removed

from a public meeting except for an actual breach of the peace committed at the meeting.  
An individual removed from an Oneida Business Committee meeting shall not be  
allowed to return for the duration of the meeting.

**117.8. Enforcement**

117.8-1. This law shall be enforced according to Robert's Rules of Order.

117.8-2. *Enforcement by the OBC Chairperson.* The Chairperson may request members of the  
public who do not follow this law be removed from an Oneida Business Committee meeting by a  
~~member of Oneida Security or Oneida Law Enforcement~~the sergeant-at-arms. The  
Chairperson's decision is final and is not appealable.

117.8-3. *Enforcement by an ~~Oneida Business Committee~~OBC Officer or Member.* Officers and  
Members of the Oneida Business Committee are authorized, under Robert's Rules of Order, to  
request a point of order to direct compliance with ~~the Robert's Rules of Order~~, rules  
requirements set forth in this law, or ~~rules~~ requirements set forth in resolutions or ~~S~~standard  
~~O~~perating ~~P~~rocedures adopted by the Oneida Business Committee.



NOTICE OF

# PUBLIC MEETING

TO BE HELD

**Thursday, December 29th at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM****(2<sup>nd</sup> 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: BUSINESS COMMITTEE MEETINGS LAW

**This is a proposal to create a new Business Committee Meetings Law which would set parameters for OBC meetings regarding:**

- the discussion of individuals *[see 117.4-2(b)]*.
- public comments *[see 117.4-3(b) and (c) and (d)]*.
- annual OBC scheduling and reporting schedule *[see 117.5-1 and 117.5-2]*.
- the OBC agenda *[see 117.6-1]*.
- requests to present agenda items *[see 117.6-2]*.
- appointment of a sergeant-at-arms *[see 117.7-1]*.
- conduct of OBC meeting attendees and audio or video recording *[see 117.7-2(a)]*.
- removal of disorderly or disruptive persons *[see 117.7-1(b)]*.
- enforcement of this law *[see 117.7-1(b)]*.

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](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

## PUBLIC COMMENT PERIOD OPEN UNTIL January 6, 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](mailto:LOC@oneidanation.org)**

**Phone: (920) 869-4376 or (800) 236-2214**

**Fax: (920) 869-4040**



## Oneida Business Committee Meetings law

5

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Oneida Business Committee Meetings				
<b>Sponsor</b>	Brandon Stevens	<b>Drafter</b>	JoAnne House	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	Brandon Stevens This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.				
<b>Purpose</b>	The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Nation.				
<b>Authorized/ Affected Entities</b>	Oneida Business Committee, Tribal entities, Oneida Nation membership, Oneida Nation employees,				
<b>Related Legislation</b>	BC resolution # 08-14-91-A (Resolution regarding discussion of individuals), Open Records and Open Meetings law				
<b>Enforcement &amp; Due Process</b>	This law is enforced by the OBC Chairperson, an OBC Officer or an OBC Member according to Robert's Rules of Order [see 117.8].				
<b>Public Meeting Status</b>	A public meeting has not been held.				

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### Overview

This is a new law that will govern Oneida Business Committee (OBC) meetings and provides a new format to facilitate more effective meetings. The law sets parameters for OBC meetings regarding:

- the discussion of individuals,
- public comments,
- annual OBC scheduling and reporting schedule,
- the OBC agenda,
- requests to present agenda items,
- appointment of a seargeant-at-arms,
- conduct of OBC meeting attendees,
- removal of disorderly or disruptive persons, and
- enforcement of this law.

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### Body of the Analysis

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#### Rules of Order

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This section details the rules that govern OBC meetings. Major aspects include:

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- Roberts Rules of Order

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- OBC meetings are guided by Robert's Rules of Order; except as modified

by the OBC by resolution *[see 117.4-1]*.

- Discussion of Individuals

- Discussion of individuals is prohibited unless the individual has been adequately notified or the item must be reserved for executive session *[see 117.4-2(b)]*. Any information received that implicates the integrity, honesty or morality of a Tribal member or employee will be forwarded immediately to executive session *[see 117.4-2(c)]*.

- Public Comment

- A public comment period has been included at the beginning of OBC meetings in order to provide the public with an opportunity for individuals to request OBC review of an issue or action, comment on an agenda item on the agenda, provide praise, provide public notice about an activity or fundraising event, or other comments deemed pertinent by the Chairperson *[see 117.4-3(b)]*. Public comments will not to be considered during any other portion of the meeting *[see 117.4-3(c)]*. This is similar to the Menominee Indian Tribe of Wisconsin as noted in the Menominee Tribal Legislature Legislative Rules of Procedure.

#### Schedule of Meetings

Detail regarding a meeting schedule and a reporting schedule are included in this law.

- proposed yearly schedule of OBC meetings around August of each year adopted by OBC resolution *[see 117.5-1]*.
- proposed reporting schedule for Tribal entities around August of each year adopted by OBC resolution *[see 117.5-2]*.

#### Agenda

- The required sections of the OBC agenda and general characteristics of each section are detailed *[see 117.6-1]*.
- Detail regarding individuals and entities authorized to submit requests to present agenda items are detailed *[see 117.6-2]*.

#### Additional Responsibilities

- OBC shall designate a sergeant-at-arms to oversee the security of OBC meetings *[see 117.7-1]*.
- OBC meeting attendees are expected to treat each other with respect and kindness. A list of prohibited behaviors is detailed *[see 117.7-2(a)]*.
- Meeting attendees that interrupt a meeting or violate section 117.4-2 by discussing individuals or commit a prohibited behavior *[see 117.7-1(a)]* will first receive a warning from the OBC that they will be removed from the meeting. After a warning, the Chairperson may order the sergeant-at-arms to remove the individual from the meeting. Removal is an option provided only in the case that a person causes a breach of peace committed at a meeting *[see 117.7-1(b)]*.

#### Enforcement

- This law shall be enforced according to Robert's Rules of Order *[see 117.8-1]*.
- The OBC Chairperson has the authority to remove members of the public who

violate this law and this decision is not appealable [see 117.8-2].

- An OBC Officer or OBC Member may request a point of order to direct compliance with requirements in this law, Robert's Rules of Order, or requirements established by resolutions or SOPs adopted by the OBC [see 117.8-3].

#### Other

- This law compliments the Open Records and Open Meetings law with the provision regarding video and audio recording [see 117.7-2(a)].
  - The Open Records and Open Meetings law states [see 7.16]:  
Any Tribal member may photograph, tape-record, or otherwise reproduce any part of a meeting required to be open as long as the device:
    - (a) Is operated openly so that it is obvious to those in attendance that the meeting is being recorded;
    - (b) Does not create an excessive noise that disturbs any individual attending the meeting;
    - (c) Is operated without excessively bright artificial light that disturbs any individual attending the meeting; and
    - (d) Does not otherwise interfere with an individual's observation or participation in the meeting.
  - The current OBC Meetings Law states that attendees who wish to video and audio record an OBC meeting are required to register on a sign up sheet prior to recording in order to make the recording obvious to those in attendance and in order for the OBC to regulate the placement of recording devices [see 117.7-2(a)].
    - This would satisfy the requirement in the Open Records and Open Meetings law that the recording is made obvious to those in attendance [see 7.16(a)] and will also meet the discretionary provision [see 7.16-2] that states any governmental body may regulate the placement and use of equipment necessary for photographing or recording a meeting, to prevent undue interference.
- Please refer to the fiscal impact statement for any financial impacts.

**Title 1. Government and Finances – Chapter 117**  
**BUSINESS COMMITTEE MEETINGS LAW**

117.1. Purpose and Policy	117.5. Schedule of Meetings
117.2. Adoption, Amendment, Repeal	117.6. Agenda
117.3. Definitions	117.7. Additional Responsibilities
117.4. Rules of Order	117.8. Enforcement

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**117.1. Purpose and Policy**

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Nation.

117.1-2. *Policy.* It is the policy of the Nation that the Oneida Business Committee to be clear and consistent in its actions and to be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views.

117.1-3. *Roles and Responsibilities.* The Oneida Business Committee are elected by the membership and are delegated legislative responsibility under Article IV of the Constitution of the Oneida Nation, resolution # GTC-2-15-82, adoption of job descriptions in July of 1990, and a motion at the October 1998 General Tribal Council meeting. The work associated with this legislative responsibility is carried out through various subcommittees such as the LOC, CDPC, and QOL in order to obtain the broadest and most informed discussion. The action regarding this legislative responsibility is taken at a Regular, Special, or Emergency Oneida Business Committee meeting, or where necessary, by e-poll in accordance with approved processes. The goal of this law is to formalize the action of legislative responsibility taking place at Oneida Business Committee meetings and the work of legislative responsibility within subcommittees.

**117.2. Adoption, Amendment, Repeal**

117.2-1. This law was adopted by the Oneida Business Committee by resolution BC -\_\_\_\_\_.

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. 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.

117.2-4. 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, the following resolutions/actions are affected as follows.

- (a) BC-08-14-91-A (Resolution regarding discussion of individuals is specifically superseded by this law)

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**117.3. Definitions**

117.3-1. 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) “Board, Committee or Commission” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.

(b) “Constitution” means the Constitution and By-laws of the Oneida Nation, as amended.

(c) “Nation” means the Oneida Nation.

(d) “Roberts Rules of Order” means a handbook for running meetings effectively and efficiently that sets the guidelines for such issues as leading debates; recognizing speakers; defining the role of the chair and other officers; proposing, seconding, and voting on motions; and writing and amending constitutions and bylaws.

(e) “Tribal Entities” means boards, committees, commissions, corporations, and organizational units of the Nation.

#### **117.4. Rules of Order**

117.4-1. *General.* The Oneida Business Committee shall utilize Robert’s Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution. The Oneida Business Committee may, by resolution:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

117.4-2. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee and other Tribal entities. Such discussions often include personal observations, evaluations, and judgments of other personnel and individuals and that discussions of this nature in open session undermines the morale and trust of employees and members. *Cf. Resolution # BC-08-14-91-A.*

(a) It is the policy of the Oneida Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All Tribal members and employees whose performance responsibilities or activities will be discussed at open meetings of the Oneida Business Committee will be given adequate notice to appear at the meeting or that matter must be reserved for executive session.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a Tribal member or employee, such information shall be immediately referred to executive session without action or further discussion.

117.4-3. *Public Comment.*

(a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) A Public Comment period is set forth on the agenda which will allow individuals to make comments. All comments are subject to the limitations of 117.4-2 when discussing individuals or groups. The comment period is not a question and answer period, it may be

extended upon request of any individual during the comment period and such request must be approved by the Oneida Business Committee by majority vote identifying the amount of time the comment period is extended. No action is required to accept or otherwise take action regarding a comment being made. Comments may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action.
2. A comment on an item on the agenda.
3. Praise regarding a Tribal entity, an individual, an employee, a board, committee, commission, program or group.
4. A public notice about an activity or fundraising event.
5. Other comments deemed pertinent by the Chairperson.

(c) Public comments shall not be entertained on any other portion of the agenda. Upon conclusion of the public comment period, the Oneida Business Committee shall, by motion, close the public comment period and open the regular business session of the agenda.

(d) Individuals speaking during the comment period are limited to 3 minutes each, which may be extended by request and approval of the Chairperson an additional 2 minutes.

#### **117.5. Schedule of Meetings**

117.5-1. *Annual Schedule*. The Tribal Secretary shall present, on or around August of each year, a proposed schedule for regular meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt its annual meeting schedule by resolution.

117.5-2. *Reporting Schedule*. The Tribal Secretary shall present, on or around August of each year, a proposed schedule for presentation of quarterly reports by Tribal entities at regular meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt the annual reporting schedule by resolution.

#### **117.6. Agenda**

117.6-1. *Agenda – Regular Meetings*. The agenda of regular meetings of the Oneida Business Committee shall contain the following sections and the general characteristics of each section is defined.

(a) *I. Call to Order*. The meeting shall be called to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *II. Adopt the Agenda*. The agenda for the meeting shall contain necessary subsections so as to identify each item. If there are amendments to the agenda, they should be made during this item, but are not required to be done under this item.

(c) *III. Oath of Office*. Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken, or an agent or member of a corporate board, shall be given the oath of office,

(d) *IV. Public Comment*. This section of the agenda shall be one hour in length and open to any comment presented by an individual; after which time the meeting will be closed to public comment and the Business Committee shall begin the official business on the agenda.

(e) *V. Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section.

(f) *VI. Resolutions.* Any resolution approving or adopting an action, supporting or appointing a position or individual, and all other resolutions to be acted upon by the Oneida Business Committee shall be presented in this section.

(g) *VII. Appointments.* Actions regarding appointments to boards, committees, commissions, corporate entities, and other membership on entities shall be taken in this section in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions and other laws, policies and rules.

(h) *VIII. Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(i) *IX. General Tribal Council.* This section shall be utilized to address issues related to scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings.

(j) *X. Standing Items.* This section shall be utilized to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.

(k) *XI. Unfinished Business.* This section shall be utilized when agenda items from prior regular, special, or emergency meetings were unable to be completed.

(l) *XII. Tabled Business.* This section shall be utilized when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(m) *XIII. New Business.* Any business brought before the Oneida Business Committee that does not otherwise fit in any of the categories listed in this section shall be placed in this section.

(n) *XIV. Travel Reports.* This section shall be used to present reports regarding approved travel required to be presented to or approved by the Oneida Business Committee.

(o) *XV. Travel Requests.* This section shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(p) *XVI. Reports.* This section shall be used to present quarterly reports as directed by the Oneida Business Committee.

(q) *XVII. Executive Session.* This section shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section may be organized to meet the needs of the Oneida Business Committee.

117.6-2. *Requests to Present Agenda Items.* In general, the following officers and individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members.* Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.



(b) *Chairpersons of Boards, Committees or Commissions.* Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports; and

(2) contracts for the entity itself requiring Oneida Business Committee approval.

All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

(c) *Direct Reports.* Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts of the entity requiring Oneida Business Committee approval; and

(3) requests for actions under the section "XIII. New Business."

(d) *Corporations.* Chairs or Agents on behalf of corporate entities shall be authorized to submit the quarterly reports of the corporation, as directed by the corporate charter to be placed on the agenda. All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

#### **117.7. Additional Responsibilities**

117.7-1. *Sergeant-at-Arms.* The Oneida Business Committee shall designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.7-2. *Oneida Business Committee Meeting Attendees.*

(a) Keeping in line with the Oneida principle of Kalihwi-y% all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees who wish to audio or video record an OBC meeting will be required to register on a sign-up sheet prior to recording in order to make the recording obvious to those in attendance and in order for the OBC to regulate the placement of recording devices. Such recordings are not considered part of the official record. Attendees shall not:

(1) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees.

(2) Be under the influence of alcohol or illegal drugs.

(3) Have a weapon on their person in violation of any applicable law.

(4) Take action that violates the laws of the Nation.

(b) *Removal of a Disorderly or Disruptive Person.* If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 17.7-2(a) and/or 117.4-2(a), the Oneida Business Committee shall inform the person he or she will be removed from the meeting. After a warning, the Chairperson may order the sergeant-at-arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting. An individual removed from an Oneida Business Committee meeting shall not be allowed to return for the duration of the meeting.

#### **117.8. Enforcement**

117.8-1. This law shall be enforced according to Robert's Rules of Order.

235 117.8-2. *Enforcement by the OBC Chairperson.* The Chairperson may request members of the  
236 public who do not follow this law be removed from an Oneida Business Committee meeting by  
237 the sergeant-at-arms. The Chairperson's decision is final and is not appealable.

238 117.8-3. *Enforcement by an OBC Officer or Member.* Officers and Members of the Oneida  
239 Business Committee are authorized, under Robert's Rules of Order, to request a point of order to  
240 direct compliance with Robert's Rules of Order, requirements set forth in this law or  
241 requirements set forth in resolutions or standard operating procedures adopted by the Oneida  
242 Business Committee.  
243



Legislative Operating Committee  
November 16, 2016

## Budget Management and Control

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> None Yet
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was deferred to the OBC by the GTC on May 23, 2011 and it was carried over into the current term by the LOC. The request was to develop a law to provide consistent requirements for the Tribal budget process, establish a procedural framework, and address oversight of Tribal expenditures.*

**9/17/14 LOC:** Motion by Tehassi Hill to add the Budget Management and Control Law to the Active Files List with Brandon Stevens as sponsor; seconded by Fawn Billie. Motion carried unanimously.

**12/9/15 OBC:** Motion by Lisa Summers to adopt resolution 12-9-15-A Guidance for Implementing Fiscal Year 2016 Budget and Developing Fiscal Year 2017 and Fiscal Year 2018 Budget, seconded by Jennifer Webster. Motion carried unanimously.

**8/2/16:** *Work meeting held.* Still in draft. Another work meeting scheduled for 8/15/16.

**8/15/16:** *Work Meeting held.* Still in draft.

**9/9/16:** *Work meeting held.* Still in draft.

**9/19/16:** *Work meeting held.* Krystal John, David Jourdan, Chad Fuss, Ralinda Ninham, Trish King, Larry Barton, Denise Vigue, Clorissa Santiago, Wes Martin attended. Draft completed. Krystal John will clean up the draft and it will be put on the 10/5/16 LOC agenda, where a legislative analysis will be requested.

**10/3/16:** *Work meeting held.* Denise Vigue, Jenny Webster, David Jourdan, Wes Martin, Larry Barton, Ralinda Ninham, Jen Falck. Some changes were suggested. LRO Director will discuss those changes with the drafting attorney (KJ). Another work meeting will be scheduled.

**10/5/16 LOC:** Motion by Jennifer Webster to accept the Budget Management and Control Law draft and forward to the LRO for a legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**10/19/16:** Quarterly Sponsor Update Meeting. Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. The analyst has received the draft and will begin analyzing soon.

**10/20/16 LOC:** Motion by Jennifer Webster to accept the Budget Management and Control Law draft and forward to the LRO for a legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**Next Steps:**

- Accept Budget Management and Control law public meeting packet, including the legislative analysis; and
- Direct the LRO to hold a public meeting for the Budget Management and Control law on December 15, 2016.

**Title 1. Government and Finances – Chapter 121**  
**BUDGET MANAGEMENT AND CONTROL**  
**Twahwistatye>nsha>**

*We have a certain amount of money*

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements	121.12.	Enforcement and Penalties

**121.1. Purpose and Policy**

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida entities when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget.

121.1-2. *Policy.* It is the policy of the Nation to rely on value based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement.

**121.2. Adoption, Amendment, Repeal**

121.2-1. This law was adopted by the Oneida Business Committee by Resolution \_\_\_\_\_.

121.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. 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.

121.2-4. 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 nothing in this law amends or repeals the requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**121.3. Definitions**

121.3-1. This section shall govern the definitions of words and phrases used within this ~~Law~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Appropriation" means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.

(b) ~~"Fund Unit" means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.~~

(c) "Capital Expenditure" means:

(1) Any item with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.00), but the total purchase price for all of the items is ten thousand dollars (\$10,000.00) or more.

(d) "Capital Improvement" means non-recurring expenditures or any expenditure for

physical improvements, including costs for: acquisition of existing buildings, land, or interests in land; construction of new buildings or other structures, including additions and major alterations; acquisition of fixed equipment; landscaping; and similar expenditures with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more.

(e) “CFO” means the Nation’s Chief Financial Officer.

(f) “Debt” means the secured or unsecured obligations owed by the Nation.

(g) “Economic Life” means the length of time an asset is expected to be useful.

(h) “Executive Manager” means any one of the following positions within the Nation: Chief Executive Officer/General Manager, Gaming General Manager, Chief Legal Counsel and/or Chief Financial Officer.

(i) “Expenditure Report” means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement of financial position.

(j) “Fiscal Year” means the one (1) year period each year from October 1<sup>st</sup> to the September 30<sup>th</sup>.

(k) “Fund Unit” means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(l) “General Reserve Fund” means the Nation’s main operating fund which is used to account for all financial resources not accounted for in other funds.

(m) “GTC Allocations” means expenditures directed by the General Tribal Council as required payments and/or benefits to the Nation’s membership and are supported by either a General Tribal Council or Oneida Business Committee resolution.

(n) “Line Item” means the specific account within a fund unit’s budget or category that expenditures are charged to.

(o) “Manager” means the person in charge of directing, controlling and administering the activities of a fund unit.

~~(p) “Permanent Executive Contingency” means an account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress.~~

~~(q)(p)~~ “Nation” means the Oneida Nation.

(q) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.

(r) “Treasurer” means the elected Oneida Nation Treasurer or his or her designee.

#### **121.4. Strategic Planning**

121.4-1. *Triennial Strategic Plan.* Prior to December 1<sup>st</sup> of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

(a) Major policy and budgetary goals for the Nation, both long and short term;

(b) Specific strategies and planned actions for achieving each goal; and

(c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Oneida Entities' Contributions to the Triennial Strategic Plan.* Managers shall annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan ~~established~~established by the Oneida Business Committee pursuant to 121.4-1. Manager shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

(a) A statement of the fund unit's mission;

(b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5-3(c) which aligns with the goals established in the Nation's triennial strategic plan;

(c) Specific strategies for achieving each of the fund unit's goals; and

(d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.

(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the ~~Employment code~~Nation's employment laws, rules and policies.

(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a ~~prudent level of business continuity funds~~Permanent Executive Contingency account within the ownership investment report to be used to prevent default on debt and to sustain operations ~~as part of the budget contingency plan~~during times of extreme financial distress. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required ~~in the Permanent Executive Contingency account~~. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency ~~account~~ until a ~~prudent~~the established level has been achieved. Funds in the Permanent Executive Contingency may



only be used for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

(c) Grant Funds. Grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Grant funds shall be spent according to any non-negotiable grant requirements and guidelines of the granting agency to include purchases, travel, training, hiring grant required positions and any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

#### **121.5. Budget Process**

121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.

121.5-2. *Community Input Budget Meeting(s).* The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1<sup>st</sup> of each year. At the community budget input meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

(a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.

(b) The CFO shall provide recommendations as to any forecast variations requested by fund units.

(c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.

(d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:

- (1) The community budget input meeting(s) transcript(s);
- (2) Any applicable fund unit's requested forecast variations; and
- (3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and considerations related to forecast variations.



121.5-3. *Priority List Established by the Oneida Business Committee.* The Oneida Business Committee shall review the community budget input meeting packet and shall hold work meetings to create a priority list.

(a) The Oneida Business Committee shall establish the priority list by placing the following services provided by the Nation in chronological order with the lowest number having the highest priority. The order of the following service groups provided below has no relation to the service groups' anticipated and/or required placement within the Oneida Business Committee's priority list; the Oneida Business Committee's priority list may vary from year to year based on the needs of the Nation.

- (1) Protection and Preservation of Natural Resources
- (2) Protection and Preservation of Oneida Culture and Language
- (3) Education and Literacy
- (4) Health Care
- (5) Economic Enterprises
- (6) Building and Property Maintenance
- (7) Human Services
- (8) Public Safety
- (9) Housing
- (10) Utilities, Wells, Wastewater and Septic
- (11) Planning, Zoning and Development
- (12) Membership Administration
- (13) Government Administration

(b) The Oneida Business Committee shall approve the priority list by resolution no later than the last meeting in February.

(c) The CFO shall maintain a list which places each fund unit into a corresponding service group.

121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including specific deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include in the guidelines the exact amount that each service group's cumulative budget is required to be increased/decreased in accordance with its placement on the priority list. The CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in accordance with the deadline as set by the Oneida Business Committee. The Oneida Business Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the CFO were received.

(a) In accordance with the approved budgetary guidelines, fund units offering like services shall meet together to review each fund unit's budget and discuss strategies for attaining compliance with the approved budgetary guidelines. Each service group shall submit one (1) draft budget which contains each fund unit's individual proposed budget and demonstrates cumulative compliance with the approved budgetary guidelines.

(b) The CFO shall receive ~~and~~ review ~~the proposed budgets and shall~~ and compile the proposed budgets into the Nation's draft budget which the CFO shall present to the Oneida Business Committee no later than the last Oneida Business Committee meeting in May. The CFO may not alter any proposed budgets until such budgets have been reviewed by the Oneida Business Committee.

(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.

(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.

(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business Committee noting the dollar amount of the service group's non-compliance. A service group's continued non-compliance may result in employee discipline according to the Nation's employment ~~law~~laws, rules and ~~rules~~policies.

121.5-5. *Content of Budget.* The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

(a) Estimated revenues to be received from all sources for the year which the budget covers;

(b) The individual budgets of each fund unit;

(c) A description of each line item within each fund unit's budget;

(d) The estimated expenditures by each fund unit; and

(e) Each fund unit's strategic plan showing alignment with the Nation's goals.

121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

~~(1a)~~ Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.

~~(2b)~~ The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.

121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

**121.6. Capital Improvements:**

121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed at the time of the reassessment.

121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create, provided that the rules shall include a provision that the Oneida Business Committee shall approve all such capital improvement plans.

121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules ~~which the Community Development Planning Committee and the Development Division shall jointly create.~~

**121.7. Appropriation of the Nation's Funds**

121.7-1. *Unexpended Capital Improvement Funds.* Unless the entity qualifies for an exception as provided in the capital improvement rules, ~~which the Community Development Planning Committee and the Development Division shall jointly create,~~ unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted.

121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

**121.8. Budget Authority**

121.8-1. *Authority to Expend Funds.* ~~Authority~~The Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other ~~officers and department~~ managers, including executive managers, of the ~~Tribal~~Nation who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department.

121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which ~~Tribal~~the Nation's funds have also been appropriated, those grant funds shall be used before ~~appropriated Tribal~~appropriating the Nation's funds unless the ~~Tribal~~Nation's funds are needed to make up an otherwise shortfall in the overall business unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. In addition to the authority and responsibilities provided elsewhere in this ~~Law~~law, the following positions and entities shall have the authority and responsibilities as outlined below:

- (a) *Oneida Business Committee.* Once the Nation's annual budget is adopted by the General Tribal Council, the authority of the Oneida Business Committee is limited to

budget oversight except as otherwise provided in this ~~Law~~law. However, these limitations do not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

(b) ~~Tribal Treasurer. The Tribal~~The Nation's Treasurer. In addition to the Treasurer's Constitutional responsibilities, the Nation's Treasurer shall:

(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:

(A) The annual General Tribal Council meeting;

(B) The semi-annual General Tribal Council meeting; and

(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.

(2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.

(c) *Chief Financial Officer.* Once the ~~Tribal~~Nation's budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:

(1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;

(2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Conduct financial condition meetings with the Nation's management on a quarterly basis.

(d) *Managers.* Managers of each business unit shall:

(1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;

(2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.

#### **121.9. Budget Transfers; Amendments**

121.9-1. *Budget Transfers.* After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. *Budget Amendments.* After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

#### **121.10. Reporting**

121.10-1. *Monthly Reporting.* The CFO shall provide copies of the monthly ~~treasurer's~~Treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected business units or of business units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each business unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

**121.11. Authorizations and Signatures**

121.11-1. *General.* The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf ~~on~~of the Nation.

121.11-2. *Fees and Charges.* Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or service whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.

**121.12. Enforcement ~~and Penalties~~**

121.12-1. *Compliance and Enforcement.* All employees and elected officials of the Nation shall comply with and enforce this law to the greatest extent possible.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws, policies and rules, including but not limited to, ~~the Nation's those related to~~ employment ~~law, policies and rules~~with the Nation, the Conflict of Interest Policy, the Code of Ethics and ~~potentially~~ the Removal law.

121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil and/or criminal charges under applicable law. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter.

*End.*

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NOTICE OF  
**PUBLIC MEETING**  
 TO BE HELD  
**THURSDAY, DECEMBER 15 at 12:15 p.m.**  
 IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> 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: Budget Management and Control**

**This is a proposal for a new law which would:**

- Require a triennial (3 year) strategic planning with short and long term policy and budget goals at both the OBC and departmental level *[see 121.4]*.
- Provide a budget contingency plan to respond to extreme financial distress to include cost savings tools and a business continuity fund *[see 121.4-3]*.
- Require community input in the budget development process *[121.5-2]*.
- Require the OBC to create a priority list of services provided by the Nation and use the list to distribute the budget. Also, requires funding units with like services to meet and formulate a plan to meet budgetary requirements for their service group *[see 121.5-4]*.
- Include guidelines and implementation requirements for capital improvement plans for government services and enterprises *[see 121.6-2]*.
- Provide guidelines for expending the Nation's funds in accordance with the adopted budget *[see 121.8]*.
- Restrict budget transfers once budgets are adopted by the GTC *[see 121.9]*.
- Provide reporting and auditing requirements *[see 121.10]*.
- Codify sign-off authority and delegate rulemaking authority for developing fees and charges for services provided *[see 121.11]*.
- Provide compliance and enforcement mechanisms for violations of this law *[see 121.12]*.
- Include timelines for draft budget completion prior to presentation to GTC for adoption *[see 121.5-7]*.

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](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD**  
**OPEN UNTIL DECEMBER 22, 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**





## Budget Management and Control

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<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Budget Management and Control				
<b>Sponsor</b>	Brandon Stevens	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	OBC – Finance Committee To formalize the process for the Oneida Business Committee and Oneida entities in developing the annual budget for the Oneida Nation for presentation to the General Tribal Council for formal approval.				
<b>Purpose</b>	The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida entities when preparing the budget to be presented to the General Tribal Council for approval and to establish a three year strategy planning process for the Nation's budget.				
<b>Authorized/ Affected Entities</b>	The Nation's Treasurer, Chief Financial Officer, Gaming General Manager, Chief Legal Counsel, Oneida Business Committee, managers, Internal Audit Department, Purchasing Department, Community Development Planning Committee, General Tribal Council, Oneida entities				
<b>Related Legislation</b>	Resolution BC-10-08-08-A ( <i>Adopting Expenditure Authorization and Reporting Requirements</i> ), Audit Law, Conflict of Interest Policy, Code of Ethics, Removal law, Legislative Procedures Act, Oneida Nation Constitution, Accounting standards established by the Financial Accounting Standards Board and the Governmental Accounting Standards Board (GASB).				
<b>Enforcement &amp; Due Process</b>	Non-compliance with this law is enforced according to the following laws and policies as applicable: Nation's laws, policies and rules including employment, the Conflict of Interest Policy, the Code of Ethics and the Removal Law [see 121.12-2]. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter [see 121.12-3].				
<b>Public Meeting Status</b>	A public meeting has not been held.				

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### Overview

8 This law was requested by the Oneida Business Committee, specifically the finance  
 9 committee, to guide the process used to develop the Nation's budget for presentation to the  
 10 General Tribal Council for formal approval and also to create a triennial strategy planning  
 11 process for the Nation's budget. This budget process detailed in the law includes value based  
 12 budgeting strategies that consider the needs of the community in the budget development  
 13 process.

- 14 ■ Triennial (3 year) strategic planning at both the OBC and departmental level to include  
 15 short and long term policy and budget goals for the Nation [see 121.4].

- Budget contingency plan to respond to extreme financial distress to include cost savings tools and a business continuity fund *[see 121.4-3]*.
- Provides for community input into the budget development process *[121.5-2]*.
- The OBC will create a priority list of services provided by the Nation that guide in the development of the budget to ensure that budget cuts do not affect high priority areas the same as low priority areas. Also requires funding units with like services to meet and formulate a plan to meet budgetary guidelines *[see 121.5-4]*.
- Includes guidelines for capital improvement plans for government services and enterprises as well as implementation requirements *[see 121.6-2]*.
- Provides guidelines for expending the Nation's funds in accordance with the adopted budget *[see 121.8]*.
- Restricts budget transfers once budgets are adopted by the GTC *[see 121.9]*.
- Provides reporting and auditing requirements *[see 121.10]*.
- Codifies sign-off authority and creates guidelines for developing fees and charges for services provided *[see 121.11]*.
- Provides compliance and enforcement mechanisms for violations of this law *[see 121.12]*.
- Includes timelines for draft budget completion prior to presentation to GTC for adoption.

### **Budget Process**

The OBC and executive managers create a triennial (3 year) strategic plan for the Nation which includes long and short term major policy and budgetary goals, specific strategies and planned action to achieve each goal, and performance targets and indicators to track the progress *[see 121.4-1(a) to (c)]*. The CFO will be required to develop guidelines, which must be approved by the Treasurer and the OBC, including specific deadlines, to be followed by department managers that have budget responsibility in preparing and submitting proposed budgets *[see 121.5-4]*. At a minimum the guidelines must include increase or decrease in cumulative budget for each service group *[see 121.5-4]*. Managers create a triennial strategic plan that aligns with the OBC triennial plan which is submitted to the CFO yearly *[see 121.4-2(a) to (d)]*. A budget contingency plan is required to plan for periods of extreme financial distress that includes cost savings tools and a business continuity fund which can only be used for specific purposes *[see 121.4-3(a) to (b)]*. Non-negotiable grant funds are exempt from the requirements of the budgetary contingency fund and any cost containment initiatives *[see 121.4-3(c)]*. The Treasurer will hold community input budget meetings to gather feedback on what should be included in the next year's budget *[see 121.5-2]*. After reviewing the feedback provided at the community budget input meetings, the OBC shall establish a priority list of services to guide any budget cuts or increases *[see 121.5-3]*. Fund units offering like services will be requested to meet and decide how to comply with budgetary guidelines and make any necessary cuts to their respective proposed budgets which are guided by the priority list. The draft budget is compiled by the CFO and presented to the OBC for review and modification *[see 121.5-4(a) to (b)]*. The OBC will work with fund unit managers regarding any OBC proposed budget modifications. A final draft budget is then approved by the OBC by resolution and presented at community meetings prior to being presented to GTC for adoption *[see 121.5-6 to 121.5-9]*.

### **Capital Improvements**



The OBC will create and GTC will approve capital improvement plans for government services to cover 5-10 years and OBC will reassess the plan every 5 years and provide a status report to GTC *[see 121.6-1]*. Capital improvement plans for enterprises may be brought forward according to the capital improvement rules *[see 121.6-2]*. Unexpended capital improvement funds carry over to the next fiscal year and are required to remain appropriated for the same purpose as originally budgeted *[see 121.7-1]*. The CFO will be required to ensure that unexpended capital expenditure funds are reallocated two budget years out according to the OBC's budget priority list for that budget year *[see 121.7-2]*.

### **Budget Authority, Transfers, Amendments, and Reporting**

The Treasurer's authority to expend appropriated funds is delegated to the CFO who shall expend funds according to the budget adopted by the GTC. Managers who manage budgets are delegated authority to expend funds as budgeted by GTC *[see 121.8-1]*. Grant funds are required to be expended prior to the Nation's funds when there is overlap unless there are restrictions on the grant funds *[see 121.8-2]*. The OBC is limited to oversight of the budget once it is approved by GTC except in emergency situations. The Treasurer will present expenditure and other financial reports to GTC. The CFO will ensure implementation of the budget as adopted by GTC *[see 121.8-3]*. Budget transfers are not allowed except as authorized by OBC in emergency situations or to adjust the budget for actual grant funds received. Budget amendments are not allowed except as authorized by OBC in emergency situations *[see 121.9]*. The CFO will provide copies of the Treasurer's monthly and quarterly operational reports to the OBC according to the Secretary's schedule. Internal audit will perform annual audits and OBC may contract with an independent audit firm as necessary *[see 121.10]*.

### **Administrative Rulemaking**

The following entities have been granted rulemaking authority to implement, interpret and/or enforce this law:

- Capital Improvement Rules
  - Shall be jointly created by the Community Development Planning Committee and the Development Division *[see 121.6-2]*
    - Minimum requirements for the rules included in this law:
      - Shall include a provision that Oneida Business Committee shall approve all capital improvement plans *[see 121.6-2]*.
      - Capital Improvement plans shall be implemented, contingent on available funding capacity *[see 121.6-3]*.
      - Exception criteria for entities regarding unexpended capital expenditure funds *[see 121.7-1]*.
      - Unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted *[see 121.7-1]*.
- Procurement Manual Rules
  - Shall be developed by the Purchasing Department *[see 121.8-1]*
    - Minimum requirements for the rules included in this law:
      - Shall provide the sign-off process and authorities required to expend funds on behalf of the Nation.

• Fee Waivers Rules

- Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements *[see 121.11-2]*.

**Other**

- The Human Resources Department will be required to update job descriptions to reflect authority delegated to expend funds based upon the procurement manual rules developed by the Purchasing Department *[see 121.8-1]*.
-

**Title 1. Government and Finances – Chapter 121**  
**BUDGET MANAGEMENT AND CONTROL**  
**Twahwistatye>nsha>**

*We have a certain amount of money*

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements	121.12.	Enforcement and Penalties

**121.1. Purpose and Policy**

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida entities when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget.

121.1-2. *Policy.* It is the policy of the Nation to rely on value based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement.

**121.2. Adoption, Amendment, Repeal**

121.2-1. This law was adopted by the Oneida Business Committee by Resolution \_\_\_\_\_.

121.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. 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.

121.2-4. 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 nothing in this law amends or repeals the requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**121.3. Definitions**

121.3-1. 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) "Appropriation" means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.

(b) "Capital Expenditure" means:

(1) Any item with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.00), but the total purchase price for all of the items is ten thousand dollars (\$10,000.00) or more.

(c) "Capital Improvement" means non-recurring expenditures or any expenditure for physical improvements, including costs for: acquisition of existing buildings, land, or interests in land; construction of new buildings or other structures, including additions and major alterations; acquisition of fixed equipment; landscaping; and similar

expenditures with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more.

(d) "CFO" means the Nation's Chief Financial Officer.

(e) "Debt" means the secured or unsecured obligations owed by the Nation.

(f) "Economic Life" means the length of time an asset is expected to be useful.

(g) "Executive Manager" means any one of the following positions within the Nation: Chief Executive Officer/General Manager, Gaming General Manager, Chief Legal Counsel and/or Chief Financial Officer.

(h) "Expenditure Report" means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement of financial position.

(i) "Fiscal Year" means the one (1) year period each year from October 1<sup>st</sup> to the September 30<sup>th</sup>.

(j) "Fund Unit" means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(k) "General Reserve Fund" means the Nation's main operating fund which is used to account for all financial resources not accounted for in other funds.

(l) "GTC Allocations" means expenditures directed by the General Tribal Council as required payments and/or benefits to the Nation's membership and are supported by either a General Tribal Council or Oneida Business Committee resolution.

(m) "Line Item" means the specific account within a fund unit's budget or category that expenditures are charged to.

(n) "Manager" means the person in charge of directing, controlling and administering the activities of a fund unit.

(o) "Nation" means the Oneida Nation.

(p) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.

(q) "Treasurer" means the elected Oneida Nation Treasurer or his or her designee.

#### **121.4. Strategic Planning**

121.4-1. *Triennial Strategic Plan.* Prior to December 1<sup>st</sup> of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

(a) Major policy and budgetary goals for the Nation, both long and short term;

(b) Specific strategies and planned actions for achieving each goal; and

(c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Oneida Entities' Contributions to the Triennial Strategic Plan.* Managers shall annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan established by the Oneida Business Committee

pursuant to 121.4-1. Manager shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

- (a) A statement of the fund unit's mission;
- (b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5-3(c) which aligns with the goals established in the Nation's triennial strategic plan;
- (c) Specific strategies for achieving each of the fund unit's goals; and
- (d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:
  - (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
  - (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.

(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the Nation's employment laws, rules and policies.

(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a Permanent Executive Contingency account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required in the Permanent Executive Contingency account. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency account until the established level has been achieved. Funds in the Permanent Executive Contingency may only be used for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

(c) *Grant Funds.* Grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Grant funds shall be spent according to any non-negotiable grant requirements and guidelines of the granting agency to include purchases, travel, training, hiring grant required positions and any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

## **121.5. Budget Process**

121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.

121.5-2. *Community Input Budget Meeting(s).* The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1<sup>st</sup> of each year. At the community budget input meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

(a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.

(b) The CFO shall provide recommendations as to any forecast variations requested by fund units.

(c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.

(d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:

(1) The community budget input meeting(s) transcript(s);

(2) Any applicable fund unit's requested forecast variations; and

(3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and considerations related to forecast variations.

121.5-3. *Priority List Established by the Oneida Business Committee.* The Oneida Business Committee shall review the community budget input meeting packet and shall hold work meetings to create a priority list.

(a) The Oneida Business Committee shall establish the priority list by placing the following services provided by the Nation in chronological order with the lowest number having the highest priority. The order of the following service groups provided below has no relation to the service groups' anticipated and/or required placement within the Oneida Business Committee's priority list; the Oneida Business Committee's priority list may vary from year to year based on the needs of the Nation.

(1) Protection and Preservation of Natural Resources

(2) Protection and Preservation of Oneida Culture and Language

(3) Education and Literacy

(4) Health Care

(5) Economic Enterprises

(6) Building and Property Maintenance

(7) Human Services

(8) Public Safety

(9) Housing

(10) Utilities, Wells, Wastewater and Septic

(11) Planning, Zoning and Development

(12) Membership Administration

(13) Government Administration

(b) The Oneida Business Committee shall approve the priority list by resolution no later than the last meeting in February.

(c) The CFO shall maintain a list which places each fund unit into a corresponding service group.

121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including specific deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include in the guidelines the exact amount that each service group's cumulative budget is required to be increased/decreased in accordance with its placement on the priority list. The CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in accordance with the deadline as set by the Oneida Business Committee. The Oneida Business Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the CFO were received.

(a) In accordance with the approved budgetary guidelines, fund units offering like services shall meet together to review each fund unit's budget and discuss strategies for attaining compliance with the approved budgetary guidelines. Each service group shall submit one (1) draft budget which contains each fund unit's individual proposed budget and demonstrates cumulative compliance with the approved budgetary guidelines.

(b) The CFO shall receive, review and compile the proposed budgets into the Nation's draft budget which the CFO shall present to the Oneida Business Committee no later than the last Oneida Business Committee meeting in May. The CFO may not alter any proposed budgets until such budgets have been reviewed by the Oneida Business Committee.

(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.

(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.

(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business Committee noting the dollar amount of the service group's non-compliance. A service group's continued non-

compliance may result in employee discipline according to the Nation's employment laws, rules and policies.

121.5-5. *Content of Budget.* The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

(a) Estimated revenues to be received from all sources for the year which the budget covers;

(b) The individual budgets of each fund unit;

(c) A description of each line item within each fund unit's budget;

(d) The estimated expenditures by each fund unit; and

(e) Each fund unit's strategic plan showing alignment with the Nation's goals.

121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

(a) Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.

(b) The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.

121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

## **121.6. Capital Improvements**

121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed at the time of the reassessment.

121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly



create, provided that the rules shall include a provision that the Oneida Business Committee shall approve all capital improvement plans.

121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules.

#### **121.7. Appropriation of the Nation's Funds**

121.7-1. *Unexpended Capital Improvement Funds.* Unless the entity qualifies for an exception as provided in the capital improvement rules, unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted.

121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

#### **121.8. Budget Authority**

121.8-1. *Authority to Expend Funds.* The Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other managers, including executive managers, of the Nation who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department.

121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall business unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. In addition to the authority and responsibilities provided elsewhere in this law, the following positions and entities shall have the authority and responsibilities as outlined below:

(a) *Oneida Business Committee.* Once the Nation's annual budget is adopted by the General Tribal Council, the authority of the Oneida Business Committee is limited to budget oversight except as otherwise provided in this law. However, these limitations do not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

(b) *The Nation's Treasurer.* In addition to the Treasurer's Constitutional responsibilities, the Nation's Treasurer shall:

(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:

(A) The annual General Tribal Council meeting;

(B) The semi-annual General Tribal Council meeting; and

(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.

- (2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.
- (c) *Chief Financial Officer.* Once the Nation's budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:
- (1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;
  - (2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and
  - (3) Conduct financial condition meetings with the Nation's management on a quarterly basis.
- (d) *Managers.* Managers of each business unit shall:
- (1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;
  - (2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and
  - (3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.

#### **121.9. Budget Transfers; Amendments**

121.9-1. *Budget Transfers.* After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. *Budget Amendments.* After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

#### **121.10. Reporting**

121.10-1. *Monthly Reporting.* The CFO shall provide copies of the monthly Treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected business units or of business units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each business unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

#### **121.11. Authorizations and Signatures**

121.11-1. *General.* The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf of the Nation.

121.11-2. *Fees and Charges.* Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program

and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or service whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.

**121.12. Enforcement**

121.12-1. *Compliance and Enforcement.* All employees and elected officials of the Nation shall comply with and enforce this law to the greatest extent possible.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws, policies and rules, including but not limited to, those related to employment with the Nation, the Conflict of Interest Policy, the Code of Ethics and the Removal law.

121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil and/or criminal charges under applicable law. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter.

*End.*

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Legislative Operating Committee  
November 16, 2016

## Per Capita Law Amendments

<b>Submission Date:</b> 7/10/15	<b>Public Meeting:</b> 5/19/2016 6/16/2016
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This request from the Trust Enrollment Department was submitted to clarify several provisions of the law, modify the frequency of form requirements and in elder distributions, and incorporate fees for stop payments and closed bank accounts.*

- 7/15/15 LOC:** Motion by Jennifer Webster to add the Per Capita Law Amendments to the active files list with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.
- 9/16/15 LOC:** Motion by David P. Jordan to accept the update as FYI and defer the Per Capita Law Amendments to the Legislative Reference Office and to bring back in 30 days for an update; seconded by Fawn Billie. Motion carried unanimously.
- 10/21/15 LOC:** Motion by David P. Jordan to accept the memorandum as FYI and to defer the Per Capita Law Amendments to the sponsor to continue to work with the Trust Enrollment Committee and to bring a draft back on November 4, 2015; seconded by Fawn Billie. Motion carried unanimously.
- 10/23/15:** Work meeting held, attendees include: Cheryl Skolaski, David P. Jordan, Caroyl Long, Douglass McIntyre, Bonnie Pigman, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore.
- 10/26/15:** Work meeting held, attendees include: Caroyl Long, Bonnie Pigman, Misty Cannon, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore, Susan White, Krystal John.
- 11/4/15 LOC:** Motion by Jennifer Webster to defer to Legislative Reference Office for legislative analysis and fiscal impact; seconded by Fawn Billie. Motion carried unanimously.
- 2/3/16 LOC:** 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.

**3/2/16 LOC:** Motion by Jennifer Webster to accept the Per Capita Law Amendments status update memorandum and defer to the sponsor to bring back an updated draft with an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**4/6/16 LOC:** Motion by Jennifer Webster to prepare the Per Capita Law Amendments for a public meeting to be held on May 19, 2016; seconded by David P. Jordan. Motion carried unanimously.

**4/20/16 LOC:** Motion by Tehassi Hill to enter the April 7, 2016 e-poll results for the Per Capita Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

*Note: the April 7th 2016 e-poll directed the Legislative Reference Office to update the draft Per Capita Law Amendments and legislative analysis to include the revisions discussed in the memo.*

Motion by Tehassi Hill to approve the Per Capita Law Amendments Public Meeting packet, noting one update to be made to the legislative analysis, and deleting one definition from the draft law; seconded by Fawn Billie. Motion carried unanimously.

*Note: the update to the legislative analysis would identify one additional new duty of the Trust Enrollment Department: calculating the amount of attachments. The definition to be deleted is for "proof of education", since there are duplicate definitions.*

**5/19/16:** *Public Meeting held.*

**6/1/16 LOC:** Motion by David P. Jordan to accept the results of the e-poll conducted on May 19, 2016 which approved the public meeting packet for an additional public meeting to be held for the Per Capita Law amendments on June 16, 2016 at 12:15 p.m.; seconded by Jennifer Webster. Motion carried unanimously.

*Note: This will be the second public meeting for Per Capita Law Amendments.*

**6/16/16:** *Public Meeting held.*

**7/6/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments regarding the Per Capita law amendments from the May 19, 2016 and June 16, 2016 public meetings and direct desired changes; seconded by David P. Jordan. Motion carried unanimously.

*Note: Directed change: remove the word automatic from section 123.6-1(d)(1)(C)(i).*

**7/25/16:** Work Meeting held. Meeting held for an update on the status of this item. Attendees include Maureen Perkins, Jen Falck, Tani Thurner, Jo Anne House.

**10/13/16:** Quarterly Sponsor Update Meeting held. Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maureen Perkins, Clorissa Santiago. Waiting for new draft.

**10/24/16:** Work Meeting held. Present: David Jordan, Krystal John, Jennifer Falk, Jo Anne House, Maureen Perkins. Changes directed.

**Next Steps:**

- Determine whether an additional public meeting is required based on revisions made to the Per Capita law amendments since the public meeting;
- Provided that an additional public meeting is not required, direct the LRO to prepare an adoption packet for the Per Capita law amendments, including the updated draft and analysis.

**Title 1. Government and Finances – Chapter 9123**

**PER CAPITA**

**Shakotiw\$ Stawih# Olihwa@ke**

*Issues concerning where they give the money*

123.1. Purpose and Policy

123.2. Adoption, Amendment, Repeal

123.3. Definitions

123.4. General

123.5. Distributions

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent

Adults

123.7. Per Capita Actions

**9123.1. Purpose and Policy**

9123.1-1. *Purpose.* The purpose of this law is:

(a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and

(b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

9123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

**9123.2. Adoption, Amendment, Repeal**

9123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and \_\_\_\_\_.

9123.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9123.2-3. 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.

9123.2-4. 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 Oneida Business Committee resolution 11-06-02-A.

9123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**9123.3. Definitions**

9123.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year.

(b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.

(c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.

(d) “Day” means calendar days, unless otherwise specifically stated.

(e) “Debtor” means a Tribal member owing a debt to an Oneida entity.

(f) “Direct Deposit” means the electronic distribution of funds.

(g) “Distribution” means the transfer of funds to Tribal members.

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- (h) “IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.
- (i) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1<sup>st</sup> and is eligible to claim a trust account for the first time in the distribution year.
- (l) “Minor Beneficiary” means a Tribal member who is less than eighteen (18) years age.
- (m) “Nation” means the Oneida Nation.
- (n) “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) “Outstanding Check” means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) “Per Capita Payment” means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) “Pooled Account” means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation’s laws.
- (r) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (t) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (u) “Trust Enrollment Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.
- (v) “Trust Fund Accountant” means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

**9123.4. General**

9123.4-1. This section sets forth the responsibilities delegated under this law.

9123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

9123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

9123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;



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- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

**9123.4-5. *Trust Enrollment Committee.*** The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

**9123.4-6. *Trust Enrollment Department.*** When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31<sup>st</sup> of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.
- (k) Complete trust account reconciliations.
- (l) Calculate attachment amounts for collection of Oneida entity debts and implement

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Oneida entity attachments.

9123.4-7. *Oneida Accounting Division.* When a per capita payment is approved, the Oneida Accounting Division shall:

- (a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.
- (b) Record issued, voided and outstanding check distributions on the general ledger.
- (c) Complete bank account reconciliations.

9123.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

9123.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) “Debt owed to an Oneida entity” includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9123.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support

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Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 9123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1<sup>st</sup>) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

- (i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt; and
- (iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's

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contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

(i) The dates of all prior notices of indebtedness provided to the debtor;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt;

(iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;

(v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;

(vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and

(vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1<sup>st</sup> in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

(i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31<sup>st</sup>, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31<sup>st</sup>; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall

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determine the amount of per capita payment attachment based on the order provided in section 9123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

~~(A)~~ Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

~~-(A)-~~ The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 9123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may implement attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9123.5-2(b)(1) or who refuse a payment under 9123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9123.5-5.

9123.4-10. *Federal Income Tax Withholding.*

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(a) *Voluntary*. The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 9123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal ~~members~~member whose per capita payment is subject to attachment in accordance with section 9123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory*. A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a*. The Nation shall comply with the most recent edition of IRS Publication 15a.

### **9123.5. Distributions**

9123.5-1. General. This section sets forth the required processes for distribution of per capita payments.

9123.5-2. Deadlines. The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility*. Eligibility falls into the following categories:

(1) *Filing Deadlines*. An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31<sup>st</sup> in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines*. An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31<sup>st</sup>.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment*. A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1<sup>st</sup>.

(b) *Distribution Documents*.



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(1) *Adult Distribution Form and Instructions.* Unless and until the Trust Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to ~~those who do not have a direct deposit record on file with the Trust Enrollment Department.~~

~~(i) all adult Tribal members.~~ Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1<sup>st</sup> in order to be eligible for a per capita distribution.

~~(B) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail receipts to those who have a direct deposit record on file with the Trust Enrollment Department. Adults receiving the receipts are not required to submit a membership distribution form unless an adult wishes to remove his or her direct deposit record.~~

~~(i) An adult wishing to remove his or her direct deposit record shall complete, notarize and return all applicable forms to the Trust Enrollment Department by close of business on or before the distribution form deadline.~~

~~(C)~~(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 9123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1<sup>st</sup> of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions: in accordance with Article III of the Per Capita Trust Agreement.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9123.5-2(e)(2)(A).

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(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1<sup>st</sup> of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 9123.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall distribute prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1<sup>st</sup> of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, minor beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 9123.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in



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accordance with ~~the distribution deadline sections 123.5-2(b)(1)(A) and 123.5-2(b)(2)(A).~~

(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 9123.5-5.

9123.5-3. Deceased Tribal Members.

(a) Deceased Tribal Member Distribution Forms. Tribal members are ~~ineligible~~eligible to receive a distribution ~~if his or her date of death occurs on or before so long as the Tribal member has complied with the distribution date documents and/or distribution rule(s) requirements.~~ This includes distributions identified to be deposited to a trust account.

~~(a) Deceased Adult.~~ The estate of a deceased ~~adult~~Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. ~~The Trust Enrollment Department shall deposit per capita payments reserved for deceased adults in a pooled account in accordance with 9.5-5.~~The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living.

(b) Deceased Minor/Majority Age Beneficiary. ~~The value of a or Legally Incompetent Adult.~~

(1) When a there is a Beneficiary Designation Form on Record. A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable ~~on the date of the~~ upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's ~~death or legally incompetent adult's death,~~ the Trust Enrollment Department shall provide notice of any remaining trust account balance to designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally income adult's trust account, to the General Fund.

(2) When there is No Beneficiary Designation Form on Record. The Trust Enrollment Committee shall establish rules ~~creating the processes by which an application for distribution may be made.~~ The distribution may be defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued ~~either~~

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~~in the name of the deceased minor/majority age beneficiary or the in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.~~

~~(1) If the trust account funds for a deceased minor/majority beneficiary are not claimed by the estate of the deceased within one (1) year after the date of the minor/majority age beneficiary's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.~~

~~(c) Deceased Legally Incompetent Adult. The balance of a legally incompetent adult's trust account is inheritable as of the date of his or her death. The Trust Enrollment Committee shall establish rules creating the processes by which the deceased's estate may apply for distribution of the trust account funds. The distribution may be issued either in the name of the deceased legally incompetent adult or the estate of the deceased legally incompetent adult.~~

~~(1) If the trust account funds for a deceased legally incompetent adult are not claimed by the estate of the deceased within one (1) year after the date of the legally incompetent adult's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.~~

9123.5-4. Relinquishment of Tribal Membership. Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 9123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1<sup>st</sup> of the distribution year and submits the majority age distribution form by July 1<sup>st</sup> of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21<sup>st</sup>) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 9123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

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- 527 (5) The Trust Enrollment Department shall deposit any unclaimed joint savings  
528 account funds in a Pooled Account in accordance with section 9123.5-5.
- 529 (c) *Legally Incompetent Adult Relinquishment*. Upon a legally incompetent adult's  
530 relinquishment the Trust Enrollment Department shall disburse any funds in a trust  
531 account for the legally incompetent adult to the guardian of the legally incompetent adult.
- 532 (1) If the trust account funds for a legally incompetent adult are not claimed  
533 within one (1) year after the date of relinquishment, the Trust Enrollment  
534 Department shall liquidate and deposit the trust fund account in accordance with  
535 9123.5-5.
- 536 9123.5-5. Pooled Account. Pooled account funds are managed by the Trust Enrollment  
537 Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds  
538 result from the following.
- 539 (a) *Expiration of Unclaimed Per Capita Payments*. Tribal Members' rights to unclaimed  
540 Per Capita Payments expire upon the occurrence of any one (1) of the following:
- 541 (1) A Tribal member submits a refusal form under 9123.5-2(f);  
542 (2) A Tribal member fails to request a prior distribution or trust account funds  
543 within the time provided under this law and/or the Per Capita Trust Agreement;  
544 (3) An adult's death occurs prior to a distribution date; or  
545 (4) The estate of a deceased majority age/minor beneficiary fails to request  
546 distribution of the trust account within the time provided under 9123.5-3(b).  
547 (5) The guardian of a deceased legally incompetent adult fails to request  
548 distribution of the trust account within the time provided under 9123.5-3(c).  
549
- 550 **9123.6. — Minor/Majority Age Beneficiaries and Legally Incompetent Adults**
- 551 9123.6-1. — Minor Beneficiaries. This section sets forth a consistent method to protect and  
552 preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may  
553 be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per  
554 Capita Trust Agreement.
- 555 (a) *The Trust Enrollment Committee*. The Trust Enrollment Committee shall establish  
556 standard operating procedures for setting up, monitoring and distributing the trust  
557 accounts. The Trust Enrollment Committee may choose to maintain pooled or individual  
558 accounts, separate accounts for each distribution or series of distributions, or any other  
559 combination which is in the best interests of the beneficiaries and which is consistent  
560 with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's  
561 investment policy.
- 562 (1) The Trust Enrollment Committee is responsible for the protection and  
563 preservation of per capita payment funds for beneficiaries. As part of that  
564 responsibility, the Trust Enrollment Committee shall complete and issue any  
565 necessary reports to the beneficiaries. The Trust Enrollment Committee shall  
566 develop rules, which establish valuation dates and frequency of reports and  
567 identify data critical to the completion of the reports. The Trust Enrollment  
568 Committee may delegate such reporting responsibilities to duly selected vendors.
- 569 (b) *Costs of Account*. The Trust Enrollment Department shall apply administrative costs

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related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee*. It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries*. Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1<sup>st</sup> of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1<sup>st</sup> of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions*. The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 9123.6-2. In such circumstances, the Trust Enrollment Department shall ~~automatically~~ liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma*. In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

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- (a) His or her proof of education has been deemed fraudulent;
- (b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;
- (c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and
- (d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.
- (iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.
- (v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 9123.5-5.
- (2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1<sup>st</sup> of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.
- 9123.6-2. *Legally Incompetent Adults*. This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.
- (a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.
- (b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.
- 9123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation

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forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

### **123.7. — Appeals Per Capita Actions**

~~9123.7-1. Any Tribal member or guardian of a Tribal member may appeal a decision~~ The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding a per capita payment actions taken pursuant to this law and/or distribution to rules.

123.7-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or rules.

123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

End.

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Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)


Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D



## MEMORANDUM

**To:** Legislative Operating Committee

**From:** Susan White, Trust Enrollment Director 

**Date:** November 16, 2016

**Subject:** Proposed Per Capita Law Amendments – Draft 16

The Trust Enrollment Department is requesting consideration in allowing the following changes to be made to Draft 16 of the Per Capita Law.

1. Lines 443 through 454: change to read as follows:

123.5-3. *Deceased Tribal Members.* Tribal members are ineligible to receive a distribution if his or her death occurs on or before the distribution date. This includes distributions identified to be deposited to trust accounts.

(1) The estate of a deceased adult Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution.

(2) By running a system generated activity in the AS400 database, the Trust Enrollment Department initiates the movement of per capita funds reserved for deceased adults to the pooled account in accordance with 123.5-5.

The Trust Enrollment Department does not wish to change the current Per Capita Law language for Deceased Members (adopted BC-08-14-13-D) as the proposed language brings with it other matters. Matters would include; complying with the Oneida Probate process to establish a Personal Representative, which would then require additional language needing to be added to the Law. If the requirement was to just pay “claimed” distributions, then what happens when a check cannot be cashed or if the direct deposit gets rejected? There are no provisions identified in Law to deal with these situations.

Additionally, direct deposit or ACH language is part of the language being added (refer to lines 411 through 429) in the proposed amendments. The language does not allow for anyone other than the “Tribal member to request reissue. The Trust Enrollment Department recommends if the drafted language to pay deceased members is allowed that the Law reflect “similar” language consistent with the Probate rules and processes identified on lines 455 through 483.

Here is a chronology of the activity surrounding the Per Capita Law amendments since Draft 12, which was presented at the 6/15/16 Public Meeting.

- 8/30/2016
  - There was a legal opinion rendered about a Deceased Legal Incompetent Adult, when the Guardian declined funds in the Trust Account. The Per Capita Law was silent on the process. Sections 123.5-3 and 123.6 were revised to include Probate provisions to better clarify processes and requirements to assist with situations involving “all” deceased persons with a Trust Account. (Drafts # 13 and 14)
- 10/24/2016
  - Regarding a Refused Distribution request, Attorney John suggested a deadline be added to the law. Attorney John, through a discussion with Chief Counsel, prompted a new discussion regarding two (2) different sections of the law – Distribution of Forms and Deceased.
  - After several emails, the Trust Enrollment Department met with Chief Counsel and Attorney John. The results of the meeting included:
    - Attorney John drafting changes to add rules to the Deceased section.
    - Chief Counsel House and Attorney John would meet with the sponsor to go over the suggested changes to the proposed Distribution of Forms and Deceased language.
  - 10/24/2016?
    - Chief Counsel House and Attorney John met with sponsor resulting in Draft 16.





## Per Capita Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Per Capita (law) Amendments				
<b>Sponsor</b>	David P. Jordan	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	Trust Department. To 1) clarify minor and majority age beneficiary references as they relate to deferrals and hardships; 2) make changes in Elder distributions; 3) incorporate fees for stop payments and closed bank accounts and 4) review how resolutions BC-01-28-04-A and BC-11-06-02 are affected by the proposed changes and original intent, as they apply to the law.				
<b>Purpose</b>	The purpose of this law is to specify the procedures to be followed in the event that per capita payments are distributed by the Nation and to clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments [See 123.1-1].				
<b>Authorized/ Affected Entities</b>	Oneida Business Committee, Trust Enrollment Committee, Trust Enrollment Department, Judiciary, Oneida Accounting Department, Oneida Nation Child Support Agency, other Oneida Entities that may be owed a debt/fine by a Tribal member.				
<b>Related Legislation</b>	Per Capita Trust Agreement, Tribal Revenue Allocation Plan, Child Support Law and Accompanying Rules, Memorandum of Agreement, Judiciary				
<b>Enforcement &amp; Due Process</b>	Any Tribal member or guardian of a Tribal member can file a complaint regarding actions taken according to this law and/or rules [See 123.7] or an attachment [See 123.4-9(d)(5)] to the Judiciary. Attachments may be ordered by the Judiciary for child support arrears or a federal tax levy [See 123.4-9(a)(1) and 123.4-9(a)(3)]. Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested [see 123.4-9(d) and 123.4-9(d)(5)]. Debt owed to an Oneida Entity includes any money owed and any fines that have been issued by the Oneida Entity [See 123.4-9(a)(2)(A)]. The Judiciary may order attachments against per capita payments of Tribal members who have not returned a notarized membership payment form or who refuse a per capita payment [See 123.4-9(f)]. All fees associated with reissuing a distribution must be applied to the distribution [see See 123.5-2(e)(2)(B)] unless it is an error on the Nation's behalf [See 123.5-2(e)(2)(B)(i)].				
<b>Public Meeting Status</b>	Public meetings were held May 19 and June 16, 2016. The LOC has reviewed the public comments received during the public comment period; any changes made based on the public comments received have been incorporated into this draft.				

### Overview

The proposed Per Capita law amendments were requested by the Trust Enrollment Department (formerly known individually as the Trust Department and the Enrollment Department) to reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults, create the majority age beneficiary category distinct from minor beneficiary, and establish bank fees for

closed accounts and returned distributions. Additional amendments include: repeals BC resolution 11-06-02-A, merges Trust and Enrollment Departments into one Trust Enrollment Department, recognizes the Trust Enrollment Committee (the current law recognizes the Trust Committee), eliminates deadlines related to attachments, eliminates the requirement for Oneida entities to receive an attachment order from the Judiciary unless an attachment hearing is requested and eliminates the role of the Trust Enrollment Committee to hold administrative hearings.

**Analysis was requested regarding the following resolutions:**

▪ **BC Resolution 11-06-02-A**

- This resolution amended the Per Capita Ordinance to create a separate per capita payment schedule for elders who turn 62 and 65 in a distribution year. The amendments added age 65 to the definition of elder in the Per Capita Ordinance. The resolution also established that elders who turn 62 or 65 by December 31<sup>st</sup> were to receive the respective elders' per capita payment for that September 30<sup>th</sup> distribution year. Those who turn 62 or 65 after September 30<sup>th</sup> were to receive their respective first time elder per capita payment in the month following their birth date. This establishes that there are additional elders payments sent after September 30<sup>th</sup> of a distribution year for those who are turning 62 and 65 after September 30 of that distribution year.
  - The proposed amendments still honor December 31<sup>st</sup> as the cut off for elders who reach the age determined by the GTC resolution in the distribution year that takes place on September 30<sup>th</sup>. These distributions; however, will occur on September 30<sup>th</sup> along with all adult distributions. Elders who reach age categories established by the GTC resolution between October 1<sup>st</sup> and December 31<sup>st</sup> will receive their elders' payments early on September 30<sup>th</sup> of that distribution year.
  - BC Resolution 11-06-02-A conflicts with the proposed amendments in that there is not a separate schedule for elders' payments in the proposed law as established by this resolution. Elders are classified as adults in the definition and therefore follow the adult distribution timeline.
    - Adult is defined as a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year [See 123.3-1(a)].

	<b>BC Resolution 11-06-02-A</b>	<b>Current Law</b>	<b>Proposed Amendments</b>
definition	Elder: shall mean those tribal members who are age 62 years or over, or 65 years or over, as of December 31 of a given year.	<b>9.3-1(e)</b> "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.	<b>123.3-1</b> "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1 <sup>st</sup> of a given year. <b>123.7-2(1)</b> For the purposes of this section, elder means a Tribal Member who meets the age requirements as of

			December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
	<b>BC Resolution 11-06-02-A</b>	<b>Current Law</b>	<b>Proposed Amendments</b>
Payments / Distributions	<p>(c) Payments Sent. Per capita payments shall be mailed on September 30<sup>th</sup>.</p> <p>1) After September 30, and through December 31, first time elder per capita payments shall be sent in the month following birth date.</p>	<p>9.5-3(d) (d) Annual Payments. Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.</p> <p>(e) (1) Prior Payments: Elders. Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month.</p>	<p>123.5-2 (c) Annual Distribution Date. The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.</p>

- **Impact.** BC Resolution 11-06-02-A conflicts with the proposed amendments.
  - This law repeals BC Resolution 11-06-02-A considering that elders will still receive their elders' payments in the distribution year according to the proposed Per Capita Law amendments.
- **Special BC Resolution 1-28-04-A**
  - This resolution was passed at the Special BC meeting held in lieu of the GTC Annual Meeting due to a lack of quorum. This resolution designates the interest from the unclaimed unallocated per capita pooled account to be applied to the Oneida Language Revitalization Program.

- Please note that the pooled account itself has not been designated for use by the GTC through this resolution; only the interest from the account was allocated, the principal of the account shall not be depleted.
- **Impact.** This resolution has no legislative impact on the proposed amendments.

### Proposed Amendments

This section will highlight each of the major proposed amendments to the law and will indicate whether there is overlap or conflict with the Per Capita Trust Agreement.

- **Repeals BC Resolution 11-06-02-A**

- **Impact.** The separate process for elders' per capita distributions has been eliminated; all adult distributions will follow the same distribution schedule.

- **Trust Enrollment Committee.** Added responsibilities include: provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan *[see 123.4-5(c)]*.

- **Impact.** No legislative impact or conflict.

- **Trust Enrollment Department.** Added responsibilities include:

- Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee *[see 123.4-6(f)]*.
  - Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments *[see 123.4-6(l)]*.
  - **Impact.** No legislative impact or conflict.

- **Tribal Treasurer.** Duties removed:

- Make a payment to those Tribal members responding to the membership payment form deadline who are not minors or incompetent adults *[see 9.7-5(a) of current law]*.
  - Cover unverified member payments for those members who are unresponsive to the membership payment form deadline *[see 9.7-5(b) of current law]*.

- **Impact.** No legislative impact or conflict.

- **Deadlines.** Deadlines regarding attachments were removed throughout the law to eliminate the need to amend the law due to updated deadlines in the future *[see 9.4-6(d)(4) and 9.4-6(d)(4)(B) and 9.4-6(d)(4)(C) and 9.4-6(d)(5) and 9.4-6(d)(6)(A) and 9.4-6(d)(6)(B) and 9.4-6(e)(1) and 9.4-6(e)(2) and 9.4-6(e)(3)(A) and 9.4-6(e)(3)(B) of current law]*.

- **Impact.** No legislative impact or conflict.

- **Distinction of Majority Age and Minor Beneficiaries.** Two terms have been added to create clarity in the law: majority age beneficiaries and minor beneficiaries.

- **Proposed Amendments to the Law.** The proposed amendments to the law define the new terms as follows:

- Majority age beneficiaries: a Tribal member who has reached eighteen (18) years of age by September 1 and is eligible to claim a trust account for the first time in the distribution year *[see 123.3-1(k)]*.

- Minor beneficiaries are defined as Tribal members who are less than eighteen (18) years of age *[see 123.3-1(l)]*.

- **Per Capita Trust Agreement.** The Per Capita Trust Agreement refers only to "beneficiaries" defined as:

- The beneficiaries of the trust shall be all duly enrolled members of the

Oneida Tribe of Indians of Wisconsin who are eligible to receive a per capita distribution in any year in which any such distribution is made, and who have not yet attained the age of eighteen years by September 1<sup>st</sup> of the year in which such distribution is made [see Article I. Beneficiaries of the Per Capita Trust Agreement].

- **Impact.** No legislative impact or conflict.
- **Oneida Entity Debt Attachment.** Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested [see 123.4-9(d)]. The entity owed the debt must provide two written notices via first class mail to the debtor's last known address prior to issuing final notice of indebtedness with intent to attach. The notice to attach must also appear in the Nation's newspaper. Once this has been satisfied, the Trust Enrollment Department will calculate the attachment amount. The Trust Enrollment Department may attach per capita payments of Tribal members who do not return a notarized membership payment form or who refuse a distribution [see 123.4-9(f)]. Any remaining amount after all attachments have been satisfied will be distributed to the Tribal member if the Tribal member follows the process for requesting a prior per capita payment [see 123.5-2(e)] or otherwise deposited into the pooled account [see 123.4-9(f)].
- **Administrative Hearings.** The role of the Trust Enrollment Committee to hold administrative hearings regarding challenges to payment or non-payment of per capita payments has been removed from this law [see 9.4-4(c) of current law]. Disputes are settled by the Judiciary in the proposed amendments.
  - **Proposed Amendments to the Law.** The proposed amendments to the law state, "The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules." [see 123.7-1].
  - **Per Capita Trust Agreement.** The Per Capita Trust Agreement states, "If any dispute arises out of the distribution of a beneficiary's interest under the trust, all such matters shall be resolved according to the procedures set forth in the Oneida Administrative Procedures Act, except as otherwise provided in the Oneida Tribe of Indians of Wisconsin Revenue Allocation Plan [see Article XV of the Per Capita Trust Agreement]."
  - **Impact.** Article XV of the Per Capita Trust Agreement would need to be updated to refer disputes to the Judiciary.
- **Bank Fees.** The current law is silent with respect to bank fees.
  - **Proposed Amendments to the Law.** All fees associated with reissuing a distribution (due to stop payment or incorrect direct deposit information) must be applied to the distribution [see 123.5-2(d)(1)] unless it is an error on the Nation's behalf [see 123.5-2(d)(2)].
  - **Impact.** No legislative impact or conflict.
- **Elders Payments.** The separate process for elder's distributions was removed from this law. Elder's distributions now follow the same process and adhere to the same deadlines as the adult distributions [see 123.5], except for those elders who reach the age category established by the GTC resolution between October 1 and December 31 of the distribution year, who will receive their elders' payments early on September 30 (implied intent). This change conflicts with BC Resolution 11-06-02-A which sets the distribution timeline for elders reaching 62 and 65 by December 31<sup>st</sup> of the distribution year.

- **Impact.** BC Resolution 11-06-02-A is repealed in this law as noted in the analysis of the resolution above.
- **Per Capita Actions.** A process to file a complaint to the Judiciary was added to this law [See 123.7].
  - **Impact.** The complaint process would need to be updated in the Per Capita Trust Agreement as it currently refers to the Administrative Procedures Act and the Revenue Allocation Plan to settle disputes [See Article XV of the Per Capita Trust Agreement].
- **Complaint with Regard to Oneida Entity Debt and Federal Tax Levy Attachments**
  - Tribal members subject to attachment to collect a debt owed to the Judiciary who wish to file a complaint regarding the attachment may file a request for a show cause hearing with the Judiciary within 30 days of the final notice of indebtedness with intent to attach. The Judiciary shall honor all requests for show cause hearings [see 123.4-9(d)(5)]. .
    - **Impact.** Provides an opportunity for Tribal members to file a complaint regarding an attachment to collect debt issued by the Judiciary.

#### Other

Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Please refer to the fiscal impact statement for any financial impacts.

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**Title 1. Government and Finances – Chapter 123**  
**PER CAPITA**  
**Shakotiw\$ Stawih# Olihwa@ke**  
*Issues concerning where they give the money*

123.1. Purpose and Policy	10	123.5. Distributions
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123.4. General	13	123.7. Per Capita Actions

**123.1. Purpose and Policy**

123.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

**123.2. Adoption, Amendment, Repeal**

123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and \_\_\_\_\_.

123.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

123.2-3. 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.

123.2-4. 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 Oneida Business Committee resolution 11-06-02-A.

123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**123.3. Definitions**

123.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year.

(b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.

(c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.

(d) “Day” means calendar days, unless otherwise specifically stated.

(e) “Debtor” means a Tribal member owing a debt to an Oneida entity.

(f) “Direct Deposit” means the electronic distribution of funds.

(g) “Distribution” means the transfer of funds to Tribal members.

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- (h) "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.
- (i) "Judiciary" means the Nation's judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) "Legally Incompetent Adult" means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) "Majority Age Beneficiary" means a Tribal member who has reached eighteen (18) years of age by September 1<sup>st</sup> and is eligible to claim a trust account for the first time in the distribution year.
- (l) "Minor Beneficiary" means a Tribal member who is less than eighteen (18) years age.
- (m) "Nation" means the Oneida Nation.
- (n) "Oneida Entity" means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) "Outstanding Check" means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) "Per Capita Payment" means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) "Pooled Account" means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation's laws.
- (r) "Proof of Education" means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) "Tribal Member" means an individual who is an enrolled member of the Nation.
- (t) "Trust Account" means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation's revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (u) "Trust Enrollment Committee" means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation's enrollment records.
- (v) "Trust Fund Accountant" means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

#### 123.4. General

- 123.4-1. This section sets forth the responsibilities delegated under this law.
- 123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.
- 123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.
- 123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:
- (a) Identify and allocate funds available for per capita payments;



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- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

123.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

123.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31<sup>st</sup> of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.
- (k) Complete trust account reconciliations.
- (l) Calculate attachment amounts for collection of Oneida entity debts and implement

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Oneida entity attachments.

123.4-7. *Oneida Accounting Division*. When a per capita payment is approved, the Oneida Accounting Division shall:

- (a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.
- (b) Record issued, voided and outstanding check distributions on the general ledger.
- (c) Complete bank account reconciliations.

123.4-8. *Tribal Treasurer*. The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

123.4-9. *Attachments*. Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

(c) *Child Support Attachments*. Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support

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Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1<sup>st</sup>) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

(i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt; and

(iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's

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contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

(i) The dates of all prior notices of indebtedness provided to the debtor;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt;

(iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;

(v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;

(vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and

(vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1<sup>st</sup> in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

(i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31<sup>st</sup>, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31<sup>st</sup>; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall

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determine the amount of per capita payment attachment based on the order provided in section 123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

(B) Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may implement attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 123.5-2(b)(1) or who refuse a payment under 123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

#### 123.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes

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from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal member whose per capita payment is subject to attachment in accordance with section 123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory*. A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a*. The Nation shall comply with the most recent edition of IRS Publication 15a.

### **123.5. Distributions**

123.5-1. *General*. This section sets forth the required processes for distribution of per capita payments.

123.5-2. *Deadlines*. The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility*. Eligibility falls into the following categories:

(1) *Filing Deadlines*. An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31<sup>st</sup> in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines*. An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31<sup>st</sup>.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment*. A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1<sup>st</sup>.

(b) *Distribution Documents*.

(1) *Adult Distribution Form and Instructions*. Unless and until the Trust

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Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to all adult Tribal members. Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1<sup>st</sup> in order to be eligible for a per capita distribution.

(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1<sup>st</sup> of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions in accordance with Article III of the Per Capita Trust Agreement.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1<sup>st</sup> of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 123.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

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(B) The Trust Enrollment Department shall distribute prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1<sup>st</sup> of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, minor beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 123.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with sections 123.5-2(b)(1)(A) and 123.5-2(b)(2)(A).

(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 123.5-5.

### 123.5-3. *Deceased Tribal Members.*

(a) *Deceased Tribal Member Distribution Forms.* Tribal members are eligible to receive a distribution so long as the Tribal member has complied with the distribution documents and/or distribution rule(s) requirements. This includes distributions identified to be deposited to a trust account. The estate of a deceased Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal



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member is still living.

(b) *Deceased Minor/Majority Age Beneficiary or Legally Incompetent Adult.*

(1) *When a there is a Beneficiary Designation Form on Record.* A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally income adult's trust account, to the General Fund.

(2) *When there is No Beneficiary Designation Form on Record.* The Trust Enrollment Committee shall establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.

123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1<sup>st</sup> of the distribution year and submits the majority age distribution form by July 1<sup>st</sup> of the

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same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21<sup>st</sup>) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 123.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 123.5-5.

123.5-5. *Pooled Account.* Pooled account funds are managed by the Trust Enrollment Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

(1) A Tribal member submits a refusal form under 123.5-2(f);

(2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;

(3) An adult's death occurs prior to a distribution date; or

(4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 123.5-3(b).

(5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 123.5-3(c).

## **123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults**

123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual

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accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1<sup>st</sup> of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1<sup>st</sup> of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 123.6-2. In such circumstances, the Trust Enrollment Department shall liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of

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attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1<sup>st</sup> of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

123.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

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(b) *Reversal of Incompetency*. If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

123.6-3. *Beneficiary Designation Forms*. The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

### 123.7. Per Capita Actions

123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.

123.7-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or rules.

123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

*End.*

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Adopted - BC-7-12-00-B  
 Emergency Amendments – BC-01-03-01-B  
 Emergency Amendments - BC-2-28-01-E  
 Amendments - BC-11-06-02-A (Elder Per Capita)  
 Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)  
 Amendments - BC-6-16-04-C (Child support priority for attachment)  
 Emergency Amendments - BC-9-12-07-A (one-time per capita payment)  
 Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)  
 Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)  
 Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)  
 Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)  
 Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13  
 Amendments Adopted – BC-08-14-13-D

## NOTICE OF

**PUBLIC MEETING**

TO BE HELD

**Thursday, December 15th at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM****(2<sup>nd</sup> 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: PER CAPITA LAW**

**This is a proposal to amend the Per Capita law which would:**

- ◆ Reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults [see 123.5-2(b) and 123.4-6(a)];
- ◆ Allow per capita distributions to all Tribal members that have filled out the required distribution forms, even if the Tribal member becomes deceased before the per capita distribution [see 123.5-3(a)];
- ◆ Create the majority age beneficiary category distinct from minor beneficiary [see 123.3-1(k)];
- ◆ Include provisions that allow all persons with per capita trust accounts to name beneficiaries [see 123.5-3(b)];
- ◆ Clarify how per capita distributions held in trust accounts are "inheritable" when the beneficiary becomes deceased [see 123.5-3(b)];
- ◆ Establish bank fees for closed accounts and returned distributions [see 123.5-2(d)(1) and (2) and 123.5-2(e)(2)(B)];
- ◆ Transfer the Trust Enrollment Committees hearing authority to the Oneida Judiciary [see 123.7]; and
- ◆ Revise the attachment process to allow entities to collect debt owed to the Nation without requiring a judgment from a court [see 123.4-9(d)].

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](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
OPEN UNTIL December 22, 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](mailto:LOC@oneidanation.org)**

**Phone: (920) 869-4376 or (800) 236-2214**

**Fax: (920) 869-4040**

# FY-2016 Annual Report

For Boards, Committees, and Commissions

## Legislative Operating Committee

### *Purpose:*

The mission of the LOC is to enhance the capability of the Oneida Nation to fulfill its sovereign authority to review and enact its laws, policies and regulations in a planned and orderly manner.

### *BCC Members*

Brandon Stevens, LOC Chairperson

Tehassi Hill, LOC Vice-Chairperson

Fawn Billie, LOC Member

Jennifer Webster, LOC Member

David P. Jordan, LOC Member

### *Budget*

#### Funding Sources for FY-2016

TRIBAL CONTRIBUTION: 100%

GRANTS: 0%

OTHER SOURCES: n/a

#### Status as of 3/31/16

Total Budget for FY2016: \$478,692

Total Expenditures for FY2016: \$332,530

Variance: \$146,162

### Variance Explanation:

The LOC budget came under budget because the LRO Director position was not filled until June 2016.

## Stipends

Regular Stipend Amount: LOC members do not earn stipends.

## Update on up to Three (3) Strategic Goals for FY-2016

Please refer to your Annual Report submission for FY-2016 and provide an update on the Goals

### GOAL 1

#### Goal:

Develop the laws of the Oneida Nation that are clear, consistent, and straightforward; that reflect the voices of individual Tribal members.

**Strategic Direction:** Committing to Build a Responsible Nation

**Practical Vision:** Accountable & Effective Governmental Design

#### Update on Goal:

The Active Files List is the list of legislative items, administrative items, and GTC Petitions, that the Legislative Operating Committee is working on at any given time.

At the end of September, the Active Files List included;

- 48 legislative items
- 4 administrative items
- 18 GTC Petitions

Laws Adopted or Amended in FY16:

Furlough Policy, Administrative Rulemaking, Administrative Procedures Act, Public Use of Tribal Land, Audit Committee Bylaws, Marriage Law Amendments, Election Law Emergency Amendments, Mortgage & Foreclosure Law, and Conflict of Interest Emergency Amendments. In addition, 2 Rules were approved by the LOC and certified by the BC; Marriage Law Fine Schedule and Marriage Law Fee Schedule Rules.

### GOAL 2

#### Goal:

Increase community participation in the legislative process.



**Strategic Direction:** Advancing On^yote?a.ka Principles

**Practical Vision:** An Engaged Community

**Update on Goal:**

Public Meetings are held in an effort to invite public participation in our lawmaking process. Public Meetings are generally held in the Business Committee Conference Room. They are a chance for anyone to provide comment on pending legislation. There is also a public comment period- which allows anyone to provide comments to the LOC in writing. Public comments should be directed to a specific area of the proposed law detailing the issue of concern. General comments that do not specially note concerns with the legislation as presented are not likely to result in change. All comments are considered by the LOC; but not all comments result in changes to the proposed legislation.

Eighteen Public Meetings were held in FY16.

For more information about upcoming Public Meetings and Public Comment Periods go to <https://oneida-nasn.gov/government/register/public-meetings/> or email us at LOC@oneidanation.org.

### **GOAL 3**

**Goal:**

Develop and promote laws that deliver maximum benefit to the Oneida membership while remaining fiscally responsible.

**Strategic Direction:** Committing to Build a Responsible Nation

**Practical Vision:** Accountable & Effective Governmental Design

**Update on Goal:**

Each law that is drafted and proposed by the Legislative Operating Committee is required to be analyzed in three ways according to the Legislative Procedures Act. These methods are designed to identify legal, legislative, policy, and fiscal considerations that the LOC decide on behalf of the community. In this way, the LOC strives to adopt fiscally responsible laws that benefit the Nation.

1. **Legislative Analysis:** A legislative analysis is required for all proposed laws, bylaws, and amendments; except for emergency legislation. The analysis is an unbiased review of proposed legislation intended to inform readers of the legislative intent of a proposal and its effect. They often include considerations that the LOC uses to discuss options and make policy decisions.
2. **Fiscal Impact Statement:** A fiscal impact statement is meant to analyze and estimate the implementation costs of proposed legislation. They are developed by the Finance Department and are required by the Legislative Procedures Act request.
3. **Statement of Effect:** A Statement of Effect contains legal and policy analysis which explain the effect of adopting a law.

### ***Meetings***

Held every 1<sup>st</sup> and 3<sup>rd</sup> Wednesday of the month.

Meeting Location: OBC Conference Room - Second Floor, Norbert Hill Center, Oneida WI

Meeting Time: 9:00 a.m.

Meetings are OPEN.

### ***Contact***

MAIN CONTACT: Brandon Stevens,

MAIN CONTACT TITLE: LOC Chair

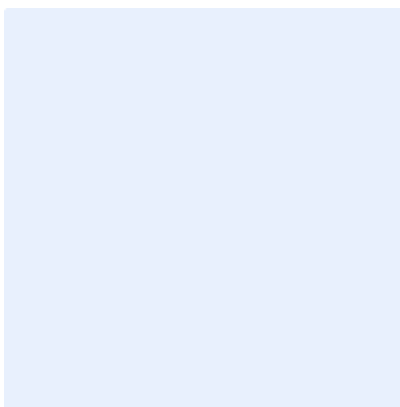
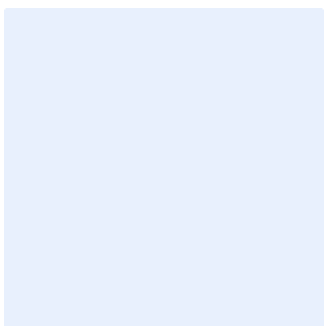
MAIN PHONE: (920) 869-4378

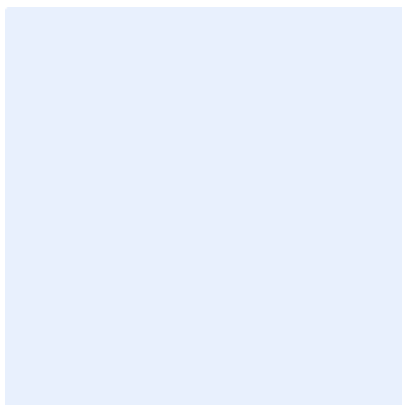
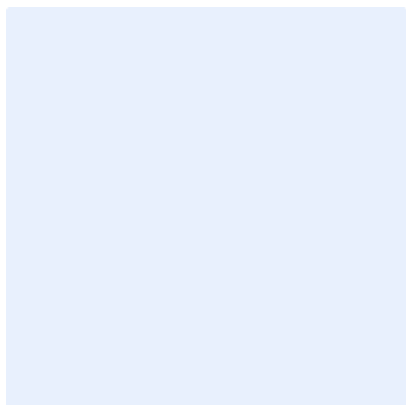
MAIN EMAIL: LOC@Oneidanation.org

MAIN WEBSITE: [www.oneida-nsn.gov/LOC](http://www.oneida-nsn.gov/LOC)  
(The LOC also maintains the Oneida Register at [www.oneida-nsn.gov/Register](http://www.oneida-nsn.gov/Register))

### ***Other Pictures that may be included in your section of the report***

**Please provide only high resolution \*.jpg images**







TO: Lisa M. Summers, Secretary  
FROM: Brandon Stevens, LOC Chair *BS*  
DATE: November 16, 2016  
RE: Oneida Business Committee Agenda-Order of Business

## BACKGROUND

In the course of discussing the development of a law regarding the procedures of Oneida Business Committee meetings the LOC has identified an agenda change that could be implemented immediately- in an effort to make meetings more efficient.

Move the Quarterly Reports and Executive Session items from their current place, to just after Minutes.

Current Format	Proposed Format
I. Call to Order and Roll Call	I. Call to Order and Roll Call
II. Opening	II. Opening
III. Adopt the Agenda	III. Adopt the Agenda
IV. Oaths of Office	IV. Oaths of Office
V. Minutes	V. Minutes
VI. Resolutions	VI. Reports
VII. Standing Committees	VII. Executive Session
VIII. Appointments	VIII. Resolutions
IX. Unfinished Business	IX. Standing Committees
X. New Business	X. Appointments
XI. Travel	XI. Unfinished Business
XII. Reports	XII. New Business
XIII. GTC	XIII. Travel
XIV. Executive Session	XIV. GTC
XV. Adjourn	XV. Adjourn

## BENEFITS & IMPACTS

1. The purpose of this request is to have the presentation of reports first thing to allow direct reports and others an opportunity to present the reports and get back to work. This is the part of the agenda where most questions and comments occur.
2. We are suggesting that the Executive Session segment be moved directly following Reports- to allow action to be taken on items already discussed. Since no further discussion is needed for these items, the move would allow those employees relying on

their directives coming out of Executive Session to leave the meeting and begin implementing those directives without delay.

3. The remainder of the agenda items are fully discussed before the Business Committee Meetings- at other subcommittee meetings, at Public Meetings, and at Legislative Operating Committee meetings. Or they are items for which only simple acceptance is needed.

## **REQUEST**

Consider action of bringing a request for formal action modifying the Oneida Business Committee agenda to have Reports and Executive Session moved up the agenda and placed just after Minutes.

# November 2016

November 2016						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2016						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Monday		Tuesday		Wednesday		Thursday		Friday	
<b>Oct 31</b>		<b>Nov 1</b>		<b>2</b>		<b>3</b>		<b>4</b>	
Oct 31 - Nov 4				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		12:00pm 2:30pm Community Support Fund Public Meeting (BCCR)			
<b>7</b>		<b>8</b>		<b>9</b>		<b>10</b>		<b>11</b>	
Nov 7 - 11				BC Meeting (BCCR)				Veterans Day Holiday	
<b>14</b>		<b>15</b>		<b>16</b>		<b>17</b>		<b>18</b>	
Nov 14 - 18				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar					
<b>21</b>		<b>22</b>		<b>23</b>		<b>24</b>		<b>25</b>	
Nov 21 - 25				BC Meeting (BCCR)		Thanksgiving Holiday		Indian Day Holiday	
<b>28</b>		<b>29</b>		<b>30</b>		<b>Dec 1</b>		<b>2</b>	
Nov 28 - Dec 2									

# December 2016

December 2016						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

January 2017						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Monday		Tuesday		Wednesday		Thursday		Friday	
<b>Nov 28</b>		<b>29</b>		<b>30</b>		<b>Dec 1</b>		<b>2</b>	
Nov 28 - Dec 2									
<b>5</b>		<b>6</b>		<b>7</b>		<b>8</b>		<b>9</b>	
Dec 5 - 9				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar					
<b>12</b>		<b>13</b>		<b>14</b>		<b>15</b>		<b>16</b>	
Dec 12 - 16				BC Meeting (BCCR)					
<b>19</b>		<b>20</b>		<b>21</b>		<b>22</b>		<b>23</b>	
Dec 19 - 23				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar				12:00pm 4:30pm Christmas Eve Holiday	
<b>26</b>		<b>27</b>		<b>28</b>		<b>29</b>		<b>30</b>	
Dec 26 - 30		Christmas Holiday		BC Meeting (BCCR)					