



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
February 1, 2017 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. January 18, 2017 LOC Meeting Minutes
- III. Current Business**
 - 1. Real Property Law Amendments
 - 2. Conflict of Interest Amendments
 - 3. Drug and Alcohol Free Workplace Policy Amendments
 - 4. Budget Management and Control
 - 5. Probate Law
 - 6. Independent Contractor Policy Amendments
 - 7. Landlord-Tenant Amendments
- IV. New Submissions**
 - 1. S. Benton re: Petition to Change Pre-employment Drug Testing for Marijuana
- V. Additions**
 - 1. Landlord-Tenant Rules Extension Request
 - 2. Eviction and Termination Rules Extension Request
 - 3. Landlord-Tenant Rule No. 2 Certification
- VI. Administrative Updates**
 - 1. Employment Law Postcard
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Business Committee Conference Room-2nd Floor Norbert Hill Center
January 18, 2017 10:00 a.m.

Present: Brandon Stevens, David P. Jordan, Fawn Billie, Jennifer Webster

Excused: Tehassi Hill

Others Present: Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Krystal John, Jennifer Falck, Rae Skenandore, Bonnie Pigman, Nancy Barton, Jo Anne House, Mike Debraska, Danelle Wilson, Shad Webster, Nicole Rommel

I. Call to Order and Approval of the Agenda

Brandon Stevens called the January 18, 2017 Legislative Operating Committee meeting to order at 10:00 a.m.

Motion by Fawn Billie to approve the agenda; seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. January 4, 2017 LOC Meeting Minutes

Motion by David P. Jordan to approve the January 4, 2017 LOC meeting minutes; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Real Property Law Amendments (00:50-05:23)

Motion by Jennifer Webster to accept the Real Property Law Amendments public meeting comments; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to accept the Real Property Law Amendments adoption packet pending the fiscal impact statement which shall be brought forth at the next LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

2. Tobacco Ordinance Amendments (05:25-06:00)

Motion by Jennifer Webster to approve the adoption packet and to forward the Tobacco Ordinance Amendments to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

3. Drug and Alcohol Free Workplace Policy Amendments (06:02-07:07)

Motion by David P. Jordan to forward the Drug and Alcohol Free Workplace Policy Amendments to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

4. Endowments Amendments (07:08-41:42)

Motion by Fawn Billie to approve the public meeting packet and send the Endowments Amendments to a public meeting to be held on February 16, 2017
Legislative Operating Committee Meeting Minutes of January 18, 2017

noting the fiscal impact statement will be added to the public meeting packet; seconded by Jennifer Webster. Motion carried unanimously.

5. Landlord-Tenant Emergency Amendments (41:42-43:42)

Motion by Jennifer Webster to approve the emergency amendments adoption packet and forward the Landlord-Tenant Emergency Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

6. Employment (43:45-45:35)

Motion by Fawn Billie to approve the Employment e-poll results and enter into the record; seconded by Jennifer Webster. Motion carried unanimously.

7. Hunting, Fishing and Trapping Law Amendments (45:36-47:33)

Motion by Fawn Billie to approve the adoption packet with the noted changes and forward the Hunting, Fishing and Trapping Law Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

Noted changes include renumbering, only requiring supervision while hunting for minors ages fourteen (14) and younger, clarifying the circumstances when a disabled hunter is able to hunt from a vehicle and/or the center of the road, and that rules will determine the number of permittees a designated hunter is able to hunt on behalf of and the size of deer hunting parties.

8. Per Capita Law Amendments (47:43-01:07:30)

Motion by David P. Jordan to approve the adoption packet with the noted changes and forward the Per Capita Law Amendments to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

Noted changes include adding definition for “rule”, clarifying that the Trust Enrollment Department is not managing the pooled accounts but identifying what funds are available to be released into the pooled account and to include GTC in section 123.2-2.

IV. New Submissions

1. Tribal Environmental Response (01:07:30-01:09:03)

Motion by David P. Jordan to add the Tribal Environmental Response to the active files list with Tehassi Hill as the sponsor noting a low priority level; seconded by Fawn Billie. Motion carried unanimously.

2. Division of Land Management Rules (01:09:05-01:20:00)

Motion by Jennifer Webster to certify Mortgage and Foreclosure law Rule 1: Mortgage Programs, Guidelines and Requirements and to forward to the Oneida Business Committee for review; seconded by Fawn Billie. Motion carried unanimously.

Motion by David P. Jordan to certify Landlord-Tenant law Rule 1: General Rental Program Eligibility, Selection and Other Requirements and to forward to the Oneida Business Committee for review; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to certify Real Property law Rule 2: Comprehensive Housing Division Residential Sites and to forward to the Oneida Business Committee for review; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions

VI. Administrative Updates

1. FY 17 First Quarterly Report (01:28:01-01:32:42)

Motion by Fawn Billie to accept the FY 17 First Quarterly Report as FYI and to forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

2. Code of Laws Reorganization Project (01:32:43-01:40:19)

Motion by Jennifer Webster to approve the updated Code of Laws Reorganization Project table; seconded by Fawn Billie. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn the January 18, 2017 Legislative Operating Committee meeting at 11:46 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee
February 1, 2017

Real Property Law Amendments

| | |
|-------------------------------------|--|
| Submission Date: 10/07/15 | Public Meeting: 10/20/16 and 12/01/16 |
| LOC Sponsor: David P. Jordan | Emergency Enacted: n/a Expires: n/a |

Summary: *These amendments will transfer all Land Commission hearing responsibilities to the Judiciary.*

10/7/15 LOC: Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

12/11/15: *Work meeting held.* Attendees include: David P. Jordan, Brandon Stevens, Rae Skenandore, Nicole Rommel, Rebecca Webster, Maureen Perkins and Krystal John.

12/16/15 LOC: Motion by Jennifer Webster to accept the memorandum update as FYI and to defer the Real Property Law Amendments back to the sponsor and to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

12/16/15: *Work meeting held.* Attendees include: David P. Jordan, Rae Skenandore, Rebecca Webster, Krystal John, Maureen Perkins and Nicole Rommel.

1/20/16 LOC: Motion by David P. Jordan to defer the Real Property Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

8/2/16: Update meeting held.

9/21/16 LOC: Motion by Davis Jordan to accept the legislative analysis and the public meeting packet and direct the LOC to hold a public meeting on October 20, 2016; seconded by Fawn Billie. Motion carried unanimously.

10/13/16: *Quarterly Sponsor Update Meeting held.* Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maurenn Perkins, Clorissa Santiago. Public meeting will be on 10/20/16. Then a work meeting is scheduled for 10/27/16 with the Land Commission to discuss Realtor licensing.

10/20/16: *Public meeting held.*

10/27/16: *Work meeting held.*

11/2/16LOC: 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.

12/01/16:

Public Meeting Held.

12/21/16 LOC:

Motion by David P. Jordan to defer the Real Property Law Amendments to the second LOC meeting in January; seconded by Fawn Billie. Motion carried unanimously.

Motion by David P. Jordan for the LOC to send a memorandum to the Organizational Development Specialist asking to add an agenda item to the joint meeting between the Oneida Business Committee, Oneida Land Commission and Oneida Land Claims Commission on January 6, 2017, regarding the proposed policy statement in the Real Property Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

01/04/17LOC:

Motion by David P. Jordan to rescind the second motion regarding the Real Property Law Amendments made on December 21, 2016:

Motion by David P. Jordan to defer the Real Property Law Amendments to the second LOC meeting in January; seconded by Fawn Billie. Motion carried unanimously.

~~*Motion by David P. Jordan for the LOC to send a memorandum to the Organizational Development Specialist asking to add an agenda item to the joint meeting between the Oneida Business Committee, Oneida Land Commission and Oneida Land Claims Commission on January 6, 2017, regarding the proposed policy statement in the Real Property Law Amendments; seconded by Fawn Billie. Motion carried unanimously.*~~

and approve the December 21, 2016 LOC meeting minutes with the noted change; seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the LRO to provide an updated comment response memo reflecting the acceptance of the response or comments; seconded by Fawn Billie. Motion carried unanimously.

1/18/17 LOC:

Motion by Jennifer Webster to accept the Real Property Law Amendments public meeting comments; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to accept the Real Property Law Amendments adoption packet pending the fiscal impact statement which shall be brought forth at the next LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Review the fiscal impact statement, accept the Real Property Law Amendments adoption packet and forward to the Oneida Business Committee for consideration.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: February 8, 2017
RE: Real Property Law Amendments

Please find the following attached backup documentation for your consideration of the Real Property Law Amendments:

1. Resolution: Real Property Law Amendments
2. Statement of Effect: Real Property Law Amendments
3. Real Property Law Amendments Legislative Analysis
4. Real Property Law (Clean)
5. Real Property Law Amendments Fiscal Impact Statement

Overview

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

- Remove hearing body authority from the Oneida Land Commission and transfer it to the Judiciary;
- Update the probate process;
- Add Wisconsin State real estate education requirements for persons purchasing property on behalf of the Nation;
- Remove provisions related to rental housing opportunities provided by the Nation as that subject matter is now contained in the Landlord-Tenant law;
- Remove provisions related to mortgages and foreclosures within the Nation's programs as that subject matter is now contained in the Mortgage and Foreclosure law;
- Remove provisions related to terminating or evicting from the Nation's leasing or rental programs as that subject matter is now contained in the Eviction and Termination law; and
- Remove provisions related to leasing from the Nation as that subject matter is now contained in the Leasing law.

In accordance with the Legislative Procedures Act, a public meeting on the proposed amendments to the Real Property law was held on October 20, 2016. A second public meeting on the proposed amendments to the Real Property law was held on December 1, 2016.

Requested Action

Approve the Resolution: Real Property Law Amendments.

BC Resolution _____
Adoption of Real Property Law Amendments

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

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

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

12 **WHEREAS**, the Oneida Business Committee adopted the Real Property law pursuant to resolution
13 BC-05-29-96-A and amended the law by resolutions: BC-03-01-06-D, BC-04-28-10-E
14 and BC-02-25-15-C; and
15

16 **WHEREAS**, these amendments update the probate process and delegate joint administrative
17 rulemaking authority to the Division of Land Management and the Oneida Land
18 Commission; and
19

20 **WHEREAS**, the Division of Land Management and the Oneida Land Commission are required to
21 create rules further defining the process for probate administration; and
22

23 **WHEREAS**, these amendments add Wisconsin State real estate education requirements for persons
24 purchasing property on behalf of the Nation; and
25

26 **WHEREAS**, these amendments transfer the Oneida Land Commission's original hearing body
27 authority to the Oneida Judiciary; and
28

29 **WHEREAS**, these amendments remove provisions related to rental housing opportunities, mortgages
30 and foreclosures and terminations and evictions as such subject matters are addressed in
31 the Landlord-Tenant law, the Mortgage and Foreclosure law, the Eviction and
32 Termination law; and
33

34 **WHEREAS**, these amendments remove provisions related to the leasing from the Nation as such
35 subject matter is addressed in the Leasing law; and
36

37 **WHEREAS**, the Leasing law's effective date is contingent upon approval of the Leasing law by the
38 Secretary of the Department of Interior; and
39

40 **WHEREAS**, public meetings regarding these amendments were held on October 20, 2016 and
41 December 1, 2016, in accordance with the Legislative Procedures Act; and
42

43 **NOW THEREFORE BE IT RESOLVED**, that all parties required to create administrative rules to
44 further support the Real Property law have all such rules finalized to become effective on June 25,
45 2017, provided that the rules related to residential sales by the Nation may have an earlier effective
46 date.
47

48 **NOW THEREFORE BE IT FURTHER RESOLVED**, that in recognition that the Leasing law is
49 not effective until it receives approval from the Secretary of the Department of Interior, the following

Resolution _____

Page 2

50 provision shall replace section 601.9 of the Real Property law until the Leasing law is effective should
51 the Leasing law not be effective by the effective date of these amendments:
52

53 **601.9. Leasing of Real Property**

54 601.9-1. All leasing of tribal land shall be processed through the Division of Land
55 Management.

56 601.9-2. Commercial, Agricultural and Residential Leases of tribal trust land are available,
57 with preference given to Oneida tribal citizens and programs.

58 601.9-3. All leases shall include the responsibility of the lessee and lessor regarding the
59 following principles:

- 60 (a) Possession of Leased Premises;
- 61 (b) Improvements;
- 62 (c) Maintenance of Premises;
- 63 (d) Assignment and Subleasing;
- 64 (e) Options to Renew;
- 65 (f) Destruction of Premises;
- 66 (g) Termination of Lease;
- 67 (h) Breach of Lease;
- 68 (i) Use of Premises;
- 69 (j) Term of Lease; and
- 70 (k) Security Deposit.

71 601.9-4. Assignment of leasehold interest for the purpose of financing shall be processed and
72 recorded at the appropriate office by the Division of Land Management. No assignment or
73 related encumbrance to the leasehold interest shall be valid without approval and recordation
74 through procedures established by the Division of Land Management.

75 601.9-5. In the event of default by the lessee of the terms of an approved encumbrance, and the
76 lessee's assignment reaches the point of sale or foreclosure, the Division of Land Management
77 shall have the right to correct the default. If the default is corrected under these circumstances
78 the lessee will be subject to further proceedings which may lead to termination of lessee's
79 lease, loss of improvements, revised payment schedule and/or garnishment of lessee's wages in
80 order to pay the remainder of the default.

81
82 **NOW THEREFORE BE IT FINALLY RESOLVED**, that these Real Property law amendments are
83 hereby adopted and shall become effective on June 25, 2017.



Statement of Effect
Adoption of Real Property Law Amendments

Summary

This Resolution adopts amendments to the Real Property law which would:

- Remove hearing body authority from the Oneida Land Commission and transfer it to the Judiciary;
- Update the probate process;
- Add Wisconsin State real estate education requirements for persons purchasing property on behalf of the Nation;
- Remove provisions related to rental housing opportunities provided by the Nation as that subject matter is now contained in the Landlord-Tenant law;
- Remove provisions related to mortgages and foreclosures within the Nation's programs as that subject matter is now contained in the Mortgage and Foreclosure law;
- Remove provisions related to terminating or evicting from the Nation's leasing or rental programs as that subject matter is now contained in the Eviction and Termination law; and
- Remove provisions related to leasing from the Nation as that subject matter is now contained in the Leasing law.

By: Krystal L. John, Staff Attorney

Analysis

This resolution adopts amendments to the Real Property law which was adopted by resolution BC-05-29-96-A and thereafter amended by resolutions BC-03-01-06-D, BC-04-28-10-E, and BC-02-25-15-C.

In addition to the items amended as summarized above, these amendments to the Real Property law also delegate administrative rulemaking authority to various parties. The Division of Land Management and the Oneida Land Commission are delegated joint authority to create rules that further govern probate administration and requests for land use licenses and easements. The Oneida Land Commission and the Comprehensive Housing Division are delegated joint authority to create rules governing residential sales by the Nation. The Oneida Planning Department is delegated authority to create Land Use Technical Unit, provided that they are required to work in collaboration with affected Oneida divisions, departments and the Oneida Land Commission in developing such rules.

The effective date of the law is extended to June 25, 2017, to align with the required effective date for all rules required to be developed by these amendments, provided that the resolution permits the rules related to residential sale to become effective sooner than June 25, 2017. The Residential sales rule is permitted to become effective sooner because the Real Property law

previously contained a general delegation of rulemaking authority to implement the law which would have allowed the residential sales rule to be adopted without requiring these amendments.

As noted above, these amendments to the Real Property law also removed various provisions with subject matter that has been transferred to newly developed laws, including the Leasing law. The Leasing law was adopted and subsequently amended by the Oneida Business Committee, but is not yet effective because it is pending approval with the Secretary of the Department of Interior. In the event that the Leasing law is not yet approved and made effective by the June 25, 2017, which is the effective date of these Real Property law amendments, the resolution provides leasing provisions which will govern until the Leasing law becomes effective.

Public meetings were held on October 20, 2016 and December 1, 2016 in accordance with the Legislative Procedures Act.

Conclusion

Adoption of these amendments does not conflict with the Nation's laws.



5

Real Property Law Amendments

| <i>Analysis by the Legislative Reference Office</i> | | | | | |
|---|--|----------------|-----------------|----------------|-----------------|
| Title | Real Property law (amendments) | | | | |
| Sponsor | David P. Jordan | Drafter | Krystal L. John | Analyst | Maureen Perkins |
| Requester & Reason for Request | Land Commission While the primary focus of the amendments is to transfer hearing body authority from the land Commission to the Judiciary, the law requires extensive updating to provide greater clarity as to the intent of the law. Additionally, content was pulled from this law and created into other laws. | | | | |
| Purpose | The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions. | | | | |
| Authorized/ Affected Entities | Oneida Land Commission, Division of Land Management, Comprehensive Housing Division, Oneida Judiciary, Oneida Nation Register of Deeds, Oneida Planning Department | | | | |
| Related Legislation | Mortgage and Foreclosure law, Land Ordinance, Leasing law, Landlord-Tenant law, Eviction and Termination law, Public Use of Tribal Land law, Land Commission Bylaws | | | | |
| Enforcement & Due Process | All involuntary transfers of title require a Judiciary hearing [see 601.7-3]. The Division of Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration [see 601.8-1]. The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon the Division of Land Management in such cases [see 601.8-2]. | | | | |
| Public Meeting Status | Public meetings were held October 20, 2016 and December 1, 2016. The LOC has fully considered all public comments received during the public comment period; and any changes made based on the public comments received have been incorporated into this draft. | | | | |

6

7

Overview

8 The Real Property Law has been redrafted; pulling out content into three separate laws
9 (Landlord-Tenant, Mortgage and Foreclosure, and Eviction and Termination).¹ Additionally,
10 hearing body authority was removed from the Land Commission and transferred to the Judiciary,
11 the probate process was updated and Wisconsin State real estate education and testing
12 requirements were added for persons purchasing property on behalf of the Nation.

Analysis to draft #8 for OBC Consideration 2017 01 25

13 Provisions were pulled from the current Real Property Law and drafted into the following laws:

- 14 ▪ Provisions related to rental housing opportunities provided by the Nation were drafted
15 into the Landlord-Tenant law.
- 16 ▪ Provisions related to mortgages and foreclosures within the Nation's mortgage programs
17 were drafted into the Mortgage and Foreclosure law.
- 18 ▪ Provisions related to terminating or evicting from the Nation's leasing or rental programs
19 were drafted into the Eviction and Termination law.

20

21

Proposed Amendments

22 ▪ The Rules of Statutory Construction [*see 67.2 of current law*] were removed from the
23 current Real Property law as this provision was intended to guide contested cases; these
24 provisions are not necessary under this amended draft because the Judiciary will hear
25 contested cases – these rules are not typically included in laws.

26 ▪ The probate section [*see 67.9 of current law*] was reworked and the Division of Land
27 Management and the Oneida Land Commission were given rulemaking authority to
28 jointly develop rules related to probate [*see 601.8*] under the Administrative Rulemaking
29 law.

30 ▪ Real Estate Trust Accounts section [*see 67.10 of current law*] was removed as these
31 functions are performed through the rules under the Mortgage and Foreclosure law and
32 detail regarding where the funds are kept is not necessary in this law.

33 ▪ The Leasing law references tribal land only and does not include Tribal fee land [*see*
34 602.4-3]. The Leasing law is drafted to align with the HEARTH Act (federal legislation)
35 which only applies to tribal land and excludes lands held in fee status, held in trust for
36 individual Indian landowners as well as mineral leases. These proposed Real Property
37 law amendments state that all leases, go through the Leasing law process regardless of
38 whether the lease is on Tribal trust land or Tribal fee land [*see 601.9-1*].

39 ▪ General contracts were removed from the records section [*see 601.10*]. There was little
40 guidance under the current law [*see 67.12-2 of current law*] and records that were not
41 useful were recorded. The amended law refocuses the Oneida Register of Deeds to only
42 accept records that affect land titles.

43 ▪ The real estate licensing section [*see 67.13 of current law*] was amended to remove the
44 Nation's Tribal Property License requirement and instead require- State of Wisconsin real
45 estate education and exam. Under the amended law, Wisconsin Real Estate education
46 and exam is required for all persons performing real estate closings [*see 601.11-1*]. An
47 Oneida specific training is still required that focuses directly on the Nation's acquisition
48 goals and the unique circumstances that apply to Indian nations. Persons acquiring Tribal
49 fee land on behalf of the Nation are regular employees of the Nation and are not be
50 eligible for a commission [*601.11-1(a)*]. Requiring State of Wisconsin education and
51 exam places those who purchase land on behalf of the Nation on equal footing with the
52 seller, which is an advantage to the Nation. Also, the Nation's Tribal Property License
53 program lacked oversight, which will now be provided through Wisconsin State real
54 estate education. Finally, by requiring Wisconsin real estate education the Land
55 Commission is removed from enforcement issues arising from questions regarding
56 licensing complaints.

57 ▪ The amendments require that two additional Division of Land Management staff are
58 educated and trained as backups to the primary staff member engaged in acquisition of

Analysis to draft #8 for OBC Consideration 2017 01 25

- 59 land on behalf of the Nation *[see 601.11-1(b).]*
- 60 ■ Trust Asset and Accounting Management System (TAAMS) certification was added to
- 61 the real estate licensing and certification section *[see 601.11-2]*. The TAAMS system is
- 62 required by the BIA to track land title documents and land transactions, contracts and
- 63 leases as well as reporting.
- 64 ■ The Tribal Real Estate Tax section was removed from the current law *[see 67.15 of*
- 65 *current law]* because the Real Estate Tax Code referenced was never developed and is
- 66 not currently intended to be developed.
- 67 ■ The Land Ordinance is applicable only to valid land assignments existing as of January 1,
- 68 2016, and is repealed when the last existing land assignment expires. Further, the
- 69 amendments add that the Nation may not acknowledge any new land assignments – and
- 70 in order to be eligible for a Tribal loan issued against an interest in a land assignment, it
- 71 must first be converted to a residential lease *[see 601.2-4 and current 67.5-4]*. Land
- 72 assignments are being phased out because the Nation no longer uses land assignments
- 73 and has moved to residential leases instead.
- 74 ■ The term of office was removed from the Organization section pertaining to the Oneida
- 75 Land Commission *[see 67.16-2(b) of current law]* as this detail appropriately appears in
- 76 the bylaws of the Land Commission. The amended law only includes the Land
- 77 Commission’s responsibilities that are directly related to this law *[see 601.12-3]*.
- 78 ■ The disposition of estates of deceased Tribal members section of the current law *[see*
- 79 *67.9]* was amended to the probate section *[see 601.8]*.
- 80 ■ The amended law moves the appointment of a personal representative
- 81 earlier in the process *[see 601.8-1(j)]*.
- 82 ■ The Oneida Land Commission will no longer have the authority to create the Nation’s
- 83 seal to be used by the Division of Land Management *[see 67.12-6 of current law]*. The
- 84 Nation’s seal will now be provided by the Tribal Secretary *[see 601.10-5]*.

Rulemaking Authority

87 The following entities have been granted Rulemaking Authority to develop rules under this law:

- 88 ■ The Division of Land Management and the Oneida Land Commission shall jointly
- 89 develop rules regarding requests for easements for landlocked properties *[see 601.7-*
- 90 *3(e)]*.
- 91 ■ The Division of Land Management and the Oneida Land Commission shall further
- 92 develop rules related to probate *[see 601.8-1]*. The rules will include timelines to ensure
- 93 timely probate completion and land consolidation *[see 601.7-3(c)(3)]*.
- 94 ■ The Oneida Land Commission shall develop rules to allocate and assign land uses to all
- 95 Tribal land, except uses governed by the Public Use of Tribal Land law *[see 601.12-*
- 96 *2(e)]*.
- 97 ■ The Oneida Land Commission and the Comprehensive Housing Division shall exercise
- 98 joint rulemaking authority to provide process requirements, including but not limited to
- 99 advertising, notice, prequalification, and selection, that apply in all circumstances when
- 100 the Nation is selling a residential property *[see 601.12-1]*.
- 101 ■ The Division of Land Management and the Oneida Land Commission shall develop
- 102 easement and land use license rules *[see 601.12-3(a)]*.
- 103 ■ The Oneida Planning Department shall develop the Land Use Technical Unit rules in
- 104 collaboration with the Oneida Land Commission *[see 601.12-2(e)]*.

Title 6. Property and Land – Chapter 601
REAL PROPERTY
Tok[^]ske Kayanl[^]hsla Tsi[>] Ni[>]yohuntsya=##
The real/certain laws of the territory of the nation

| | |
|------------------------------------|---|
| 601.1. Purpose and Policy | 601.7. Title Transfer |
| 601.2. Adoption, Amendment, Repeal | 601.8. Probate |
| 601.3. Definitions | 601.9. Leasing of Real Property |
| 601.4. General Provisions | 601.10. Records |
| 601.5. Holding of Ownership | 601.11. Real Estate Education Requirements and Certifications |
| 601.6. Legal Descriptions | 601.12. Organization |

1 **601.1. Purpose and Policy**

2 601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the
3 transfer, control and management of the territory within the Reservation and all tribal land; to
4 integrate these regulations and procedures with the real property laws and practices of other
5 federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish
6 licensing and certification requirements for the Nation’s employees dealing with real property
7 transactions.

8 601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for
9 persons purchasing and/or managing real property on behalf of the Nation and/or within the
10 Reservation and to provide real property holder’s rights and responsibilities. In addition, it is the
11 Nation’s policy that probated estates shall be settled expeditiously and without undue delay.

12
13 **601.2. Adoption, Amendment, Repeal**

14 601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A
15 and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C and BC-05-13-15-
16 B.

17 601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to
18 the procedures set out in the Legislative Procedures Act.

19 601.2-3. Should a provision of this law or the application thereof to any person or
20 circumstances be held as invalid, such invalidity shall not affect other provisions of this law
21 which are considered to have legal force without the invalid portions.

22 601.2-4. In the event of a conflict between a provision of this law and a provision of another
23 law, the provisions of this law shall control. Provided that, the Land Ordinance is applicable
24 only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the
25 expiration of the last existing land assignment.

26 601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
27

28 **601.3. Definitions**

29 601.3-1. This section shall govern the definitions of words and phrases used within this law.
30 All words not defined herein shall be used in their ordinary and everyday sense, subject to 601.4-
31 5.

32 (a) “Broker” means a person who acts as an agent and negotiates the sale, purchase or
33 rental of real property on behalf of others for a fee.

34 (b) “Certified Survey Map” means a map which provides the legal description of real
35 property and is officially filed and approved by the county, Tribal or municipal
36 governments.

- 37 (c) “Comprehensive Housing Division” means the entity responsible for housing matters
38 as defined by Oneida Business Committee Resolution.¹
39 (d) “Easement” means a real property right to cross or otherwise utilize the land of
40 another for a specified purpose.
41 (e) “Estate” means a person’s interest in real property or other property.
42 (f) “Fiduciary” means a person required to act for the benefit of another person on all
43 matters within the scope of their relationship and by such a relationship owes another
44 duties of good faith, trust, confidence and candor. For the purposes of this law, both
45 brokers and salespersons are “fiduciaries.”
46 (g) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an
47 incompetent or minor party.
48 (h) “Individual Fee Land” means real property held in fee status by an individual or
49 group of individuals.
50 (i) “Individual Trust Land” means individual Tribal land held in trust by the United
51 States of America for the benefit of a Tribal member.
52 (j) “Judiciary” means the judicial system that was established by Oneida General Tribal
53 Council resolution GTC-01-07-13-B to administer the judicial authorities and
54 responsibilities of the Nation.
55 (k) “Land Use License” means an agreement entered into by the Nation providing a party
56 the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose
57 and a specific duration, which may require the Nation to be compensated for such use.
58 (l) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that
59 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
60 lessee to a lender or other mortgagee.
61 (m) “Nation” means the Oneida Nation.
62 (n) “Personal Representative” means a person to whom authority to administer a
63 decedent’s estate have been granted by the Division of Land Management or the
64 Judiciary.
65 (o) “Probate” or “Administration” means any proceeding relating to a decedent’s estate,
66 whether there is or is not a will.
67 (p) “Real Property” means land and anything growing on, attached to, or erected on the
68 land, excluding anything that may be severed without injury to the land.
69 (q) “Reservation” means all the property within the exterior boundaries of the
70 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida
71 7 Stat. 566, and any lands added thereto pursuant to federal law.
72 (r) “Restricted Fee Status” means an interest in real property which includes a provision
73 in the deed or will that, upon the happening or failure to happen of a certain event, the
74 title of the purchaser or devisee will be limited, enlarged, changed or terminated.
75 (s) “Rule” means a set of requirements, including fee schedules, enacted by the
76 Comprehensive Housing Division, Division of Land Management, Oneida Planning
77 Department and/or the Oneida Land Commission in accordance with the Administrative
78 Rulemaking law based on authority delegated in this law in order to implement, interpret
79 and/or enforce this law.

¹ See BC Resolutions 08-10-16-L, 10-12-16-B and 10-12-16-D defining the Comprehensive Housing Division for purposes of the Mortgage and Foreclosure law, Eviction and Termination law and Landlord-Tenant law respectively.

80 (t) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of
81 Indian Affairs system for maintaining and tracking land title documents and all legal
82 documents relating to land transactions.

83 (u) “Title Status Report” means a report issued by the Bureau of Indian Affairs after a
84 title examination which shows the proper legal description of a tract of Tribal land;
85 current ownership, including any applicable conditions, exceptions, restrictions or
86 encumbrances on records; and whether the land is in unrestricted, restricted, trust, or
87 other status as indicated by the records in a Land Titles and Records Office. (v) “Tribal
88 Fee Land” means Tribal land held in fee status by the Nation within the Reservation.

89 (v) “Tribal Land” means Tribal fee land and Tribal trust land.

90 (w) “Tribal Member” means an individual who is an enrolled member of the Nation.

91 (x) “Tribal Trust Land” means the surface estate of land or any interest therein held by
92 the United States in trust for the Nation; land held by the Nation subject to federal
93 restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
94 land held by the United States in trust for the Nation under Section 17 of the Indian
95 Reorganization Act, 25 U.S.C §477, et. seq.

96
97 **601.4. General Provisions**

98 601.4-1. *Applicable Real Property.* The provisions of this law extend to all Tribal member’s
99 individual fee land and Tribal member’s individual trust land within the Reservation boundaries
100 and all Tribal land.

101 601.4-2. *Tribal Land Base.* The Division of Land Management shall administer all transactions
102 which add real property to the Tribal land base under the provisions of this law.

103 601.4-3. *Sale of Tribal Land Prohibited.* The sale of Tribal land is specifically prohibited by
104 this law, unless the intent of the transaction is the consolidation or partition of Tribal trust land
105 and/or individual trust land.

106 601.4-4. *New Land Assignments Prohibited.* The Nation may not acknowledge any new land
107 assignments. Further, in order to be eligible for a Tribal loan issued against a real property
108 interest held as a land assignment, the land assignment shall first be converted to a residential
109 lease.

110 601.4-5 *Wisconsin Probate Code and its Related Chapters.* In instances where the Nation
111 lacks definition, procedure, or legal precedent in a probate matter, the Nation shall use
112 Wisconsin’s Probate Code and its related chapters for guidance.

113 601.4-6. *Wisconsin Real Property Law.* The Nation shall follow all applicable portions of the
114 Wisconsin Real Property Law when acquiring individual fee land.

115 601.4-7. *No Waiver of Sovereign Immunity.* Nothing in this law may be construed as a waiver
116 of the Nation’s sovereign immunity.

117
118 **601.5. Holding of Ownership**

119 601.5-1. Interests in real property by more than one (1) person may be held in the following
120 ways:

121 (a) *Joint Tenancy with the Right of Survivorship.* Pursuant to this ownership mechanism
122 each owner has an equal, undivided interest in the real property. When an owner dies,
123 his/her share is divided among the remaining owners; the last living owner owns the
124 entire property.

125 (1) Real property owned by married persons is held under this mechanism unless
126 they have executed a valid marital property agreement specifically stating that the
127 real property in question is held as tenants in common.

128 (b) *Tenancy in Common*. Pursuant to this ownership mechanism each owner has a
129 percentage of divided interest in the real property. When an owner dies, his/her interest
130 is divided among his/her devisees or heirs.

131 (1) Real property owned by more than one (1) person, other than married persons,
132 is owned under this mechanism unless a deed or transfer document specifically
133 states the real property is held as joint tenants with rights of survivorship.
134

135 **601.6. Legal Descriptions**

136 601.6-1. The legal description for any real property transferred under this law shall be derived
137 from a certified survey map or survey completed by a registered land surveyor according to
138 currently accepted minimum industry standards for property surveys. If the plat of survey
139 changes the legal description of the certified survey map for the same piece of property, the
140 certified survey map's legal description shall be used on transfer documents along with the
141 survey description, which shall be designated as "Also Known As ..." Section, township, range
142 and fourth principal meridian shall be included in all legal descriptions.

143 601.6-2. Every land survey shall be made in accordance with the county register of deeds'
144 records for fee land, and in accordance with the Oneida Nation Register of Deed's records for
145 Tribal Trust Lands and Individual Trust Lands. The surveyor shall acquire data necessary to
146 retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal
147 leases, Tribal home purchase agreements, center line and other boundary line locations.

148 601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal
149 identification of line or boundaries.

150 601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in
151 the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and
152 encroachments, as applicable.

153 601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real
154 estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

155 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease
156 to Tribal members, the address is an adequate legal description of the real property.
157

158 **601.7. Title Transfer**

159 601.7-1. *Trust Acquisition*. The Division of Land Management shall use title companies duly
160 registered with the Department of Interior and approved by the Division of Land Management to
161 update abstracts or provide title insurance on real property scheduled for trust acquisition.

162 (a) Title companies shall follow general guidelines provided by the federal government
163 in terms of form, content, period of search, destroyed or lost records and abstracter's
164 certificate.

165 (b) When researching land title for real property within the Reservation which is being
166 considered for trust acquisition, the Division of Land Management staff shall request the
167 title company to search the title back to the original allottee, in order to assure that
168 patents or Indian deeds were legally issued.

169 (c) Any valid liens or encumbrances shown by the commitment for title insurance shall
170 be eliminated before the title is transferred into trust.

171 (d) After land is in trust both a title search of county records and a title status report
172 requested by the Division of Land Management from the Bureau of Indian Affairs shall
173 verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid
174 encumbrance is one that has been preapproved, in writing, by the Division of Land
175 Management based on a standard operating procedure that is effective upon approval by
176 the Oneida Land Commission.

177 (e) Division of Land Management applications to convert Tribal fee land into Tribal trust
178 land require an Oneida Land Commission resolution approving the said conversion.

179 601.7-2. *Deeds.* A deed is the formal document used by the Division of Land Management to
180 transfer title from one party to another.

181 (a) A valid deed shall:

182 (1) Be in writing;

183 (2) Identify the grantor (seller) and grantee (buyer);

184 (3) Provide the legal description of the real property;

185 (4) Identify the interest conveyed, as well as any conditions, reservations,
186 exceptions, or rights of way attached to the interest;

187 (5) Be signed by or on behalf of each of the grantors (sellers);

188 (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if
189 applicable; and

190 (7) Be delivered to the grantee (buyer).

191 (b) In addition to the requirements listed in section 601.7-3(a), a deed prepared for trust
192 acquisition shall include:

193 (1) The federal authority for trust acquisition;

194 (2) Any exceptions or exclusions from the State of Wisconsin's fees or other
195 transfer requirements;

196 (3) The approximate acreage of the real property being transferred to trust; and

197 (4) The authority and signature of the appropriate Department of Interior official
198 who accepts the real property into trust.

199 (c) A deed transferring fee simple title shall be recorded in the appropriate register of
200 deeds office, provided that, once the real property is in trust, the title shall be recorded
201 with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles
202 and Records Office.

203 601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and
204 order from the Judiciary, and may occur in the following ways:

205 (a) Eminent Domain. Eminent domain is the right of the Nation's government to acquire
206 Tribal member individual fee land within the Reservation for public uses without the
207 consent of private owners.

208 (1) For the purposes of this section, public uses include, but are not limited to,
209 environmental protection, streets, highways, sanitary sewers, public utility/sites,
210 waste treatment facilities and public housing.

211 (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate
212 an agreeable taking by making an offer to purchase based on an appraisal of the
213 real property. The appraisal amount may be based on an appraisal provided by
214 the Nation. In the event the property owner objects to the Nation's appraisal, they
215 may obtain an independent appraisal at their own cost. For the purposes of this
216 section, an appraisal means process for estimating a piece of real property's value.

217 (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

218 (b) Foreclosure. Foreclosures may occur subject to the Mortgage and Foreclosure law
219 when a Tribal member ceases payment on a leasehold mortgage.

220 (c) Tribal Land Consolidation. Section 207 of the Indian Land Consolidation Act
221 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-
222 608, 98 Stat. 3171) is incorporated into this law, which provides a mechanism for real
223 property within the Reservation to escheat, or pass, to the Nation.

224 (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership
225 interest in real property escheats, or passes, to the Nation under the following
226 circumstances, provided that the Nation shall provide just compensation for the
227 interest:

228 (A) The real property is within the Reservation boundaries;

229 (B) The decedent's ownership in the given parcel of land is two percent
230 (2%) or less of the total acreage; and

231 (C) The interest is incapable of earning one hundred dollars (\$100.00) in
232 any one (1) of the five (5) years immediately following the decedent's
233 death.

234 (2) A decedent's heirs may appeal a land consolidation under this section to the
235 Judiciary.

236 (3) Land consolidation is subject to the probate requirements, as included in this
237 law and accompanying rules.

238 (d) Transferring Interests Inherited by Non-Tribal Members. If the owner of an interest
239 of real property which is held in trust or restricted fee status located within the
240 Reservation devises such interest to a non-Tribal member, the Nation may acquire the
241 said interest by paying the fair market value of the interest determined as of the date of
242 the decedent's death. Such transfer is effective upon receipt of an order transferring
243 inherited interests from the Judiciary pursuant to section 205 of the Indian Land
244 Consolidation Act.

245 (1) An order transferring inherited interests may not be granted if:

246 (A) While the decedent's estate is pending, the non-Indian devisee
247 denounces his or her interest in favor of a Tribal member person;

248 (B) The interest is part of a family farm that is devised to a member of the
249 immediate family of the decedent, provided that such a restriction shall be
250 recorded as part of the deed relating to the interest involved; or

251 (C) The devisee agrees in writing that the Nation may acquire the interest
252 for fair market value only if the interest is offered for sale to a person or
253 entity that is not a member of the immediate family of the owner of the
254 interest.

255 (e) Easements for Landlocked Properties. The Division of Land Management and the
256 Oneida Land Commission shall jointly develop rules regarding requests for easements for
257 landlocked properties.

258 601.7-4. Division of Land Management shall work with the Oneida Law Office in order to
259 pursue an involuntary transfer of title.

260

261 **601.8. Probate**

262 601.8-1. The Division of Land Management shall process and administer probate estates and,
263 where necessary, shall refer probate estates to the Oneida Judiciary for formal administration.

264 The Division of Land Management and the Oneida Land Commission shall jointly create any
265 rules necessary to administer probate estates. The Division of Land Management shall:

- 266 (a) Process applications for probate administration;
- 267 (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate
268 decedent's property pursuant to applicable laws and rules;
- 269 (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- 270 (d) Require and receive affidavits of service;
- 271 (e) Receive waiver and consent to probate administration forms and any related
272 affidavits;
- 273 (f) Issue notice to creditors of the probate's administration, receive creditor claims for
274 consideration and settlement, and issue discharge of creditors when appropriate;
- 275 (g) Receive and process all estate inventories;
- 276 (h) Receive and process, when possible, land transactions in accordance with this law and
277 receive proof of recording documents;
- 278 (i) Receive estate receipts;
- 279 (j) In undisputed matters, receive and process statement of personal representative to
280 close estate and issue discharge of personal representative; and
- 281 (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and
282 participate in the Judiciary's proceedings as necessary.

283 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring
284 appointment of a guardian ad litem and shall have all the above powers conferred upon the
285 Division of Land Management in such cases. In addition, the Judiciary shall hear and administer
286 probate estates in which the Division of Land Management seeks appointment as a personal
287 representative.

288

289 **601.9. Leasing of Real Property**

290 601.9-1. The Division of Land Management shall administer and process all leasing of Tribal
291 land for residential, agricultural and commercial purposes in accordance with the Leasing law.
292 The Leasing law definition of Tribal land does not include Tribal fee land; pursuant to this law,
293 the Division of Land Management shall administer and process all leases of Tribal fee land
294 lasting longer than one (1) year that are not made as part of the homeownership program using
295 federal funding in accordance with the Leasing law.

296

297 **601.10. Records**

298 601.10-1. *Purpose.* The Division of Land Management shall oversee the administration of the
299 Oneida Nation Register of Deeds which shall accept and record documents related to real
300 property located within the Reservation.

301 601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents
302 that provide evidence of activities affecting real property title, preserve the record of a title
303 document and give constructive notice of changes to a title document. Further, said documents
304 shall be originals, signed duplicates or certified copies. The following documents may be
305 accepted by the Oneida Nation Register of Deeds.

- 306 (a) Deeds;
- 307 (b) Probate orders;
- 308 (c) Mortgages and other valid liens;
- 309 (d) Easements, covenants, and restrictions;
- 310 (e) Certified survey maps and plats of survey;

- 311 (f) Patents;
- 312 (g) Declarations of involuntary transfer or taking;
- 313 (h) Satisfactions;
- 314 (i) Leases made pursuant to the Leasing law;
- 315 (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- 316 (k) Marriage agreements; and
- 317 (l) Correction of title defects.

318 601.10-3. *Accessibility*. The Oneida Nation Register of Deeds shall provide open access to land
319 records and title documents.

320 601.10-4. *Trust Land*. All documents pertaining to Tribal trust land and Individual trust land
321 shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs
322 Land Titles and Records Office.

323 601.10-5. *Tribal Seal*. The Nation’s Secretary shall provide the Division of Land Management
324 with the Nation’s seal to be used to authenticate documents which are certified by the Oneida
325 Nation Register of Deeds.

326

327 **601.11. Real Estate Education Requirements and Certifications**

328 601.11-1. *Wisconsin Real Estate Education and Exam Required*. All persons engaging in the
329 acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate
330 closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to
331 obtain a Wisconsin Real Estate License, but are required to fulfill the pre-license education
332 requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4)
333 courses of continuing education requirements as required of Wisconsin real estate licensees. The
334 Division of Land Management Director shall select which continuing education courses are
335 required and the Oneida Law Office shall provide the Director with a recommendation. In
336 addition to Wisconsin’s minimum education requirements as applied to the Nation’s real estate
337 employees in this law, the Division of Land Management shall require such employees to attend
338 real estate training specific to the Nation’s goals and unique positions as the Oneida Law Office
339 shall offer on an as-needed basis.

340 (a) While Wisconsin real estate law allows persons engaged in the sale of real estate to
341 earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular
342 employees of the Nation and, therefore, shall waive any commission for which they
343 might otherwise be eligible.

344 (b) It is critical to the Oneida Nation’s goal to reacquire property within the original
345 Reservation boundaries to have employees educated and experienced in executing real
346 estate transactions. Accordingly, the Division of Land Management shall employ a
347 minimum of one (1) employee whose primary focus is real estate acquisitions and shall
348 ensure that a minimum of two (2) employees are educated and trained as backups to the
349 primary.

350 601.11-2. *TAAMS Certification Required*. All persons responsible for encoding leasing
351 information shall obtain a TAAMS certification, which includes, but is not limited to, the
352 following positions:

- 353 (a) Residential and Commercial Leasing Specialists;
- 354 (b) Land Title and Trust Manager; and
- 355 (c) Title Examiner.

356 601.11-3. *Fiduciary Responsibility*. All persons engaged in the buying or selling of Tribal land
357 shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all
358 applicable Tribal and federal laws.
359

360 **601.12. Organization**

361 601.12-1. *Comprehensive Housing Division*. The Comprehensive Housing Division shall
362 oversee all residential transactions, excluding residential leases, within the Reservation and shall
363 process and administer said transactions using the applicable of the Landlord-Tenant law, the
364 Mortgage and Foreclosure law and/or the Eviction and Termination law. In addition, the Oneida
365 Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking
366 authority to provide process requirements, including but not limited to advertising, notice,
367 prequalification, and selection, that apply in all circumstances when the Nation is selling a
368 residential property.

369 601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7)
370 elected Tribal members and shall:

- 371 (a) Interpret the provisions of this law and create policy to guide the Division of Land
372 Management in implementing the same;
- 373 (b) Approve or deny all easements and land use licenses;
- 374 (c) Review and adopt the Division of Land Management’s standard operating procedures
375 for entering into agriculture and commercial leases pursuant to the Leasing law;
- 376 (d) Approve or deny all acquisition of Tribal land;
- 377 (e) Allocate and assign land uses to all Tribal land, except those uses governed by the
378 Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the
379 Oneida Planning Department shall develop in collaboration with affected Oneida
380 divisions and departments and the Oneida Land Commission; and
- 381 (f) Name all buildings, roads, parks and the like on Tribal land.

382 601.12-3. *Division of Land Management*. The Division of Land Management shall implement
383 this law in accordance with the policy directives provided by the Oneida Land Commission. The
384 Division of Land Management shall:

- 385 (a) Forward requests for easements and land use licenses to the Oneida Land
386 Commission based on the easement and land use license rules jointly developed by the
387 Division of Land Management and the Oneida Land Commission;
- 388 (b) Administer and oversee the Oneida Nation Register of Deeds;
- 389 (c) Enter into and administer residential, agricultural and commercial leases pursuant to
390 the Leasing law and the Eviction and Termination law and any corresponding rules;
- 391 (d) Prepare title reports and process trust transactions; and
- 392 (e) Process land acquisition transactions as approved by the Oneida Land Commission.

393
394 *End.*

~~395~~
396

397
398 Adopted - BC-5-29-96-A
399 Amended-BC-3-01-06-D
400 Amended-BC-04-28-10-E
401 Amended – BC-02-25-15-C
402 Amended-BC-05-13-15-B

MEMORANDUM

DATE: January 16, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Real Property Amendments**

I. Background

This Law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C and BC-05-13-15-B. A public meeting was held on December 22, 2016. The fiscal analysis was completed on Draft eight (8). Public meetings were held October 20, 2016 and December 1, 2016. According to the Legislative Reference Office, the new Law contains the following:

- Amendments to the Real Property Law incorporate the Leasing Law by reference, and upon adoption will replace the version of this Law adopted by BC-05-13-15-B.
- Provisions were removed from the current Real Property Law and drafted into the following Laws:
 - Provisions related to rental housing opportunities provided by the Nation were drafted into the Landlord-Tenant Law.
 - Provisions related to mortgages and foreclosures within the Nation's mortgage programs were drafted into the Mortgage and Foreclosure Law.
 - Provisions related to terminating or evicting from the Nation's leasing or rental programs were drafted into the Eviction and Termination Law.
- The Rules of Statutory Construction were removed from the current Real Property Law.
- The probate section was changed and the Division of Land Management and the Oneida Land Commission have rulemaking authority to jointly develop probate rules.

- Real Estate Trust Accounts section was removed and added under the Mortgage and Foreclosure Law.
- The proposed Real Property Law amendments state that all leases, go through the Leasing Law process for renewal and approval.
- General contracts were removed from the records section. The amended Law refocuses the Oneida Register of Deeds to only accept records that affect land titles.
- The Real Estate Licensing section was amended.
 - The Nation’s Tribal Property License requirement is replaced with the State of Wisconsin Real Estate pre-license educational requirements, continuing education requirements and the Wisconsin Real Estate License exam.
 - Wisconsin Real Estate education and exam is required for all persons performing real estate closings. However, the persons are not required to obtain a WI license.
 - An Oneida specific training is still required that focuses directly on the Nation’s acquisition goals and the unique circumstances that apply to Indian Nations.
 - Persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and are not be eligible for a commission or any related form of compensation or remuneration.
 - Requiring State of Wisconsin education and exam places those who purchase land on behalf of the Nation on equal footing with the seller, which is an advantage to the Nation.
 - The Land Commission is removed from enforcement issues arising from questions regarding licensing complaints or disputes.
 - The amendments require that two (2) additional Division of Land Management staff are educated and trained as backups to the primary staff member engaged in acquisition of land on behalf of the Nation.
- Trust Asset and Accounting Management System (TAAMS) certification was added to the Real Estate Licensing and Certification section. The TAAMS system is required by the BIA to track land title documents and land transactions, contracts and leases as well as reporting.

- The Tribal Real Estate Tax section was removed from the current Law because the Real Estate Tax Code referenced has yet to be developed and is not currently intended to be developed.
- The Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016, and is repealed when the last existing land assignment expires. Further, the amendments add that the Nation may not acknowledge any new land assignments and in order to be eligible for a Tribal loan issued against an interest in a land assignment, it must first be converted to a residential lease. Land assignments are being phased out because the Nation no longer assigns land, instead a residential lease is utilized.
- The term of office was removed from the Organization section pertaining to the Oneida Land Commission as this detail appropriately appears in the Bylaws of the Land Commission. The amended Law only includes the Land Commission's responsibilities that are directly related to this Law.
- The disposition of estates of deceased Tribal members section of the current Law was amended to the probate section.
- The amended Law moves the appointment of a personal representative earlier in the process.
- The Oneida Land Commission will no longer have the authority to create the Nation's Official seal to be used by the Division of Land Management. The Nation's seal will now be provided by the Oneida Business Committee.
- The following entities have been granted Rulemaking Authority to develop rules under this Law:
 - The Division of Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties.
 - The Division of Land Management and the Oneida Land Commission shall further develop rules related to probate. The rules will include timelines to ensure timely probate completion and land consolidation.
 - The Oneida Land Commission shall develop rules to allocate and assign land uses to all Tribal land, except uses governed by the Public Use of Tribal Land Law.
 - The Oneida Land Commission and upon implementation, the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process

requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property.

- The Division of Land Management and the Oneida Land Commission shall develop easement and land use license rules.
- The Oneida Planning Department shall develop the Land Use Technical Unit rules in collaboration with the Oneida Land Commission

II. Executive Summary of Findings

A “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

According to the Division of Land Management, there are no projected increases in expenses due to the implementation of these. All parties required to create administrative rules under the Real Property Law shall have all such rules finalized to become effective on June 25, 2017, provided that the rules related to residential sales by the Nation may have an earlier effective date.

III. Financial Impact

No impact.

IV. Recommendation

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



Legislative Operating Committee February 1, 2017

Conflict of Interest Amendments

| | |
|-------------------------------------|--|
| Submission Date: 7/21/16 | Public Meeting: 1/3/17 |
| LOC Sponsor: Brandon Stevens | Emergency Enacted: 08/10/16 Expires: 02/10/17 |

Summary: An emergency amendment to the Conflict of Interest Policy in regards to the HUD Site Monitoring Review Finding #1.

7/13/16 OBC: Motion by Lisa Summer (in regards to finding #1) to request the LOC to develop emergency amendments to the COI Policy to address mandatory recusal in the event of the certain conflicts within 45 days; and to request final amendments as possible, seconded by Brandon Stevens. Motion carried unanimously.

8/3/16 LOC: Motion by David P. Jordan to approve the Conflict of Interest Policy Emergency Amendments resolution and forward to the Oneida Business Committee for consideration; seconded Jennifer Webster. Motion carried unanimously.

8/10/16 OBC: Motion by Lisa Summers to adopt resolution # 08-10-16-M Conflict of Interest Policy Emergency Amendments, seconded by Tehassi Hill. Motion carried unanimously.

8/17/16 LOC: Motion by David P. Jordan to add the Conflict of Interest Policy Emergency Amendments to the active files list with Brandon Stevens as the sponsor; 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. Clorissa is working on draft.

11/17/16: *Work Meeting Held.* Present: David Jordan, Fawn Billie, Tehassi Hill, Jenny Webster, Brandon Stevens, Troy Parr, Travis Wallenfang, Pat Garvey, Clorissa Santiago, Candice Skenandore, Jen Falck, and JoAnne House. Place the item on the 12/7/16 LOC agenda- to approve a public meeting packet. Require the Development Division and Indian Preference Office to submit written comments during the public comment period.

12/07/16LOC: Motion by Jennifer Webster to approve the Conflict of Interest Amendments public meeting packet with the definition changes, and direct the LRO to hold a public meeting on January 3, 2017; seconded by Tehassi Hill. Motion carried unanimously.

12/14/16 OBC: Motion by Jennifer Webster to adjourn at 11:59 a.m.; and to defer the remaining agenda items to the December 28, 2016, regular Business Committee meeting, with item “VIII.A. Review concern # 2016-CC-21 regarding Tsyunhehkwaw operations” to be addressed first on that agenda, seconded by Melinda J. Danforth. Motion carried unanimously.

12/28/16 OBC: Meeting cancelled.

1/3/17: Public Meeting Held

1/11/17 OBC: Motion by Lisa Summers to accept the Conflict of Interest memorandum update from the

Legislative Operating Committee, seconded by David Jordan. Motion carried unanimously.

1/20/17: *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Candice Skenandore, and Tani Thurner.

Next Steps:

- Review public meeting comment memo.
- Approve the adoption packet and send to the Oneida Business Committee for consideration.
- Approve emergency extension packet and send to the Oneida Business Committee for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: January 18, 2017
RE: Conflict of Interest Law Amendments: Public Meeting Comment Review

On January 3, 2017, a public meeting was held regarding amendments to the Conflict of Interest Policy. The amendments would:

- Permanently adopt the emergency amendment which sets a minimum standard for prohibited activities resulting from a disclosed conflict of interest and requires that no employee, officer or agent of the Nation may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest;
- Permanently adopt the emergency amendment which expanded the definition of conflict of interest to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party;
- Add a definition for the term “immediate family member;”
- Require departments and entities of the Nation to develop standard operating procedures and/or work standards outlining prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest; and
- Permanently adopt emergency amendments which allow division directors the discretion, to the extent permitted by applicable law, policy or rule, to decide if a conflict of interest has been properly alleviated or mitigated according to standard operating procedures.

There were no oral or written comments received during the public meeting on January 3, 2017, or during the public meeting comment period ending on January 10, 2017.



LEGISLATIVE OPERATING COMMITTEE
Public Meeting on the Conflict of Interest Law Amendments
Business Committee Conference Room-2nd Floor
Norbert Hill Center
January 3, 2017, 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, Fawn Billie, Clorissa Santiago, Maureen Perkins, Danelle Wilson, Candice Skenandore

Conflict of Interest Law Amendments

Brandon Stevens: Greetings. The time is 12:15 p.m. and today's date is Tuesday January 3, 2017. I will now call the public meeting for the Conflict of Interest Law Amendments to order. The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Tuesday, January 3, 2017. In attendance from the LOC is Councilwoman Fawn Billie and Councilman Tehassi Hill.

We will begin today's public meeting for Conflict of Interest Law Amendments. This is a proposal that would:

- Permanently adopt the emergency amendment which sets a minimum standard for prohibited activities resulting from a disclosed conflict of interest and requires that no employee, officer or agent of the Nation may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest;
- Permanently adopt the emergency amendment which expanded the definition of conflict of interest to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party;
- Add a definition for the term "immediate family member;"
- Require departments and entities of the Nation to develop standard operating procedures outlining prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest; and

- Allow division directors the discretion, to the extent permitted by applicable law, policy or rule, to decide if a conflict of interest has been properly alleviated or mitigated according to standard operating procedures.

And we'll set the time limit at five minutes per person and we have no one signed up so far and we'll wait five minutes. Ok we'll wait for five minutes, or five minutes after, it's not really set. Alright, we'll call this, so there's no speakers that signed up so we'll call this meeting closed at 12:22 p.m. for the public hearing on the Conflict of Interest Law. Written comments may be submitted by close of business on Tuesday, January, 10th. Thank you.

-End of meeting-



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: February 8, 2017
RE: Conflict of Interest Law Amendments

Please find the following attached backup documentation for your consideration of the Conflict of Interest Law Amendments:

1. Resolution: Conflict of Interest Law Amendments
2. Statement of Effect: Conflict of Interest Law Amendments
3. Conflict of Interest Law Amendments Legislative Analysis
4. Conflict of Interest Law (Redline)
5. Conflict of Interest Law (Clean)
6. Conflict of Interest Law Amendments Fiscal Impact Statement

Overview

The attached Resolution will adopt permanent amendments to the current Conflict of Interest Policy (the "Policy") that are necessary in order to keep the Policy in compliance with requirements set by the United States Department of Housing and Urban Development. Amendments to the Policy were adopted by the Oneida Business Committee (OBC) on an emergency basis through Resolution BC-08-10-16-M. The emergency amendments expire on February 10, 2017.

The permanent amendments:

- Refer to the Policy as the Conflict of Interest law (the "Law") moving forward;
- Expand the definition of "conflict of interest" to include any interests, whether the interest is real or apparent and to include any financial or familial interest an elected official, officer, political appointee, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party [see 217.3-1(b)];
- Clarify and expand who the Law applies to, so the Law is consistent in its application to the Nation's agents, elected officials, officers, political appointees, employees, consultants, and appointed or elected members of a board, committee or commission;
- Delegate responsibility to maintain, collect, and distribute conflict of interest disclosure forms to the Nation's Human Resource Department (HRD) for employees, and the Office of the Nation's Secretary for elected officials, officers, political appointees, and elected or appointed members of a board, committee or commission [see 217.4-3];
- Add penalties for failure to disclose a conflict of interest for elected officials, officers and

political appointees *[see 217.5-2, and 217.5-4]*;

- Clarify that when a supervisor is provided with credible evidence that an employee failed to disclose a conflict of interest, that employee will be placed on leave pursuant to the Investigative Leave Policy, except this Law requires the investigation be completed within seven (7) days, rather than the fifteen (15) days identified in the Investigative Leave Policy *[see 217.5-1]*;
- Create a new section titled, “Prohibited Activities Resulting from a Disclosed Conflict of Interest” which states that once a conflict of interest is disclosed an employee, consultant, elected official, officer, agent, political appointee, or elected or appointed member of a board, committee and commission cannot participate in the selection, award or administration of any contract, including those contracts supported by a federal award, or any activities identified in the Nation’s laws, policies or rules *[see 217.6-1]*;
- Require the Nation’s entities to create standard operating procedures and/or work standards that outline further prohibited activities resulting from a disclosed conflict of interest, and identify ways to alleviate conflicts of interest so that a person is not prohibited from participating in normal activities *[see 217.6-2]*.

A public meeting on the proposed amendments was held on January 3, 2017, in accordance with the Legislative Procedures Act. The Legislative Operating Committee received no written or oral comments during the public comment period ending on January 10, 2017.

Requested Action

Approve the Resolution: Conflict of Interest Law Amendments

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Conflict of Interest Law Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Conflict of Interest Policy (the "Policy") was adopted by the Oneida Business Committee by resolution BC-06-10-98-C; and
- WHEREAS,** an audit completed by the United States Department of Housing and Urban Development (HUD) was received by the Oneida Nation on June 12, 2016, which showed that the Policy was not in compliance with certain HUD requirements; and
- WHEREAS,** HUD gave the Oneida Nation ninety (90) days to become compliance with HUD requirements; and
- WHEREAS,** the Oneida Business Committee adopted emergency amendments to the Policy pursuant to Resolution BC-08-10-6-M in accordance with the emergency adoption process set forth in the Legislative Procedures Act (LPA); and
- WHEREAS,** the emergency amendments brought the Policy into compliance with HUD requirements; and
- WHEREAS,** the emergency amendments to the Policy expire February 10, 2017; and
- WHEREAS,** the permanent amendments to the Policy are necessary to remain compliant with the HUD requirements; and
- WHEREAS,** permanent amendments include changing the Policy to a law to align with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward; and
- WHEREAS,** amendments expand and clarify who the Law applies to so that the Law is consistently applied to all of the Nation's agents, elected officials, officers, political appointees, employees, consultants, and appointed or elected members of a board, committee or commission; and
- WHEREAS,** the amendments delegate responsibility to maintain, collect, and distribute conflict of interest disclosure forms to the Nation's Human Resource Department (HRD) for employees, and the Office of the Nation's Secretary for elected officials, officers, political appointees, and elected or appointed members of a board, committee or commission; and

WHEREAS, the amendments add penalties for failure to disclose a conflict of interest for elected officials, officers and political appointees; and

WHEREAS, the amendments clarify when a supervisor is provided with credible evidence that an employee failed to disclose a conflict of interest, that employee will be placed on leave pursuant to the Investigative Leave Policy, except this Law requires the investigation be completed within seven (7) days, rather than the fifteen (15) days identified in the Investigative Leave Policy; and

WHEREAS, the amendments specify that when an employee, consultant, elected official, political appointee, officer, agent, or appointed or elected member of a board, committee or commission discloses a conflict of interest, he or she may not participate in the selection, award, or administration of a contract including contracts supported by a Federal award or any other prohibited activities identified in the Nation's laws, policies or rules; and

WHEREAS, the amendments require the Nation's entities to create standard operating procedures and/or work standards that outline further prohibited activities resulting from a disclosed conflict of interest and identify ways to alleviate and mitigate conflicts of interest; and

WHEREAS, a public meeting on the amendments was held on January 3, 2017, in accordance with the LPA, and no written or oral comments were received by the Legislative Operating Committee during the public comment period ending on January 10, 2017.

NOW THEREFORE BE IT RESOLVED, that amendments to the Conflict of Interest law are hereby adopted and are effective immediately.



Statement of Effect
Conflict of Interest Law Amendments

Summary

This Resolution adopts permanent amendments to the Conflict of Interest Law (the “Law”).

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This resolution adopts permanent amendments to the Conflict of Interest Policy (the “Policy”).

In December 2015 the United States Department of Housing and Urban Development (HUD) conducted an on-site monitoring review of the Oneida Housing Authority and provided a report to the Nation on June 12, 2016 in which they found that the Nation’s Conflict of Interest Policy was not in compliance with 2 CFR Section 200.318(c)(1), regarding contracts supported by a federal award. The Nation was given ninety (90) days to bring the Conflict of Interest Policy into compliance.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee (OBC) to take emergency action to amend a law where it is "necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population" and when enactment or amendment of legislation is required sooner than would be possible under the LPA. Through Resolution BC-08-10-16-M, the OBC enacted emergency amendments to the Policy to obtain compliance with HUD’s regulations.

The emergency amendments brought the Policy into compliance by implementing the following revisions:

- Expanding the definition of “conflict of interest” to include any interests, whether the interest is real or apparent and to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party;
- Adding a new section titled “Prohibited activities resulting from a Conflict of Interest” which includes the required language that no employee, officer, or agent may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a conflict of interest.

In order for the Policy to remain compliant with HUD, the emergency amendments must be permanently adopted. The Policy’s emergency amendments expire February 10, 2017.

Since the emergency amendments were adopted on August 10, 2016, additional amendments to the Policy have been proposed. Amendments now refer the Policy as a law. This aligns with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward.

Amendments to the Law clarify and expand who the Law applies to, so that the Law is consistent in including the Nation's agents, elected officials, officers, political appointees, employees, consultants, and appointed or elected members of a board, committee or commission throughout the Law.

Currently, the Policy states that the Oneida Law Office shall be responsible for creating a standard form, and any specialized forms, upon which conflicts of interest can be disclosed. Although the Policy states that forms to disclose conflicts of interest will be created, it is currently unclear on who shall maintain and distribute those forms. The amendments delegate responsibility to maintain, collect, and distribute conflict of interest disclosure forms to the Nation's Human Resource Department (HRD) for employees, and the Office of the Nation's Secretary for elected officials, officers, political appointees, and elected or appointed members of a board, committee or commission.

The Policy currently only provides penalties for non-disclosure of a conflict of interest to employees, members of boards, committees and commissions and those who contract with the Nation. The Policy includes employees in the definition for who can possess a conflict of interest but is silent on any penalties an elected official would face if they failed to disclose a conflict of interest. The amendments add penalties for failure to disclose a conflict of interest for not only elected officials, but officers and political appointees as well.

Additionally, the amendments clarify that when a supervisor is provided with credible evidence that an employee failed to disclose a conflict of interest, that employee will be placed on leave pursuant to the Investigative Leave Policy, except this Law requires the investigation be completed within seven (7) days, rather than the fifteen (15) days identified in the Investigative Leave Policy.

The amendments in the Law also expand the section regarding prohibited activities resulting from a disclosed conflict of interest by including consultants, elected officials, political appointees, and elected or appointed members of a board, committee and commission in addition to employees, officers, and agents. The amendments specify that after a conflict is disclosed, the named parties cannot participate in the selection, award or administration of any contract, including those contracts supported by a federal award, or any activities identified in the Nation's laws, policies or rules.

The amendments also require the Nation's entities to create standard operating procedures and/or work standards that outline further prohibited activities resulting from a disclosed conflict of interest, and identify ways to alleviate conflicts of interest so that a person is not prohibited from participating in normal activities.

A public meeting on the proposed amendments was held on January 3, 2017, in accordance with the Legislative Procedures Act. The Legislative Operating Committee received no written or oral comments during the public comment period which ended on January 10, 2017.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.



Conflict of Interest Amendments Legislative Analysis

SECTION 1. BACKGROUND

| REQUESTER: Brandon Stevens | SPONSOR: Brandon Stevens | DRAFTER: Clorissa N. Santiago | ANALYST: Candice E. Skenandore |
|--------------------------------|---|----------------------------------|-----------------------------------|
| Intent | Permanently adopt the emergency amendments which bring this legislation in compliance with HUD requirements as well as approve additional changes to the Law. | | |
| Purpose | Ensure that anyone that has access to confidential information be subject to specific limitations in order to protect the interests of the Nation [See Conflict of Interest 217.1-1]. | | |
| Affected Entities | The Nation’s agents; consultants; elected officials; employees; the entities; members who serve on a board, committee or commission; OBC officers, political appointees and any person that is associated with the above persons in personal, martial, familial, business, financial or other relationships. The Law does not pertain to insurance providers seeking to enter into third party payment agreements with the Pharmacy [See Conflict of Interest 217.3-1 & 217.7-2]. The HRD and the Secretary’s Office are responsible for maintaining and distributing/collecting annual Conflict of Interest disclosure forms [See Conflict of Interest 217.4-3 (a) & (b)]. | | |
| Affected Legislation | Investigative Leave Policy, Personnel Policies and Procedures, Comprehensive Policy Governing Boards, Committees and Commissions, Removal Law. | | |
| Enforcement/Due Process | <ul style="list-style-type: none"> ▪ Employees who fail to disclose a conflict of interest will be placed on leave pursuant to the Investigative Leave Policy; except that this Law requires the investigation to be concluded within 7 days [See Conflict of Interest 217.5-1]. If an employee receives an adverse employment action due to failing to disclose a conflict of interest, the employee can appeal the adverse employment action pursuant to the Nation’s personnel policies and procedures. ▪ Elected officials or officers who fail to disclose a conflict of interest may be subject to removal or face penalties pursuant to the Nation’s laws regarding penalties [See Conflict of Interest 217.5-2]. ▪ Members of a board, committee or commission may be subject to removal pursuant to Removal Law or have their appointment terminated by the OBC pursuant to the Comprehensive Policy Governing Boards, Committees and Commissions. Members may also face penalties pursuant to the Nation’s laws regarding penalties [See Conflict of Interest 217.5-3]. ▪ Political appointees that fail to disclose a conflict may be subject to discipline at the discretion of the elected official they serve [See Conflict of Interest 217.5-4]. ▪ A person or organization that contracts with the Nation may have their contracts terminated for failing to disclose a conflict [See Conflict of Interest 217.5-5]. | | |
| Public Meeting | A public meeting was held on January 3, 2017 and no comments were received. | | |

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

- 2 A. The Oneida Business Committee (OBC) requested the Legislative Operating Committee
 3 (LOC) to develop emergency amendments to the Conflict of Interest Policy (Law) to

4 address mandatory recusal in the event of certain conflicts [*See OBC Meeting Minutes,*
5 *July 13, 2016*]. This request stemmed from an audit completed by the U.S. Department
6 of Housing and Urban Development (HUD) on June 12, 2016, which found that the Law
7 was not in compliance with certain HUD requirements and gave the Oneida Nation
8 (Nation) 90 days to become compliant.

- 9 B. The OBC adopted emergency amendments to comply with the HUD audit pursuant to
10 resolution BC-08-10-16-M.
- 11 C. These emergency amendments are set to expire on February 10, 2017. The Legislative
12 Procedures Act allows the OBC to extend the emergency amendments for up to an
13 additional six months, if necessary [*See Legislative Procedures Act 16.9-5 (b)*].
- 14 D. The emergency amendments, along with additional changes to the Law, are brought
15 forward for consideration of permanent adoption.

16 17 **SECTION 3. CONSULTATION**

- 18 A. The following departments/divisions were consulted when developing the revisions to
19 this Law: Oneida Law Office, Development Division, and Indian Preference.
- 20 B. A search of similar tribal legislation was conducted and the Stockbridge-Munsee
21 Community Band of Mohican Indians' Code of Conduct and Menominee Indian Tribe of
22 Wisconsin's Conflict of Interest were reviewed when developing this legislative analysis
23 [*See Stockbridge-Munsee's Code of Conduct, CH. 51 and Menominee Indian Tribe of*
24 *Wisconsin's Ethics, CH. 77, Article I. Conflict of Interest*].

25 26 **SECTION 4. PROCESS**

- 27 A. The developmental process of this Law is in compliance with the process set forth in the
28 Legislative Procedures Act.
- 29 B. July 13, 2016: This item was added to the Active Files List.
- 30 C. January 3, 2017: The LOC held a public meeting.
- 31 D. No public comments were received.

32 33 **SECTION 5. PROPOSED AMENDMENTS TO LEGISLATION**

34 Proposed amendments to the Law include the following:

- 35 A. Expand the definition section to include terms required by HUD as well as better clarify
36 identified persons [*See Conflict of Interest 217.3-1*].
- 37 B. Expand who the Law applies to which now includes the Nation's agents, elected officials,
38 officers, political appointees and anyone with familial ties to an agent, elected official,
39 employee, consultant, appointed or elected member of a board, committee or commission
40 and officers [*See Conflict of Interest 217.4-1 (a)*].
- 41 C. Require the Secretary to inform all elected officials, officers, political appointees and
42 elected/appointed members of boards, committees and commissions of this Law and
43 require the identified persons to disclose any conflicts of interest [*See Conflict of Interest*
44 *217.4-2 (c)*]. In addition, the Law delegates the Human Resources Department (HRD)
45 and the Secretary's Office with the responsibility of maintaining and distributing conflict
46 of interest disclosure forms.
- 47 ▪ HRD must collect annual conflict of interest disclosure forms from all employees.
 - 48 ▪ The Secretary's Office must collect annual conflict of interest disclosure forms
49 from all elected officials, officers, and elected/appointed members.
 - 50 ▪ Employees, elected officials, officers, and elected/appointed members must
51 disclose a conflict of interest as soon as it arises [*See Conflict of Interest 217.4-3*]

- 52 (a) & (b)].
- 53 D. Clarify that if a supervisor is provided with credible evidence that an employee failed to
- 54 disclose a conflict of interest, that employee will be placed on leave pursuant to the
- 55 Investigative Leave Policy, except this Law requires the investigation be completed
- 56 within seven days, rather than the 15 days identified in the Investigative Leave Policy. If
- 57 the investigation substantiates that the employee failed to disclose a conflict, the
- 58 supervisor must terminate the employee's employment [*See Conflict of Interest 217.5-1*
- 59 *and Investigative Leave Policy 8-1*].
- 60 E. Subject elected officials, officers and political appointees to penalties for failing to
- 61 disclose a conflict of interest [*See Conflict of Interest 217.5-2*]. Currently, only
- 62 employees; members of boards, committees and commissions, and those who contract
- 63 with the Nation are subject to penalties for failing to disclose conflicts.
- 64 F. Specify that when a conflict of interest is disclosed, an elected official, employee,
- 65 consultant, officer, agent, political appointee or an elected/appointed member of board,
- 66 committee or commission cannot participate in the selection, award or administration of a
- 67 contract, including contract support, by a Federal award or any prohibited activities
- 68 identified in the Nation's laws, policies or rules [*See Conflict of Interest 217.6-1*].
- 69 G. Require the Nation's entities to create standard operating procedures and/or work
- 70 standards that further outline prohibited activities when a conflict of interest is disclosed
- 71 as well as ways to alleviate the conflict of interest [*See Conflict of Interest 217.6-2*].
- 72

73 **SECTION 6. EFFECT ON EXISTING LEGISLATION, ENFORCEMENT, & DUE**

74 **PROCESS**

- 75 A. Personnel Policies and Procedures
- 76 ▪ An employee can have his/her employment terminated for failing to disclose a
- 77 conflict of interest. However, he/she can appeal the adverse employment action
- 78 pursuant to the Nation's laws, rules and policies governing employment [*See*
- 79 *Conflict of Interest 217.5-1*].
- 80 B. Removal Law and Comprehensive Policy Governing Boards, Committees and
- 81 Commissions
- 82 ▪ If an officer, elected official, or elected member fails to disclose a conflict of
- 83 interest, he/she may be subject to removal pursuant to the Removal Law and if an
- 84 appointed member of an entity fails to disclose a conflict of interest, the OBC
- 85 may terminate his/her appointment in accordance with the law governing boards,
- 86 committees and commissions for appointed officials [*See 217.5-2 & 217.5-3*].
- 87 C. Nation's laws regarding penalties
- 88 ▪ If an elected official, officer, or elected/appointed member of a board, committee
- 89 or commission fails to disclose a conflict of interest, he/she may be subject to
- 90 penalties pursuant to laws of the Nation regarding penalties [*See Conflict of*
- 91 *Interest 217.5-2 & 217.5-3*]. The Nation currently does not have legislation
- 92 regarding penalties but if in the future such a law is adopted, elected officials,
- 93 officers, and elected/appointed members that violate this Law may face
- 94 penalties/sanctions.
- 95

96 **SECTION 7. OTHER CONSIDERATIONS**

- 97 A. Additional changes were made to ensure the Law is consistent with standard drafting
- 98 practices and to improve the clarity of the Law without affect the content of the Law.
- 99 B. Please refer to the fiscal impact statement for any financial impacts.

Draft 2 for OBC Consideration
2017 02 08

Title 2. Employment – Chapter 217 CONFLICT OF INTEREST ~~Policy~~

~~Article I.~~217.1. Purpose and Policy
~~Article II.~~217.2. Adoption, Amendment, Repeal
~~Article I.~~217.3. Definitions
217.4. General

~~Article V.~~217.5. Penalties for Non-Disclosure of a Conflict of Interest
~~Article VI.~~ Exceptions
Disclosed Conflict of Interest
217.7. Exemptions

~~Article I.~~217.6. Prohibited Activities Resulting from a

217.1. Purpose and Policy

~~1-1.~~

217.1-1 Purpose. The ~~Oneida Tribe desires~~purpose of this law is for the Nation to ensure that all employees, consultants, elected officials, officers, political appointees, officials appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the ~~Oneida Tribe Nation's~~Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the ~~Oneida Tribe Nation.~~

~~1-2. The Oneida Tribe asserts~~217.1-2. Policy. It is the policy of the Nation to assert its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the ~~Oneida Tribe Nation~~ in the course of an employee's duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights.

~~1-3. The Oneida Tribe Nation~~ asserts that no persons who work for the ~~Oneida Tribe Nation~~ or are responsible for safeguarding its interests nor their relatives, associates, partners, or anyone connected with such persons should in any way benefit against or in competition with the ~~Oneida Tribe Nation's~~ interests without full and complete prior disclosure to the ~~Oneida Tribe Nation.~~

~~Article II.~~217.2. Adoption, Amendment, Repeal

217.2-1. This ~~Policy is~~law was adopted by the Oneida Business Committee ~~by Resolution # BC-606-10-98-C; and amended by BC~~.

~~2-217.2-2.~~ This ~~Policy~~law may be amended ~~pursuant to the procedures set out in the Oneida Administrative Procedures Act 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.

217.2-3. Should a provision of this ~~Policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~Policy~~law which are considered to have legal force without the invalid portions.

~~2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this Policy are hereby superseded unless specifically re-enacted after adoption of this Policy. Specifically, the following resolutions are superseded by this Policy:~~

~~a. Resolution # BC-9-28-90-A, and~~

~~b. Resolution # BC-9-27-90-E.~~

~~Article III.~~217.2-4. In the event of a conflict between a provision of this law and a provision of

Draft 2 for OBC Consideration
2017 02 08

36 another law, the provision of this law shall control.

37 217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

38
39 **217.3. Definitions**

40 217.3-1. This article section shall govern the definitions of words ~~as~~ and phrases ~~as~~ used
41 herein within this law. All words not defined herein shall be used in their ordinary and everyday
42 sense.

43 ~~3-2-~~(a) “Agent” means a person who is authorized to act for or in place of of another,
44 which may include an employee, consultant, elected official, officer, political appointee,
45 and appointed or elected member of the Nation.

46 (b) A Conflict of interest@ shall mean means any interest, real or apparent, whether it be
47 personal, financial, political, or otherwise, in which ~~a~~an elected official, officer, political
48 appointee, employee, consultant, or appointed or elected member of any board,
49 committee or commission, or their immediate relatives family members, friends or
50 associates, or any other person with whom they have contact, have that conflicts with any
51 right of the Oneida Tribe Nation to property, information, or any other right to own and
52 operate activities free from undisclosed competition or other violation of such rights of
53 the Oneida Tribe Nation. In addition, conflict of interest also means any financial or
54 familial interest an elected official, officer, political appointee, employee, consultant, or
55 appointed or elected member or their immediate family members may have in any
56 transaction between the Nation and an outside party.

57 ~~3-3-~~(c) “Consultant” means a person who provides expertise or guidance to the Nation.

58 (d) “Elected official” means a person elected to the Oneida Business Committee who
59 does not hold an officer position.

60 (e) “Employee” means anyone employed by the Oneida Nation in one of the following
61 employed capacities: full-time, part-time, emergency temporary, limited term or on a
62 contractual basis.

63 (f) “Entity” means a department, program or service of the Nation.

64 (g) “Immediate family member” means an individual’s husband, wife, mother, father,
65 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
66 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
67 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
68 through legal adoption.

69 (h) “Member” means a person who serves on a board, committee, or commission of the
70 Nation. It does not include the Oneida Business Committee or the governing body of a
71 Tribally Chartered Corporation.

72 (i) “Nation” means the Oneida Nation.

73 (j) “Officer” means a person elected to the Oneida Business Committee holding the
74 Chairperson, Vice Chairperson, Secretary, or Treasurer position.

75 (k) “Political appointee” means a person who assists an elected member of the Oneida
76 Business Committee in their daily activities and operations.

77 (l) A Third party agreement@ shall mean means any agreement with the Pharmacy in which
78 an insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to
79 subscribers of a valid health plan of that insurance provider.

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81 **Article I (Feb 1) 217.4. General.**

82 ~~4-1. Purpose. This Policy shall be interpreted to prevent the use of inside information by which~~
83 ~~such use would be to the detriment of the Oneida Tribe.~~

84 ~~4-2. Scope.~~

85 217.4-1. Scope.

86 (a-) This ~~Policy~~law shall apply to agents, elected officials, officers, political appointees,
87 employees, consultants, appointed or elected members of boards, committees and
88 commissions, officers of the Oneida Tribe or any other persons with whom they may be
89 associated in personal, marital, familial, business, financial or other relationships.

90 (b-) Under the protection of this ~~Policy~~law are the resources of the Oneida Tribe Nation,
91 its enterprises, programs, business interests, financial information, trade secrets and any
92 other information that could be used against the Oneida Tribe Nation or those duly
93 authorized to represent its interests.

94 ~~217.4-32. Amendment of Documents.~~ The following documents shall be amended as required in
95 order to implement this ~~Policy~~law:

96 ~~a. Personnel Policies and Procedures for employees.~~

97 (a) The Nation's laws, rules and policies governing employment.

98 (1-) Prospective employees ~~will be asked shall disclose~~ whether or not they have
99 any conflicts of interest as defined in this ~~Policy~~law.

100 (2-) Current employees ~~will be asked to~~shall disclose existing conflicts of
101 interest, if any.

102 (b-) Persons or ~~entities~~organizations contracting with the Oneida Tribe must Nation shall
103 include a provision in their contract reciting the prohibition against undisclosed conflicts
104 of interest.

105 ~~e. All members of boards, committees and commissions shall be informed in writing by~~
106 ~~the Tribal Secretary of the existence of this Policy.~~

107 (c) The Oneida Nation Secretary shall inform all elected officials, officers, political
108 appointees, and elected or appointed members of the existence of this law in writing. All
109 elected officials, officers, political appointees, and elected or appointed members shall
110 disclose any conflicts of interest.

111 ~~217.4-43. Forms.~~ Forms shall be prepared upon which disclosures of conflicts which exist may
112 be listed and returned to the Oneida Business Committee for action as indicated in this
113 ~~Policy~~law. The Oneida Law Office shall be responsible for creating a standard form and any
114 specialized forms required by this ~~Policy~~law. The Nation's Human Resource Department and
115 the Office of the Oneida Nation Secretary shall be responsible for distributing and maintaining
116 conflict of interest disclosure forms.

117
118 Article V(a) The Nation's Human Resource Department shall collect conflict of interest
119 disclosure forms from all employees on an annual basis. Additionally, an employee shall
120 disclose a conflict of interest as soon as the conflict arises.

121 (b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms
122 from all elected officials, officers, political appointees, and elected and appointed
123 members on an annual basis. Additionally, an elected official, officer, political appointee,
124 or elected or appointed member shall disclose a conflict of interest as soon as the conflict
125 arises.

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217.5. Penalties for Non-Disclosure of a Conflict of Interest

217.5-1. Employees. ~~Employees found~~ If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be ~~in violation of conflicts~~ placed on leave pursuant to the Nation's Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of interest shall be ~~suspended without pay pending a complete investigation and terminated where evidence identifies that a undisclosed conflicts exists or existed. This investigation must be~~ concluded within seven (7) days of the suspension, after which the terminated employee shall have the same rights of appeal as all other employees pursuant to procedures set forth in the Personnel Policies and Procedures ~~employee being placed on leave. A supervisor shall terminate an employee from his or her employment with the Nation when an investigation substantiates that the employee failed to disclose a conflict of interest.~~

217.5-2. ~~Boards, Committees~~ *Elected Officials and Commissions.* ~~Members of boards, committees and commissions may be either removed~~ *Officers.* An elected official or officer who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law ~~for elected officials~~ or penalties pursuant to laws of the Nation regarding penalties.

217.5-3. *Elected or Appointed Members.* A member who fails to disclose a conflict of interest may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to removal pursuant to the Removal Law for elected members, or have their appointment terminated by the Oneida Business Committee pursuant to the law governing board, committees and commissions for appointed ~~officials~~ members.

217.5-~~3~~-4. *Political Appointees.* A political appointee that fails to disclose a conflict of interest may be subject to discipline at the discretion of the elected official the political appointee serves.
217.5-5. *Contracts.* ~~Entities~~ An organization or ~~persons~~ a person who ~~do~~ does not disclose conflicts of interest may be subject to termination of their contracts.

Article VI. Exceptions

217.6. Prohibited Activities Resulting from a Disclosed Conflict of Interest

217.6-1. When an existing conflict of interest is disclosed, no employee, consultant, elected official, political appointee, officer, agent, or appointed or elected member may participate in:

- (a) the selection, award, or administration of a contract including contracts supported by a Federal award; and/or
- (b) any other prohibited activities identified in any other law, policy or rule of the Nation.

217.6-2. Entities of the Nation shall develop standard operating procedures and/or work standards outlining further prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest.

- (a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it may become permissible for a party to participate under section 217.6-1(b) at the discretion of the division director and to the extent permitted by any applicable law, policy or rule. However, in all circumstances, such parties shall remain prohibited from participating under section 217.6-1(a).

217.7. Exemptions

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171 217.7-1. Exemptions to this Policylaw are for the purpose of excluding activities of the Oneida
172 TribeNation for which no conflict of interest can exist. These activities generally occur when the
173 Oneida TribeNation is acting as a provider of services for which another will be making
174 payments or reimbursing costs of providing the services. Exemptions ~~must~~shall be specifically
175 identified within this Articlelaw.

176 217.7-2. Pharmacy. This exemption shall be designed to relieve the Pharmacy and insurance
177 providers from the requirements of the Conflict of Interest Policylaw while recognizing the
178 unique relationship between the Pharmacy and insurance providers in third party payment
179 agreements where no
180 proprietary information of the OneidaTribeNation is provided to the insurance providers, and
181 there is little or no opportunity for a conflict of interest between the insurance providers and the
182 OneidaTribeNation. This exemption shall be designed to increase the attractiveness of the
183 Pharmacy to subscribers of multiple insurance providers. This exemption shall apply solely to
184 insurance providers seeking to enter into third party payment agreements with the Pharmacy.

185
186 *End.*

189 Adopted - BC-06-10-98-C
190 Emergency ~~Amendment~~Amended - BC-04-12-06-JJ
191 Emergency Amended - BC-09-27-06-E (~~adoption of emergency amendments~~)
192 Emergency Amended – BC-08-10-16-M
193

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2017 02 08

Title 2. Employment – Chapter 217
CONFLICT OF INTEREST

| | |
|------------------------------------|--|
| 217.1. Purpose and Policy | 217.5. Penalties for Non-Disclosure of a Conflict of Interest |
| 217.2. Adoption, Amendment, Repeal | 217.6. Prohibited Activities Resulting from a Disclosed Conflict of Interest |
| 217.3. Definitions | 217.7. Exemptions |
| 217.4. General | |

1 **217.1. Purpose and Policy**

2 217.1-1 *Purpose*. The purpose of this law is for the Nation to ensure that all employees,
3 consultants, elected officials, officers, political appointees, appointed and elected members and
4 all others who may have access to information or materials that are confidential or may be used
5 by competitors of the Nation=s enterprises or interests be subject to specific limitations to which
6 such information and materials may be used in order to protect the interests of the Nation.

7 217.1-2. *Policy*. It is the policy of the Nation to assert its proprietary rights to client lists, trade
8 secrets and any other confidential data generated, developed or commissioned for the Nation in
9 the course of an employee=s duties and responsibilities and that all employees, and prospective
10 employees, be made aware of their obligation to uphold such rights. The Nation asserts that no
11 persons who work for the Nation or are responsible for safeguarding its interests nor their
12 relatives, associates, partners, or anyone connected with such persons should in any way benefit
13 against or in competition with the Nation=s interests without full and complete prior disclosure to
14 the Nation.

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16 **217.2. Adoption, Amendment, Repeal**

17 217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-
18 98-C and amended by BC_____.

19 217.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the
20 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
21 Act.

22 217.2-3. Should a provision of this law or the application thereof to any person or circumstances
23 be held as invalid, such invalidity shall not affect other provisions of this law which are
24 considered to have legal force without the invalid portions.

25 217.2-4. In the event of a conflict between a provision of this law and a provision of another
26 law, the provision of this law shall control.

27 217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

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29 **217.3. Definitions**

30 217.3-1. This section shall govern the definitions of words and phrases used within this law. All
31 words not defined herein shall be used in their ordinary and everyday sense.

32 (a) "Agent" means a person who is authorized to act for or in place of of another, which
33 may include an employee, consultant, elected official, officer, political appointee, and
34 appointed or elected member of the Nation.

35 (b) AConflict of interest@ means any interest, real or apparent, whether it be personal,
36 financial, political, or otherwise, in which an elected official, officer, political appointee,
37 employee, consultant, or appointed or elected member, or their immediate family
38 members, friends or associates, or any other person with whom they have contact, have

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39 that conflicts with any right of the Nation to property, information, or any other right to
40 own and operate activities free from undisclosed competition or other violation of such
41 rights of the Nation. In addition, conflict of interest also means any financial or familial
42 interest an elected official, officer, political appointee, employee, consultant, or appointed
43 or elected member or their immediate family members may have in any transaction
44 between the Nation and an outside party.

45 (c) “Consultant” means a person who provides expertise or guidance to the Nation.

46 (d) “Elected official” means a person elected to the Oneida Business Committee who
47 does not hold an officer position.

48 (e) “Employee” means anyone employed by the Oneida Nation in one of the following
49 employed capacities: full-time, part-time, emergency temporary, limited term or on a
50 contractual basis.

51 (f) “Entity” means a department, program or service of the Nation.

52 (g) “Immediate family member” means an individual’s husband, wife, mother, father,
53 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
54 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
55 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
56 through legal adoption.

57 (h) “Member” means a person who serves on a board, committee, or commission of the
58 Nation. It does not include the Oneida Business Committee or the governing body of a
59 Tribally Chartered Corporation.

60 (i) “Nation” means the Oneida Nation.

61 (j) “Officer” means a person elected to the Oneida Business Committee holding the
62 Chairperson, Vice Chairperson, Secretary, or Treasurer position.

63 (k) “Political appointee” means a person who assists an elected member of the Oneida
64 Business Committee in their daily activities and operations.

65 (l) *Third party agreement* means any agreement with the Pharmacy in which an
66 insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to
67 subscribers of a valid health plan of that insurance provider.

68
69 **217.4. General.**

70 217.4-1. *Scope.*

71 (a) This law shall apply to agents, elected officials, officers, political appointees,
72 employees, consultants, appointed or elected members or any other persons with whom
73 they may be associated in personal, marital, familial, business, financial or other
74 relationships.

75 (b) Under the protection of this law are the resources of the Nation, its enterprises,
76 programs, business interests, financial information, trade secrets and any other
77 information that could be used against the Nation or those duly authorized to represent its
78 interests.

79 217.4-2. *Amendment of Documents.* The following documents shall be amended as required in
80 order to implement this law:

81 (a) The Nation’s laws, rules and policies governing employment.

82 (1) Prospective employees shall disclose whether or not they have any conflicts
83 of interest as defined in this law.

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- 84 (2) Current employees shall disclose existing conflicts of interest, if any.
85 (b) Persons or organizations contracting with the Nation shall include a provision in their
86 contract reciting the prohibition against undisclosed conflicts of interest.
87 (c) The Oneida Nation Secretary shall inform all elected officials, officers, political
88 appointees, and elected or appointed members of the existence of this law in writing. All
89 elected officials, officers, political appointees, and elected or appointed members shall
90 disclose any conflicts of interest.

91 217.4-3. *Forms.* Forms shall be prepared upon which disclosures of conflicts which exist may
92 be listed and returned to the Oneida Business Committee for action as indicated in this law. The
93 Oneida Law Office shall be responsible for creating a standard form and any specialized forms
94 required by this law. The Nation's Human Resource Department and the Office of the Oneida
95 Nation Secretary shall be responsible for distributing and maintaining conflict of interest
96 disclosure forms.

97 (a) The Nation's Human Resource Department shall collect conflict of interest disclosure
98 forms from all employees on an annual basis. Additionally, an employee shall disclose a
99 conflict of interest as soon as the conflict arises.

100 (b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms
101 from all elected officials, officers, political appointees, and elected and appointed
102 members on an annual basis. Additionally, an elected official, officer, political appointee,
103 or elected or appointed member shall disclose a conflict of interest as soon as the conflict
104 arises.
105

106 **217.5. Penalties for Non-Disclosure of a Conflict of Interest**

107 217.5-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed
108 to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's
109 Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of
110 interest shall be concluded within seven (7) days of the employee being placed on leave. A
111 supervisor shall terminate an employee from his or her employment with the Nation when an
112 investigation substantiates that the employee failed to disclose a conflict of interest.

113 217.5-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a
114 conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant
115 to laws of the Nation regarding penalties.

116 217.5-3. *Elected or Appointed Members.* A member who fails to disclose a conflict of interest
117 may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to
118 removal pursuant to the Removal Law for elected members, or have their appointment
119 terminated by the Oneida Business Committee pursuant to the law governing board, committees
120 and commissions for appointed members.

121 217.5-4. *Political Appointees.* A political appointee that fails to disclose a conflict of interest
122 may be subject to discipline at the discretion of the elected official the political appointee serves.

123 217.5-5. *Contracts.* An organization or a person who does not disclose conflicts of interest may
124 be subject to termination of their contracts.
125

126 **217.6. Prohibited Activities Resulting from a Disclosed Conflict of Interest**

127 217.6-1. When an existing conflict of interest is disclosed, no employee, consultant, elected
128 official, political appointee, officer, agent, or appointed or elected member may participate in:

129 (a) the selection, award, or administration of a contract including contracts supported by
130 a Federal award; and/or

131 (b) any other prohibited activities identified in any other law, policy or rule of the
132 Nation.

133 217.6-2. Entities of the Nation shall develop standard operating procedures and/or work
134 standards outlining further prohibited activities resulting from disclosed conflicts of interest and
135 means by which a party can alleviate or mitigate the conflict of interest.

136 (a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it
137 may become permissible for a party to participate under section 217.6-1(b) at the
138 discretion of the division director and to the extent permitted by any applicable law,
139 policy or rule. However, in all circumstances, such parties shall remain prohibited from
140 participating under section 217.6-1(a).

141

142 **217.7. Exemptions**

143 217.7-1. Exemptions to this law are for the purpose of excluding activities of the Nation for
144 which no conflict of interest can exist. These activities generally occur when the Nation is acting
145 as a provider of services for which another will be making payments or reimbursing costs of
146 providing the services. Exemptions shall be specifically identified within this law.

147 217.7-2. *Pharmacy.* This exemption shall be designed to relieve the Pharmacy and insurance
148 providers from the requirements of the Conflict of Interest law while recognizing the unique
149 relationship between the Pharmacy and insurance providers in third party payment agreements
150 where no proprietary information of the Nation is provided to the insurance providers, and there
151 is little or no opportunity for a conflict of interest between the insurance providers and the
152 Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to
153 subscribers of multiple insurance providers. This exemption shall apply solely to insurance
154 providers seeking to enter into third party payment agreements with the Pharmacy.

155

156 *End.*

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159 Adopted - BC-06-10-98-C

160 Emergency Amended - BC-04-12-06-JJ

161 Emergency Amended - BC-09-27-06-E

162 Emergency Amended - BC-08-10-16-M

163

MEMORANDUM

DATE: January 24, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Conflict of Interest Amendments**

I. Background

This Law was adopted by the Oneida Business Committee by resolution BC-6-10-98-C. Emergency amendments to comply with Housing and Urban Development (HUD) requirements were adopted through resolution BC-08-10-16-M. These emergency amendments were needed for mandatory recusal in the event of certain conflicts and they are set to expire on February 10, 2017. A public meeting was held on January 3rd. According to the Legislative Reference Office, the new Law will:

- Permanently adopt the emergency amendment which sets a minimum standard for prohibited activities resulting from a disclosed conflict of interest and requires that no employee, officer or agent of the Nation may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest;
- Permanently adopt the emergency amendment which expanded the definition of conflict of interest to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party;
- Add a definition for the term “immediate family member;”
- Require departments and entities of the Nation to develop standard operating procedures and/or work standards outlining prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest; and

- Permanently adopt emergency amendments which allow Division Directors the discretion, to the extent permitted by applicable Law, policy or rule, to decide if a conflict of interest has been properly alleviated or mitigated according to standard operating procedures.

II. Executive Summary of Findings

A “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The Nation’s Human Resource Department (HRD) and the Office of the Oneida Nation Secretary are identified as being responsible for the implementation of the Law. Finance sent inquiries to both parties requesting input for the Fiscal Impact Statement. HRD stated that their portion of the responsibilities will be carried out with existing resources and therefore there will be no impact. However, the Secretary’s office did not respond to the request. Therefore, any potential financial impact to that area is indeterminate.

The Conflict of Interest amendments require the Nation’s laws, rules and policies governing employment be amended as required in order to implement this Law. The Conflict of Interest Law aligns with the requirements in the proposed Employment Law. An update on the Employment Law is on the agenda for the February 13th, 2017 General Tribal Council (GTC) meeting. The Conflict of Interest amendments will need to go into effect immediately upon adoption, since the emergency amendments expire on February 10, 2017.

III. Financial Impact

Indeterminate.

IV. Recommendation

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



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: February 8, 2017
RE: Extension of the Conflict of Interest Policy Emergency Amendments

Please find the following attached backup documentation for your consideration of the extension of the Conflict of Interest Policy Emergency Amendments:

1. Resolution: Conflict of Interest Policy Emergency Amendments Extension
2. Statement of Effect: Conflict of Interest Policy Emergency Amendments Extension
3. Conflict of Interest Law (Redline)
4. Conflict of Interest Law (Clean)

Overview

In December 2015 the United States Department of Housing and Urban Development (HUD) conducted an on-site monitoring review of the Oneida Housing Authority and provided a report to the Nation on June 12, 2016, in which they found that the Nation's Conflict of Interest Policy was not in compliance with 2 CFR Section 200.318(c)(1), regarding contracts supported by a federal award. The Nation was given ninety (90) days to bring the Policy into compliance.

Through Resolution BC-08-10-16-M, the OBC issued a finding of an emergency and stated the necessity for these emergency amendments so that the Policy would comply with HUD's regulations.

The emergency amendments:

- Expand the definition of "conflict of interest" to include any interests, whether the interest is real or apparent and to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party; and
- Add a new section titled "Prohibited Activities Resulting from a Conflict of Interest" which includes the required language that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a conflict of interest.

Section 16.9-5(b) of the Legislative Procedures Act allows for the opportunity of a one-time emergency law extension of up to six (6) months. Adoption of this Resolution would extend the emergency amendments for an additional six (6) months, allowing the Policy to remain compliant with HUD until permanent amendments can be adopted.

Requested Action

Approve the Resolution: Conflict of Interest Policy Emergency Amendments Extension

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Conflict of Interest Policy Emergency Amendments Extension

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

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

WHEREAS, the Conflict of Interest Policy (the "Policy") was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C; and

WHEREAS, an audit completed by the United States Department of Housing and Urban Development (HUD) was received by the Oneida Nation on June 12, 2016, which showed that the Policy was not in compliance with certain HUD requirements; and

WHEREAS, HUD gave the Oneida Nation ninety (90) days to become compliance with HUD requirements; and

WHEREAS, the Oneida Business Committee adopted emergency amendments to the Policy pursuant to Resolution BC-08-10-6-M in accordance with the emergency adoption process set forth in the Legislative Procedures Act (LPA); and

WHEREAS, the emergency amendments brought the Policy into compliance with HUD requirements; and

WHEREAS, the emergency amendments to the Policy expire February 10, 2017; and

WHEREAS, the LPA authorizes the Oneida Business Committee to enact legislation on an emergency basis to be in effect for a period of six (6) months, renewable for an additional six (6) months; and

WHEREAS, extension of the emergency adoption would enable the emergency amendments to remain in effect while they are processed for permanent adoption; and

WHEREAS, extension of the emergency amendments is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and amendment of the law is required sooner than would be possible under the LPA; and

NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Conflict of Interest Policy are hereby extended on an emergency basis for an additional six (6) months; effective February 10, 2017.



Statement of Effect

Conflict of Interest Policy Emergency Amendments Extension

Summary

This Resolution extends the adoption of emergency amendments to the Conflict of Interest Policy for six (6) months or until permanent amendments are adopted, whichever occurs first.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

In December 2015 the United States Department of Housing and Urban Development (HUD) conducted an on-site monitoring review of the Oneida Housing Authority and provided a report to the Nation on June 12, 2016, in which they found that the Nation's Conflict of Interest Policy was not in compliance with 2 CFR Section 200.318(c)(1), regarding contracts supported by a federal award. The Nation was given ninety (90) days to bring the Policy into compliance.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee (OBC) to take emergency action to amend a law where it is "necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population" and when enactment or amendment of legislation is required sooner than would be possible under the LPA. Through Resolution BC-08-10-16-M, the OBC issued a finding of an emergency and stated the necessity for these emergency amendments so that the Policy would comply with HUD's regulations.

The emergency amendments brought the Policy into compliance by implementing the following revisions:

- Expanding the definition of "conflict of interest" to include any interests, whether the interest is real or apparent and to include any financial or familial interest an elected official, employee, consultant, or appointed or elected member of any board, committee or commission, or their immediate relatives may have in any transaction between the Oneida Nation and an outside party;
- Adding a new section titled "Prohibited activities resulting from a Conflict of Interest" which includes the required language that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a conflict of interest.

The Policy's emergency amendments expire February 10, 2017. Section 16.9-5(b) of the LPA allows for the opportunity of a one-time extension of an emergency law of up to six (6) months. Adoption of this Resolution would extend the emergency amendments for an additional six (6) months, allowing the Policy to remain compliant with HUD while permanent amendments are processed for adoption.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.

Conflict of Interest Policy

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Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article I. General

6 Article V. Penalties
7 Article VI. Exceptions

8
9

Article I. Purpose and Policy

10

11 1-1. The Oneida Tribe desires that all employees, consultants, appointees, officials and all others
12 who may have access to information or materials that are confidential or may be used by
13 competitors of the Oneida Tribe-s enterprises or interests be subject to specific limitations to
14 which such information and materials may be used in order to protect the interests of the Oneida
15 Tribe.

16 1-2. The Oneida Tribe asserts its proprietary rights to client lists, trade secrets and any other
17 confidential data generated, developed or commissioned for the Oneida Tribe in the course of an
18 employee-s duties and responsibilities and that all employees, and prospective employees, be
19 made aware of their obligation to uphold such rights.

20 1-3. The Oneida Tribe asserts that no persons who work for the Oneida Tribe or are responsible
21 for safeguarding its interests nor their relatives, associates, partners, or anyone connected with
22 such persons should in any way benefit against or in competition with the Oneida Tribe-s
23 interests without full and complete prior disclosure to the Oneida Tribe.

24

Article II. Adoption, Amendment, Repeal

25

26 2-1. This Policy is adopted by the Oneida Business Committee by Resolution # BC-6-10-98-C.

27 2-2. This Policy may be amended pursuant to the procedures set out in the Oneida
28 Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal
29 Council.

30 2-3. Should a provision of this Policy or the application thereof to any person or circumstances
31 be held as invalid, such invalidity shall not affect other provisions of this Policy which are
32 considered to have legal force without the invalid portions.

33 2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other
34 similar actions which are inconsistent with this Policy are hereby superseded unless specifically
35 re-enacted after adoption of this Policy. Specifically, the following resolutions are superseded
36 by this Policy:

- 37 a. Resolution # BC-9-28-90-A, and
- 38 b. Resolution # BC-9-27-90-E.

39

Article III. Definitions

40

41 3-1. This article shall govern the definitions of words as phrases as used herein. All words not
42 defined herein shall be used in their ordinary and everyday sense.

43 3-2. AConflict of interest@ shall mean any interest, real or apparent, whether it be personal,
44 financial, political, or otherwise, in which a elected official, employee, consultant, or appointed
45 or elected member of any board, committee or commission, or their immediate relatives, friends
46 or associates, or any other person with whom they have contact, have that conflicts with any
47 right of the Oneida Tribe to property, information, or any other right to own and operate
48 | activities free from undisclosed competition or other violation of such rights of the Oneida Tribe.

49 In addition, conflict of interest also means any financial or familial interest an elected official,
 50 employee, consultant, or appointed or elected member of any board, committee or commission,
 51 or their immediate relatives may have in any transaction between the Oneida Tribe and an outside
 52 party.

53 3-3. AThird party agreement@ shall mean any agreement with the Pharmacy in which an insurance
 54 provider agrees to reimburse the Pharmacy for drugs and supplies sold to subscribers of a valid
 55 health plan of that insurance provider.

56 57 **Article I. General.**

58 4-1. *Purpose.* This Policy shall be interpreted to prevent the use of inside information by which
 59 such use would be to the detriment of the Oneida Tribe.

60 4-2. *Scope.*

61 a. This Policy shall apply to employees, consultants, members of boards, committees and
 62 commissions, officers of the Oneida Tribe or any other persons with whom they may be
 63 associated in personal, marital, business, financial or other relationships.

64 b. Under the protection of this Policy are the resources of the Oneida Tribe, its
 65 enterprises, programs, business interests, financial information, trade secrets and any
 66 other information that could be used against the Oneida Tribe or those duly authorized to
 67 represent its interests.

68 4-3. *Amendment of Documents.* The following documents shall be amended as required in order
 69 to implement this Policy:

70 a. Personnel Policies and Procedures for employees.

71 1. Prospective employees will be asked whether or not they have any conflicts of
 72 interest as defined in this Policy.

73 2. Current employees will be asked to disclose existing conflicts of interest, if
 74 any.

75 b. Persons or entities contracting with the Oneida Tribe must include a provision reciting
 76 the prohibition against undisclosed conflicts of interest.

77 c. All members of boards, committees and commissions shall be informed in writing by
 78 the Tribal Secretary of the existence of this Policy.

79 4-4. *Forms.* Forms shall be prepared upon which disclosures of conflicts which exist may be
 80 listed and returned to the Oneida Business Committee for action as indicated in this Policy. The
 81 Oneida Law Office shall be responsible for creating a standard form and any specialized forms
 82 required by this Policy.

83 84 **Article V. Penalties for Non-Disclosure of a Conflict of Interest**

85 5-1. *Employees.* Employees found to be in violation of conflicts of interest shall be suspended
 86 without pay pending a complete investigation and terminated where evidence identifies that a
 87 undisclosed conflicts exists or existed. This investigation must be concluded within seven (7)
 88 days of the suspension, after which the terminated employee shall have the same rights of appeal
 89 as all other employees pursuant to procedures set forth in the Personnel Policies and Procedures.

90 5-2. *Boards, Committees and Commissions.* Members of boards, committees and commissions
 91 may be either removed pursuant to the Removal Law for elected officials or have their
 92 appointment terminated by the Oneida Business Committee pursuant to the law governing board,
 93 committees and commissions for appointed officials.

94 5-3. *Contracts.* Entities or persons who do not disclose conflicts may be subject to termination

95 of their contracts.

96
97 **Article VI. Prohibited activities resulting from a Conflict of Interest**

98 **6-1. When a conflict of interest exists, no employee, officer or agent may participate in:**

99 **a. the selection, award, or administration of a contract supported by a Federal award;**
100 **and/or**

101 **b. any other prohibited activities identified in any other law, policy or rule of the Oneida**
102 **Nation.**

103 **6-2. In the event arrangements are made to alleviate or mitigate the conflict of interest, it may**
104 **become permissible for a party to participate under 6-1.b. at the discretion of the division**
105 **director and to the extent permitted any applicable law, policy or rule, however, in all**
106 **circumstances, such parties remain prohibited from participating under 6-1.a.**

107
108 **Article VII. Exceptions**

109 **67-1.** Exemptions to this Policy are for the purpose of excluding activities of the Oneida Tribe
110 for which no conflict of interest can exist. These activities generally occur when the Oneida
111 Tribe is acting as a provider of services for which another will be making payments or
112 reimbursing costs of providing the services. Exemptions must be specifically identified within
113 this Article.

114 **67-2. Pharmacy.** This exemption shall be designed to relieve the Pharmacy and insurance
115 providers from the requirements of the Conflict of Interest Policy while recognizing the unique
116 relationship between the Pharmacy and insurance providers in third party payment agreements
117 where no proprietary information of the Oneida Tribe is provided to the insurance providers, and
118 there is little or no opportunity for a conflict of interest between the insurance providers and the
119 Oneida Tribe. This exemption shall be designed to increase the attractiveness of the Pharmacy to
120 subscribers of multiple insurance providers. This exemption shall apply solely to insurance
121 providers seeking to enter into third party payment agreements with the Pharmacy.

122
123 *End.*
124

125
126 Adopted - BC-6-10-98-C

127 Emergency Amendment - BC-4-12-06-JJ

128 Amended - BC-9-27-06-E (adoption of emergency amendments)

129 Amended – BC-8-10-16-M (adoption of emergency amendments)

Conflict of Interest Policy

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Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article I. General

6 Article V. Penalties
7 Article VI. Exceptions

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Article I. Purpose and Policy

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1-1. The Oneida Tribe desires that all employees, consultants, appointees, officials and all others who may have access to information or materials that are confidential or may be used by competitors of the Oneida Tribe's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Oneida Tribe.

1-2. The Oneida Tribe asserts its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the Oneida Tribe in the course of an employee's duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights.

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100 and/orb. any other prohibited activities identified in any other law, policy or rule of the
101 Oneida Nation.

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103 become permissible for a party to participate under 6-1.b. at the discretion of the division
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105 circumstances, such parties remain prohibited from participating under 6-1.a.

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117 Oneida Tribe. This exemption shall be designed to increase the attractiveness of the Pharmacy to
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119 providers seeking to enter into third party payment agreements with the Pharmacy.

120

121 *End.*

122

123

124 Adopted - BC-6-10-98-C

125 Emergency Amendment - BC-4-12-06-JJ

126 Amended - BC-9-27-06-E (adoption of emergency amendments)

127 Amended – BC-8-10-16-M (adoption of emergency amendments)

128



Legislative Operating Committee
February 1, 2017

Drug and Alcohol Free Workplace Amendments

| | |
|--|--|
| Submission Date: 10/05/16 | Public Meeting: |
| LOC Sponsor: Fawn Billie and Jennifer Webster | Emergency Enacted: 10/26/16 Expires: 04/26/17 |

Summary: These emergency amendments were requested by the OLO to comply with OSHA regulations.

10/20/16 LOC: Motion by Fawn Billie to add Drug and Alcohol Free Workplace Policy Amendments to the active files list with Fawn Billie and Jennifer Webster as co-sponsors; Seconded by David P. Jordan. Motion Carried unanimously.

Motion by Fawn Billie to approve the emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

10/26/16 OBC: Motion by Brandon Stevens to adopt resolution 10-26-16-D Drug and Alcohol Free Workplace Policy Emergency Amendments, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Lisa Summers to request that a similar policy for appointed and elected officials also be developed and provided by the LOC, seconded by Davis Jordan. Motion carried unanimously.

12/2/16: *Work Meeting held.* Present: Cathy Bachhuber, Bob Keck, Jenny Webster, Maureen Perkins, Geraldine Danforth, Mary Corneliussen, Clorissa Santiago, Fawn Billie. Drafting attorney will make changes to draft based on discussion and there will be another work meeting.

1/5/17: *Work Meeting held.* Present: Clorissa Santiago, Maureen Perkins, Jennifer Webster, Fawn Billie, Matthew Denny, Geraldine Danforth, Mary Corneliussen, Robert Keck. Drafting attorney will make changes to draft based on discussion.

1/18/17 LOC: Motion by David P. Jordan to forward the Drug and Alcohol Free Workplace Policy Amendments to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

1/19/17: *Quarterly Meeting.* Present: Jennifer Webster, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Tani Thurner, Maureen Perkins.

Next Steps:

- Forward to the Finance Office for a fiscal analysis, due to the Legislative Reference Office February 15, 2017.
- Approve the public meeting packet and forward the Drug and Alcohol Free Workplace Policy amendments to a public meeting to be held on March 2, 2017.

NOTICE OF
PUBLIC MEETING
 TO BE HELD
THURSDAY MARCH 2 at 12:15 p.m.
 IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

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

**TOPIC: DRUG AND ALCOHOL FREE
 WORKPLACE AMENDMENTS**

This is a proposal to amend the existing Drug and Alcohol Free Workplace Policy (DAFWP) which would:

- ◆ Permanently adopt emergency amendments which removed the requirement of post-accident drug and alcohol testing for all instances of work-related injuries and accidents so that DAFWP complied with the requirements of the Occupational Safety and Health Act;
- ◆ Refer to the Policy as a law, aligning with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward;
- ◆ Expand the application of the DAFWP so the law applies to all applicants and employees during times the applicant or employee is operating a vehicle owned by the Nation or a vehicle rented by the Nation;
- ◆ Clarify that an employee is prohibited from the use of prohibited drugs at all times;
- ◆ Add an additional responsibility to the employee to provide appropriate information to Employee Health Nursing in the event a medical condition prevents the employee from properly completing drug and alcohol testing;
- ◆ Clarify that supervisor's determination to use reasonable suspicion drug and alcohol testing is non-appealable;
- ◆ Update the language and ensure compliance with drafting style and formatting requirements .

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit

www.oneida-nsn.gov/Register/PublicMeetings

or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD
 OPEN UNTIL MARCH 9, 2017**

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@oneidationation.org
 Phone: (920) 869-4376 or (800) 236-2214
 Fax: (920) 869-4040



Drug and Alcohol Free Workplace Amendments Legislative Analysis

| <i>Analysis by the Legislative Reference Office</i> | | | | | |
|---|--|----------------|----------------------|----------------|-----------------|
| Title | Drug and Alcohol-Free Workplace (law) | | | | |
| Sponsors | Fawn Billie and Jennifer Webster | Drafter | Clorissa N. Santiago | Analyst | Maureen Perkins |
| Requester & Reason for Request | The Oneida Law Office has requested these changes due to a recently adopted change to federal law. Additional minor changes were made. | | | | |
| Purpose | This law governs drug/alcohol testing of employees of the Nation. | | | | |
| Authorized/ Affected Entities | HRD, Employee Health Nursing, Oneida Nation Employee Assistance Program, Medical Review Officer (MRO) and all employees of the Nation | | | | |
| Related Legislation | Personnel Policies and Procedures; Workers Compensation Law | | | | |
| Enforcement & Due Process | The law identifies how reasonable suspicion can be established, such that an employee can be sent for drug and/or alcohol testing [see 202.7]. Employee's cannot appeal or challenge this determination [see 202.7-3]. | | | | |
| Public Meeting Status | A public meeting has not yet been held. | | | | |

Overview

1 The OBC adopted emergency amendments to the Drug and Alcohol-Free Workplace
 2 (law) to comply with a change to federal law (29 CFR 1904) pursuant to resolution BC-10-26-
 3 16-D. Although the federal rule went into effect August 10, 2016, it was not enforced until
 4 November 1, 2016. These proposed amendments are being considered for permanent adoption.
 5 The federal rule is intended to prevent employers from discouraging employees from reporting
 6 workplace injuries and illnesses. The change to federal law more clearly prohibits employers
 7 from using drug testing, or the threat of it, as a form of retaliation against employees who report
 8 injuries or illnesses. The comments for the Final Rule, published on the Federal Register, states:

9
 10 “[t]he final rule does prohibit employers from using drug testing (or the threat of drug
 11 testing) as a form of adverse action against employees who report injuries or illnesses. To
 12 strike the appropriate balance here, drug testing policies should limit post-incident testing
 13 to situations in which employee drug use is likely to have contributed to the incident, and
 14 for which the drug test can accurately identify impairment caused by drug use.”

15
 16 The emergency amendments adopted October 26, 2017 removed the requirement for
 17 employees to immediately notify their supervisors and to undergo alcohol and drug testing every
 18 time they are involved in a work-related accident [see 3-1(m), 8-3 of current policy]. The
 19 amendments also removed the provision that treated a failure to do so as “refusal to test” [see
 20 Article 9 of current policy]. Article 9 is also amended to delete references to work-related
 21 accidents when identifying what “refusal to test” entails.

22 These changes mean that employees of the Nation will no longer be subject to mandatory
 23 drug and alcohol testing for every work-related accident. The law will not identify any situations

24 where an employee is subject to mandatory post-accident testing. However, employees may still
25 be subject to drug and alcohol testing if their supervisor has “reasonable suspicion” that the
26 employee may be under the influence. Standards/processes for how supervisors can establish
27 reasonable suspicion are still contained in the amended law [see 202.7].
28

29 **Other**

- 30 • The Oneida Tribe of Indians of Wisconsin was updated to Nation throughout the law in
31 accordance with the approved constitutional amendments.
- 32 • This law has changed from a policy to a law in alignment with the LOC’s directive that
33 all policies are classified as laws moving forward.
- 34 • The law has been reformatted to align with the code of laws reorganization project.
- 35 • Minor language changes have been made to improve the clarity of the law without
36 affecting the content.
- 37 • Please refer to the fiscal impact statement for any financial impacts.
- 38 • The emergency amendments are currently effective and will remain in effect for up to six
39 months (expire 4/26/2017), with the possibility of a one-time extension of up to an
40 additional six months [see *Legislative Procedures Act, 16.9-5(b)*]. The proposed
41 amendments are being considered for permanent adoption.
42

Drug and Alcohol Free Workplace Policy

1 Article I. Purpose and Policy
 2 Article II. Adoption, Amendment, Repeal
 3 Article III. Definitions
 4 Article IV. Application
 5 Article V. Shared Responsibility
 6 Article VI. Prohibited Behavior
 7 Article VII. Reasonable Suspicion
 8 Article VIII. Drug and Alcohol Testing
 9 Article IX. Refusal to Test
 10 Article X. Waiting Period
 11 Article XI. Consequences for Prohibited Behavior
 12 Article XII. Re-hire
 13 Article XIII. Other Potential Consequences
 14 Article XIV. Confidentiality
 15 Article XV. Communication

Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE

| | | | |
|----|---|----|--|
| 19 | <u>202.1. Purpose and Policy</u> | 27 | <u>202.9. Refusal to Test</u> |
| 20 | <u>202.2. Adoption, Amendment, Repeal</u> | 28 | <u>202.10. Reasonable Suspicion Testing Waiting Period</u> |
| 21 | <u>202.3. Definitions</u> | 29 | <u>202.11. Consequences for Prohibited Behavior</u> |
| 22 | <u>202.4. Application</u> | 30 | <u>202.12. Re-hire</u> |
| 23 | <u>202.5. Shared Responsibility</u> | 31 | <u>202.13. Other Potential Consequences</u> |
| 24 | <u>202.6. Prohibited Behavior</u> | 32 | <u>202.14. Confidentiality</u> |
| 25 | <u>202.7. Reasonable Suspicion</u> | 33 | <u>202.15. Communication</u> |
| 26 | <u>202.8. Drug and Alcohol Testing</u> | 34 | |

35
 36 **Article I 202.1. Purpose and Policy**
 37 1-202.1-1. Purpose. The TribeNation is committed to protecting the safety, health and well-being
 38 of all employees, and other individuals in the workplace. The TribeNation recognizes that alcohol
 39 abuse and drug use pose a significant health and safety threat to our customers and other
 40 employees. The TribeNation also recognizes that alcohol and drug abuse and addiction are
 41 treatable illnesses. The TribeNation realizes that early intervention and support may improve the
 42 success of rehabilitation.

43 202.1-2. Policy. It is the policy of the TribeNation to establish a drug and alcohol-free workplace
 44 program that balances respect for individuals with the need to maintain an alcohol and drug-free
 45 environment. The TribeNation encourages employees to voluntarily seek help for their personal
 46 drug and alcohol-related problems.

47
 48 **Article II 202.2. Adoption, Amendment, Repeal**

49 202.2-1. This Policylaw was adopted by the Oneida Business Committee by resolution BC-10-25-
 50 95-A and amended by BC-10-20-99-A, BC-12-05-07-B ~~and~~ BC-12-11-13-F ~~and~~
 51 BC.

52 202.2-2. This Policylaw may be amended or repealed by the Oneida Business Committee and/or
 53 the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
 54 Act.

55 202.2-3. Should a provision of this Policylaw or the application thereof to any person or
 56 circumstances be held as invalid, such invalidity shall not affect other provisions of this Policylaw
 57 which are considered to have legal force without the invalid portions.

58 202.2-4. In the event of a conflict between a provision of this Policylaw and a provision of another
 59 Policylaw, the provisions of this Policylaw shall control.

60 | 202.2-5. This Policylaw is adopted under authority of the Constitution of the Oneida Tribe of
 61 | Indians of Wisconsin Nation.

62 |
 63 | **Article III 202.3. Definitions**

64 | 202.3-1. This Article section shall govern the definitions of words or phrases as used herein within
 65 | this law. All words not defined herein shall be used in their ordinary and everyday sense.

66 | (a) “Appropriate authority” ~~shall mean~~ means the Human Resources Department hiring
 67 | representative, immediate supervisor, EHN, MRO, and/or EAPONEAP who requests the
 68 | drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or
 69 | follow-up testing.

70 | (b) “Confirmed positive test result” ~~shall mean~~ means a lab-confirmed drug test that is
 71 | verified by the MRO that exceeds the cut-off levels established by this Policylaw (levels
 72 | established by the US United States Department of Health and Human Services), confirmed
 73 | saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or
 74 | refusal to test.

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

76 | (d) “Employee” means any individual who is employed by the Tribe Nation and is subject
 77 | to the direction and control of the Tribe Nation with respect to the material details of the
 78 | work performed, or who has the status of an employee under the usual common law rules
 79 | applicable to determining the employer-employee relationship. “Employee” includes, but
 80 | is not limited to; an individual employed by any program or enterprise of the Tribe Nation,
 81 | but does not include elected or appointed officials, or individuals employed by a Tribally
 82 | Chartered Corporation. For purposes of this Policylaw, individuals employed under an
 83 | employment contract as a limited term employee are employees of the Tribe Nation, not
 84 | consultants.

85 | (e) “External applicant” ~~shall mean~~ means a person who is applying for a position and not
 86 | currently employed by the Tribe Nation.

87 | (f) “HRD” shall mean the Human Resources Department and/or representatives
 88 | performing Human Resources functions applicable to this Policylaw.

89 | (g) “Internal applicant” ~~shall mean~~ means a person who is applying for a position who is
 90 | currently employed by the Tribe Nation, this shall include those employed under a
 91 | temporary status.

92 | (h) “MRO” ~~shall mean~~ means Medical Review Officer who is a licensed physician who is
 93 | responsible for receiving and reviewing laboratory test results generated by an employer’s
 94 | drug testing program and evaluating medical explanations for certain drug test results.

95 | (i) “Nation” means the Oneida Nation.

96 | (j) “NHTSA” means the National Highway Traffic Safety Administration.

97 | (k) “ONEAP” ~~shall mean~~ means the Oneida Nation Employee Assistance Program which is
 98 | a professional counseling program staffed by clinical social workers licensed by the State
 99 | of Wisconsin which offers services to Tribe the Nation’s employees and family members.

100 | (l) “Prohibited drug(s)” ~~shall mean~~ means marijuana, cocaine, opiates, amphetamines,
 101 | phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
 102 | substance included in Schedules I through V, as defined by Section 812 of Title 21 of the
 103 | United States Code. This shall also include prescription medication or over-the-counter
 104 | medicine used in an unauthorized or unlawful manner.

(j) “Return-to-Work Agreement” ~~shall mean~~ means an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(k) “Supervisor” ~~shall mean~~ means the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

~~(l) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

(m) “Work-related accident” ~~shall mean~~ means an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

- (1) results in an injury to the employee ~~and requires~~ or another person that may require medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,
- (2) results in death of the employee or another person, or
- (3) involves any property damage.

~~Article IV~~ **202.4. Application**

~~202.4-1.~~ This ~~Policy~~ law applies to all applicants for employment, whether external or internal, and all employees during working hours ~~and when on-call, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.~~

~~202.4-2.~~ ~~Employees are~~ An employee is prohibited from the use of prohibited drugs at all times.

~~202.4-3.~~ An employee is prohibited from the use of intoxicants ~~and prohibited drugs~~ while on official business travel while the conference or meeting is in session.

~~202.4-34.~~ An employee is not exempted from this ~~Policy~~ law if they travel to another state, territory or country where the use of certain drugs is legal.

~~Article V~~ **202.5. Shared Responsibility**

~~202.5-1.~~ A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and ~~employees~~ an employee.

~~202.5-2.~~ *Employee.* It is the employee’s responsibility to:

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by EHN and the MRO ~~and~~. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. ~~Employees~~ An employee who ~~fail~~ fails to cooperate and ~~do~~ does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

150 (f) Sign a consent form to be tested for alcohol and drugs when requested by ~~a supervisor,~~
 151 ~~EHN, a certified drug and alcohol technician, or police personnel in accordance with this~~
 152 ~~Policy.~~ an appropriate authority.

153 (g) Provide the appropriate information to EHN in the event a medical condition prevents
 154 the employee from properly completing drug and alcohol testing so alternative drug and
 155 alcohol testing measures can be taken by EHN.

156 202.5-3. Supervisor. It is the supervisor's responsibility to:

157 (a) Be familiar with this ~~Policy~~ law and any related policies and procedures.

158 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
 159 person who reported the suspicious behavior.

160 (c) Promptly intervene with ~~employees~~ an employee who ~~are~~ is believed to be under the
 161 influence of prohibited drugs and/or alcohol.

162 (d) Monitor the employee under the influence of prescription and/or over-the-counter
 163 medications that could compromise the safety of the employee, fellow employees, or the
 164 public.

165 (e) Send the employee through the contracted transportation service for reasonable
 166 suspicion drug and alcohol ~~forensic~~ testing.

167 (f) Take appropriate action as outlined by this ~~Policy~~ law.

168 (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor
 169 that was developed by ONEAP.

170 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
 171 employee to EHN.

172 202.5-4. Supervisor and Employee. ~~Supervisors and employees~~ A supervisor or an employee that
 173 ~~fail~~ fails to adhere to ~~their~~ the responsibilities of the supervisor or employee under this ~~Policy~~ law
 174 may be subject to disciplinary action or other consequences as explained in ~~Article XIII~~ section
 175 202.13.

176 202.5-5. — Off-duty Use of Prohibited Drugs or Alcohol. Off-duty use of prohibited drugs or
 177 alcohol may result in continued impairment during on-duty hours, which shall then constitute a
 178 violation of this ~~Policy~~ law. It is the employee's responsibility to understand the consequences of
 179 off-duty use, and take steps to avoid the possibility of on-duty impairment. ~~In the case where~~ An
 180 employee who is called in for ~~an~~ emergency or unplanned work, excluding ~~(this does not include~~
 181 ~~those on-call.);~~ and ~~he or she~~ has been using prohibited drugs or drinking alcoholic beverages
 182 prior to such a call, ~~such employee should~~ shall inform the employee's supervisor they cannot
 183 report, and shall continue to decline to report until the effects of the prohibited drugs or alcohol
 184 have left ~~his or her~~ the employee's system. Such refusal to report shall not be viewed as improper,
 185 and disciplinary action shall not arise ~~specifically~~ from such refusal.

186 202.5-6. — Use of Controlled Substances That May Affect Safety or Performance.
 187 ~~Employees~~ An employee who ~~are~~ is taking or ~~are~~ is under the influence of any controlled substances
 188 during working hours, including ~~(such as~~ prescription medication or over the counter medication,
 189 which may affect the employee's job performance or safety of the employee, fellow employees,
 190 public, or assets of the ~~Tribe~~ Nation have the following obligations:

191 (a) The employee shall notify the employee's immediate supervisor about the use of the
 192 substance and possible work-related effects prior to commencing work.

- 193 (b) Upon request, the employee may be required to obtain a written statement of any work
 194 restrictions or impact on performance or safety relating to the legal substances from ~~his~~
 195 ~~or her~~ the employee's physician or pharmacist.
- 196 (c) An employee shall not sell or share his or her prescribed medications with any other
 197 person, and shall not take medications that are prescribed to another person.
- 198 (d) It may be necessary for the employee's supervisor, area manager or ~~Employee Health~~
 199 ~~Nursing (EHN)~~ to consult with the employee's personal physician, pharmacist or an
 200 MRO, with the employee's approval or written authorization, to determine if the
 201 medication might impact the employee's ability to perform ~~his or her~~ the employee's
 202 job, or pose a hazard to other employees or to the general public.
- 203 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
 204 days. Any modification of duties shall result in the appropriate modification of pay as
 205 established by the Human Resources Department.

206
 207 **Article VI ~~202.6.~~ Prohibited Behavior**

- 208 202.6-1. An applicant or employee of the TribeNation is in violation of this Policy law if he or she:
- 209 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
 210 drugs or alcohol while on duty. Notwithstanding Article XI section 202.11, any employee who
 211 is caught using, possessing or selling prohibited drugs shall be immediately terminated from
 212 employment with the TribeNation.
- 213 (b) Fails to inform his or her supervisor of being under the influence of prescription
 214 medication and/or over-the-counter medication(s) which may affect the employee's job
 215 performance or safety of the employee, fellow employees, public, or assets of the
 216 TribeNation.
- 217 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
 218 prescription medications.
- 219 (d) Refuses to test.
- 220 (e) Has a confirmed positive test after completing a drug and/or alcohol ~~forensic~~ test
 221 through EHN or ~~its designee~~ a medical facility, or has a confirmatory test come back as
 222 positive.

223
 224 **Article VII ~~202.7.~~ Reasonable Suspicion**

- 225 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
 226 personal observation and/or secondary reported observation that an employee may be under the
 227 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
 228 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
 229 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
 230 evaluate the following:
- 231 (a) Specific, contemporaneous and articulable observations concerning appearance,
 232 behavior, speech, or body odors of the employee consistent with possible drug use or
 233 alcohol misuse.
- 234 (b) The observations may include indications of the chronic and withdrawal effects of
 235 prohibited drugs or alcohol.
- 236 202.7-2. The supervisor shall document his or her observations and discuss the matter with the
 237 employee. ~~During~~ this discussion, the supervisor may ask the employee for proof of a

238 | prescription.— The employee shall comply with this request. If after a discussion with the
 239 | employee, the supervisor continues to suspect the employee may currently still be under the
 240 | influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee
 241 | for reasonable suspicion drug and alcohol-~~forensic~~ testing.

242 | 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol
 243 | testing of an employee is final. An employee cannot appeal or challenge a supervisor's
 244 | determination for reasonable suspicion drug and alcohol testing.

245 |
 246 | **Article VIII 202.8. Drug and Alcohol Testing**

247 | 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
 248 | conditions of employment as described in this ~~Policy~~law. To ensure the accuracy and fairness of
 249 | this ~~Policy~~law, all ~~forensic~~drug and alcohol testing shall be conducted according to the United
 250 | States Department of Health and Human Services, Substance Abuse and Mental Health Services
 251 | Administration (SAMSHA) guidelines for Federal Workplace Drug ~~T~~esting Programs.

252 | 202.8-2. ~~The Employee Health Nursing Department~~EHN or its designee shall use Federal Drug
 253 | Administration approved urine tests and National Highway Transportation Safety Administration
 254 | (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices,
 255 | operated by technicians whose training terminology, procedures, methods, equipment, forms, and
 256 | quality assurance comply with best practices.

257 | (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
 258 | which is certified by the U.S. Department of Health and Human Services using its
 259 | confirmation methods and established cut-off levels. Laboratory-confirmed results shall
 260 | undergo the verification process by a MRO.

261 | (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
 262 | evidential breath testing device.

263 | (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
 264 | certified saliva test.

265 | ~~8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his~~
 266 | ~~or her supervisor of the accident. Alcohol and drug testing shall be conducted on the employee~~
 267 | ~~immediately following the accident by certified drug and alcohol technicians or police personnel.~~
 268 | ~~Upon arriving at a medical facility, the employee shall inform the medical care provider that this~~
 269 | ~~was a work-related accident. If the alcohol and drug testing is not conducted by certified drug and~~
 270 | ~~alcohol technician or police, then the supervisor shall direct the employee to go to EHN or its~~
 271 | ~~designee to be tested within one (1) hour of being directed by the Supervisor to do so or within one~~
 272 | ~~(1) hour of being treated and released at the medical facility. Refusal to submit to any post-~~
 273 | ~~accident alcohol and drug testing requested by certified drug and alcohol technicians, police, EHN,~~
 274 | ~~or its designee shall be treated as a refusal to test pursuant to this Policy.~~

275 | 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform
 276 | his or her supervisor of the accident.

277 | 202.8-4. Each employee, as a condition of employment, is required to participate in pre-
 278 | employment, reasonable suspicion, and follow-up testing upon the request of an appropriate
 279 | authority.

280 | 202.8-5. A negative test result is required for employment eligibility.

281 | 202.8-6. Dilution of Test Results. In cases where a drug test result is diluted ~~or~~, a positive dilute
 282 | of the test ~~was cancelled~~,result requires that the applicant or employee shall be given a confirmed

283 ~~positive test result, while a negative dilute of the test result requires~~ retesting ~~urine for drugs is~~.
 284 ~~EHN shall notify the applicant or employee of the~~ required. ~~retesting.~~

285 (a) If the re-test results in a negative-dilute, the applicant ~~or employee~~ shall be given a
 286 negative test result.

287 (b) If the re-test results in a positive-dilute, then the applicant ~~shall be given a positive test~~
 288 ~~result. Other retesting may also~~ ~~or employee shall~~ be ~~required at the direction of the~~
 289 ~~MRO.~~ ~~given a positive test result.~~

291 ~~Article IX~~ **202.9. Refusal to Test**

292 ~~202.9-1.~~ Refusal to test is prohibited behavior as defined in ~~Article VI~~ ~~section 202.6.~~ Refusal to
 293 test carries the same consequences as a ~~non-negative and/or~~ confirmed positive test result.
 294 Examples of refusal to test include, but are not limited to:

295 (a) Substituting, adulterating (falsifying), or diluting the specimen

296 (b) Refusal to sign the required forms

297 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
 298 accurate testing and as directed by the collector

299 (d) Failing to remain at the testing site until the testing process is complete

300 (e) Providing an insufficient sample of urine or breath

301 (f) Failing to test or to re-test

302 (g) Failing to appear within two (2) hours after an order or request is made for testing or
 303 re-testing, ~~including for work related accidents.~~

304 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
 305 process

306 ~~(i) Failing~~

307 **202.10. Reasonable Suspicion Testing Waiting Period**

308 ~~202.10-1.~~ This section applies only to ~~inform~~ ~~current employees who meet~~ the ~~medical facility that~~
 309 ~~reasonable suspicion standard. It does not apply to applicants of the Nation.~~

310 ~~202.10-2~~ ~~During drug and~~ alcohol ~~and drug~~ testing ~~is needed due to a work related accident~~

312 ~~Article X.~~ **Waiting Period**

313 ~~10-1.~~ ~~An~~ ~~for~~ ~~reasonable suspicion, an~~ employee shall be immediately removed from duty without
 314 pay ~~during the waiting period between~~ at the time of ~~initiation of the reasonable suspicion drug and~~
 315 ~~alcohol testing and~~ specimen collection ~~and the employer's notification~~ ~~until the employer is~~
 316 ~~notified by EHN~~ of negative results on both ~~tests, alcohol~~ ~~the drug~~ and ~~drugs~~ ~~alcohol tests~~, or
 317 MRO-verified negative test results.

318 ~~202.10-23.~~ When ~~negative~~ ~~confirmation of~~ test results are made available to the employer, the
 319 supervisor shall notify the employee by telephone and by certified mail using the contact
 320 information provided by the employee. The notice to the employee shall identify a reinstatement
 321 date. ~~Back if the test was confirmed negative, or applicable consequences if the test was~~
 322 ~~confirmed positive. If the employee is reinstated, back~~ pay shall be provided in accordance with
 323 the Back Pay ~~Policy~~ ~~law~~. However, if the employee fails to return to work on the assigned
 324 reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the
 325 employee in accordance with the ~~Personnel Policies and Procedures~~ ~~Nation's laws, rules and~~
 326 ~~policies governing employment~~, unless an extension is granted in writing by the supervisor along
 327 with the reason for the extension. An employee who is ultimately terminated for failure to return

328 to work on his or her assigned reinstatement date shall not be eligible for employment for one (1)
 329 year after the date of termination.

330 ~~10-3. This article applies only to current employees who meet the reasonable suspicion standard.~~
 331 ~~It does not apply to applicants.~~

332

333 Article XI

334 **202.11. Consequences for Prohibited Behavior**

335 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
 336 before being directed to ~~the Employee Health Nursing Department EHN~~ or other designated
 337 testing site for ~~his or her~~ the applicant's drug and alcohol testing.

338 202.11-2. External Applicant. If an external applicant fails to show at the testing site within the
 339 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 340 ~~section~~ section 202.6-1(e) that has been documented, the employment offer shall be withdrawn.
 341 An external applicant shall not be eligible for hiring consideration for one hundred eighty (180)
 342 days from the date of the urine drug screening test.

343 202.11-3. Internal Applicant. If an internal applicant fails to show at the testing site within the
 344 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 345 section ~~202.6-1~~, the employment offer shall be withdrawn. The applicant shall be removed from
 346 duty and subject to respective consequences of this Policylaw. The applicant shall not be eligible
 347 for hiring consideration in a different position for one hundred eighty (180) days from the date of
 348 the urine drug screening test.

349 202.11-4. Employee. If an employee has engaged in prohibited behavior as listed in section
 350 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10)
 351 business days (which shall be deemed thereafter as a definite positive test), ~~he or she~~ the employee
 352 shall be removed from duty and subject to the respective consequences of this Policylaw.

353 202.11-5. Consequences.

354 (a) *First Violation.*

355 (1) Any employee who engages in prohibited behavior as defined in Article
 356 ~~VI~~ section 202.6 for the first time shall be removed from duty without pay and shall
 357 receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also
 358 determine if the employee shall be subject to return-to-duty/follow-up testing. If
 359 follow-up testing is required, the testing shall be at the employee's expense.

360 (2) The employee shall be required to sign an ONEAP Return-to-Work
 361 Agreement and submit ~~the agreement~~ to his or her supervisor within ten (10)
 362 calendar days or the employee shall be terminated and ineligible for re-hire for one
 363 (1) year.

364 (A) When the supervisor signs the Return-to-Work Agreement the
 365 employee shall be placed back on the work schedule by the next regularly
 366 scheduled workday.

367 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
 368 employee being terminated and ineligible for re-hire for one (1) year.

369 (b) *Second Violation.*

370 (1) Any employee who engages in prohibited behavior as defined in Article
 371 ~~VI~~ section 202.6 a second time within his or her lifetime of employment with the

372 | ~~TribeNation~~ shall be removed from duty without pay and shall receive a mandatory
 373 | referral to ONEAP for an assessment.

374 | (2) The employee shall be required to sign ~~a~~an ONEAP Return-to-Work
 375 | Agreement and submit it to ~~their~~the employee's supervisor for signature within ten
 376 | (10) calendar days or the employee shall be terminated and ineligible for re-hire for
 377 | one (1) year. After a second violation the employee shall not be placed back on the
 378 | work schedule until:

379 | (A) The employee receives approval from the ONEAP that they have
 380 | demonstrated sufficient progress in a treatment program that would indicate
 381 | the employee is drug and alcohol free within thirty (30) days of the
 382 | employee being removed from duty; and

383 | (B) The employee completes a return-to-duty drug screening and alcohol
 384 | test at a SAMHSA-certified facility at their own expense, which shall be
 385 | negative within thirty (30) days of the employee being removed from duty;

386 | (C) The ONEAP notifies the supervisor of the employee's eligibility to
 387 | return to work.

388 | (3) As a condition of continuing employment, the employee shall participate in
 389 | follow-up testing with continued negative results as directed by the ONEAP and
 390 | listed in the Return-to-Work Agreement. All follow-up testing shall be at the
 391 | employee's expense.

392 | (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
 393 | result in the employee being terminated and ineligible for re-hire for one (1) year.

394 | (c) *Third Violation.*

395 | (1) Any employee who engages in prohibited behavior as defined in Article
 396 | VI section 202.6 a third time in his or her lifetime of employment with the
 397 | TribeNation shall be terminated. The employee shall not be eligible for
 398 | employment unless he or she receives a forgiveness pursuant to the Pardon and
 399 | Forgiveness Law. An employee that receives a forgiveness shall not be eligible
 400 | for re-hire for one (1) year after the date of termination.

401 | **Article XII 202.12. Re-hire**

402 | 202.12-1. Former employees A former employee that ~~were~~was terminated due to violations of this
 403 | Policy shall provide, along with ~~their~~the former employee's application for employment, the
 404 | following:

405 | (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

406 | (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
 407 | within the last thirty (30) days. This drug screening and alcohol test shall be done at
 408 | ~~their~~the former employee's own expense.

409 | **Article XIII 202.13. Other Potential Consequences**

410 | 202.13-1.—The violation of this Policy may result in consequences to the employee
 411 | beyond any discipline or corrective action that may be taken. Other potential consequences
 412 | include the following:
 413 |
 414 |

415 | (a) *Disqualification of Unemployment Benefits:* ~~Employees~~An employee who ~~are~~is
 416 | terminated as a result of a violation of this ~~Policy~~law may be ineligible for unemployment
 417 | benefits.

418 | (b) *Reduction of Workers Compensation Benefits:* ~~Employees~~An employee who
 419 | ~~suffer~~incurs an injury in a work-related accident that occurred while engaged in a violation
 420 | of this ~~Policy~~law may have any workers compensation benefits reduced.

421 | (c) *Criminal Penalties:* ~~Employees~~An employee whose conduct violates state or federal
 422 | criminal laws may be referred to appropriate law enforcement for criminal prosecution.

423 | (d) *Liability for Accidents:* ~~Employees~~An employee whose conduct in violation of this
 424 | ~~Policy~~law causes an accident may be held personally responsible for losses associated with
 425 | the accident, and the employee may be required to pay for those losses.

426 |
 427 | **Article XIV.—202.14. Confidentiality**

428 | 202.14-1. Information related to the application of this ~~Policy~~law is confidential. Access to this
 429 | information is limited to those who have a legitimate “need to know” in compliance with relevant
 430 | laws and personnel policies and procedures.

431 | 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
 432 | records; which are separate from the employee’s clinical and personnel files. The employee may
 433 | request a copy of ~~his or her~~the employee’s records. The records may be requested by a third party
 434 | in accordance with the Oneida ~~Personnel Policies~~Nation’s laws, rules and ~~Procedures~~policies
 435 | governing employment.

436 |
 437 | **Article XV—202.15. Communication**

438 | 202.15-1. HRD shall communicate this ~~Policy~~law to all employees to ensure all employees are
 439 | aware of their role in supporting this ~~Policy~~law:

440 | (a) All employees shall be given information on how to access this ~~Policy~~law.

441 | (b) This ~~Policy~~law shall be reviewed in new employee orientation and other means, as
 442 | deemed appropriate by HRD.

443 | (c) All employees shall sign an acknowledgment form stating they have received a copy of
 444 | this ~~Policy~~law, have read and understand it, and agree to follow this ~~Policy~~law.

445 |
 446 | *End.*
 447 |

448 | See GTC-~~01-31-94-B~~

449 | Adopted by the OBC on ~~08-17-94~~

450 | Emergency Amendments BC-04-20-95-C

451 | Adopted BC-10-25-95-A (repealed previous versions)

452 | Amended BC-10-20-99-A

453 | Amended BC-12-05-07-B

454 | Amended BC-12-11-13-F

455 | Emergency Amended BC-10-26-16-D
 456 |

Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE

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202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

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202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F and BC_____.

202.2-2. 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.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(c) “EHN” means the Oneida Employee Health Nursing Department.

(d) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work

58 performed, or who has the status of an employee under the usual common law rules
 59 applicable to determining the employer-employee relationship. “Employee” includes, but
 60 is not limited to; an individual employed by any program or enterprise of the Nation, but
 61 does not include elected or appointed officials, or individuals employed by a Tribally
 62 Chartered Corporation. For purposes of this law, individuals employed under an
 63 employment contract as a limited term employee are employees of the Nation, not
 64 consultants.

65 (e) “External applicant” means a person who is applying for a position and not currently
 66 employed by the Nation.

67 (f) “HRD” shall mean the Human Resources Department and/or representatives
 68 performing Human Resources functions applicable to this law.

69 (g) “Internal applicant” means a person who is applying for a position who is currently
 70 employed by the Nation, this shall include those employed under a temporary status.

71 (h) “MRO” means Medical Review Officer who is a licensed physician who is responsible
 72 for receiving and reviewing laboratory test results generated by an employer’s drug testing
 73 program and evaluating medical explanations for certain drug test results.

74 (i) “Nation” means the Oneida Nation.

75 (j) “NHTSA” means the National Highway Traffic Safety Administration.

76 (j) “ONEAP” means the Oneida Nation Employee Assistance Program which is a
 77 professional counseling program staffed by clinical social workers licensed by the State of
 78 Wisconsin which offers services to the Nation’s employees and family members.

79 (k) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine
 80 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance
 81 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
 82 States Code. This shall also include prescription medication or over-the-counter medicine
 83 used in an unauthorized or unlawful manner.

84 (l) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor
 85 and signed by the employee and the ONEAP counselor, and the referring supervisor, which
 86 sets out the actions the employee needs to complete in order to return to work and remain
 87 employed.

88 (m) “Supervisor” means the immediate supervisor, or person who has taken on the role of
 89 supervisor due to an absence that is responsible for performance review, corrective action,
 90 and day-to-day assignments of duties.

91 (n) “Work-related accident” means an unexpected event involving an employee that occurs
 92 in the employee’s working environment or during an activity related to work, that:

93 (1) results in an injury to the employee or another person that may require medical
 94 intervention by a police officer or emergency medical technician, or treatment at a
 95 medical facility,

96 (2) results in death of the employee or another person, or

97 (3) involves any property damage.

98 **202.4. Application**

99 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
 100 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
 101 or a vehicle rented by the Nation.
 102

- 103 202.4-2. An employee is prohibited from the use of prohibited drugs at all times.
 104 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
 105 while the conference or meeting is in session.
 106 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
 107 country where the use of certain drugs is legal.

108
 109 **202.5. Shared Responsibility**
 110 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
 111 and shared responsibility between the employer and an employee.

- 112 202.5-2. *Employee*. It is the employee's responsibility to:
- 113 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours,
 114 and/or when scheduled to be on-call.
 - 115 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
 116 prohibited drugs while working.
 - 117 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
 118 appropriate authority.
 - 119 (d) Confidentially report suspicious behavior of an employee immediately to the
 120 supervisor of the employee in question.
 - 121 (e) Cooperate with the requests made by EHN and the MRO. The employee shall return
 122 the call of the MRO within twenty-four (24) hours of the call being made to the employee.
 123 An employee who fails to cooperate and does not contact the MRO within twenty-four (24)
 124 hours of receiving contact shall not receive back pay for any time between the date the
 125 MRO placed the call until the time the employee does return the call of the MRO.
 - 126 (f) Sign a consent form to be tested for alcohol and drugs when requested by an
 127 appropriate authority.
 - 128 (g) Provide the appropriate information to EHN in the event a medical condition prevents
 129 the employee from properly completing drug and alcohol testing so alternative drug and
 130 alcohol testing measures can be taken by EHN.

- 131 202.5-3. *Supervisor*. It is the supervisor's responsibility to:
- 132 (a) Be familiar with this law and any related policies and procedures.
 - 133 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
 134 person who reported the suspicious behavior.
 - 135 (c) Promptly intervene with an employee who is believed to be under the influence of
 136 prohibited drugs and/or alcohol.
 - 137 (d) Monitor the employee under the influence of prescription and/or over-the-counter
 138 medications that could compromise the safety of the employee, fellow employees, or the
 139 public.
 - 140 (e) Send the employee through the contracted transportation service for reasonable
 141 suspicion drug and alcohol testing.
 - 142 (f) Take appropriate action as outlined by this law.
 - 143 (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor
 144 that was developed by ONEAP.
 - 145 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
 146 employee to EHN.

147 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the
 148 responsibilities of the supervisor or employee under this law may be subject to disciplinary action
 149 or other consequences as explained in section 202.13.

150 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or
 151 alcohol may result in continued impairment during on-duty hours, which shall then constitute a
 152 violation of this law. It is the employee's responsibility to understand the consequences of off-
 153 duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is
 154 called in for emergency or unplanned work, excluding those on-call, and has been using
 155 prohibited drugs or drinking alcoholic beverages prior to such a call, shall inform the employee's
 156 supervisor they cannot report, and shall continue to decline to report until the effects of the
 157 prohibited drugs or alcohol have left the employee's system. Such refusal to report shall not be
 158 viewed as improper, and disciplinary action shall not arise from such refusal.

159 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee
 160 who is taking or is under the influence of any controlled substances during working hours,
 161 including prescription medication or over the counter medication, which may affect the
 162 employee's job performance or safety of the employee, fellow employees, public, or assets of the
 163 Nation have the following obligations:

- 164 (a) The employee shall notify the employee's immediate supervisor about the use of the
 165 substance and possible work-related effects prior to commencing work.
- 166 (b) Upon request, the employee may be required to obtain a written statement of any work
 167 restrictions or impact on performance or safety relating to the legal substances from the
 168 employee's physician or pharmacist.
- 169 (c) An employee shall not sell or share his or her prescribed medications with any other
 170 person, and shall not take medications that are prescribed to another person.
- 171 (d) It may be necessary for the employee's supervisor, area manager or EHN to consult
 172 with the employee's personal physician, pharmacist or an MRO, with the employee's
 173 approval or written authorization, to determine if the medication might impact the
 174 employee's ability to perform the employee's job, or pose a hazard to other employees
 175 or to the general public.
- 176 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
 177 days. Any modification of duties shall result in the appropriate modification of pay as
 178 established by the Human Resources Department.

179

180 **202.6. Prohibited Behavior**

181 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 182 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
 183 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught
 184 using, possessing or selling prohibited drugs shall be immediately terminated from employment
 185 with the Nation.
- 186 (b) Fails to inform his or her supervisor of being under the influence of prescription
 187 medication and/or over-the-counter medication(s) which may affect the employee's job
 188 performance or safety of the employee, fellow employees, public, or assets of the Nation.
- 189 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
 190 prescription medications.
- 191 (d) Refuses to test.

- 192 (e) Has a confirmed positive test after completing a drug and/or alcohol test through EHN
193 or a medical facility, or has a confirmatory test come back as positive.
194

195 **202.7. Reasonable Suspicion**

196 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
197 personal observation and/or secondary reported observation that an employee may be under the
198 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
199 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
200 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
201 evaluate the following:

202 (a) Specific observations concerning appearance, behavior, speech, or body odors of the
203 employee consistent with possible drug use or alcohol misuse.

204 (b) The observations may include indications of the chronic and withdrawal effects of
205 prohibited drugs or alcohol.

206 202.7-2. The supervisor shall document his or her observations and discuss the matter with the
207 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.
208 The employee shall comply with this request. If after a discussion with the employee, the
209 supervisor continues to suspect the employee may currently still be under the influence or
210 reasonable suspicion is otherwise established, the supervisor shall refer the employee for
211 reasonable suspicion drug and alcohol testing.

212 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol
213 testing of an employee is final. An employee cannot appeal or challenge a supervisor's
214 determination for reasonable suspicion drug and alcohol testing.
215

216 **202.8. Drug and Alcohol Testing**

217 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
218 conditions of employment as described in this law. To ensure the accuracy and fairness of this
219 law, all drug and alcohol testing shall be conducted according to the United States Department of
220 Health and Human Services, Substance Abuse and Mental Health Services Administration
221 (SAMSHA) guidelines for Federal Workplace Drug Testing Programs.

222 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and
223 National Highway Transportation Safety Administration (NHTSA) certified evidential breath
224 testing devices or NHTSA certified saliva-screening devices, operated by technicians whose
225 training terminology, procedures, methods, equipment, forms, and quality assurance comply with
226 best practices.

227 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
228 which is certified by the U.S. Department of Health and Human Services using its
229 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
230 undergo the verification process by a MRO.

231 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
232 evidential breath testing device.

233 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
234 certified saliva test.

235 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform
236 his or her supervisor of the accident.

237 202.8-4. Each employee, as a condition of employment, is required to participate in pre-
 238 employment, reasonable suspicion, and follow-up testing upon the request of an appropriate
 239 authority.

240 202.8-5. A negative test result is required for employment eligibility.

241 202.8-6. *Dilution of Test Results*. In cases where a drug test result is diluted, a positive dilute of
 242 the test result requires that the applicant or employee shall be given a confirmed positive test
 243 result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
 244 employee of the required retesting.

245 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a
 246 negative test result.

247 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a
 248 positive test result.

249

250 **202.9. Refusal to Test**

251 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
 252 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
 253 are not limited to:

254 (a) Substituting, adulterating (falsifying), or diluting the specimen.

255 (b) Refusal to sign the required forms .

256 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
 257 accurate testing and as directed by the collector.

258 (d) Failing to remain at the testing site until the testing process is complete.

259 (e) Providing an insufficient sample of urine or breath

260 (f) Failing to test or to re-test.

261 (g) Failing to appear within two (2) hours after an order or request is made for testing or
 262 re-testing.

263 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
 264 process.

265

266 **202.10. Reasonable Suspicion Testing Waiting Period**

267 202.10-1. This section applies only to current employees who meet the reasonable suspicion
 268 standard. It does not apply to applicants of the Nation.

269 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
 270 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
 271 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
 272 results on both the drug and alcohol tests, or MRO-verified negative test results.

273 202.10-3. When confirmation of test results are made available to the employer, the supervisor
 274 shall notify the employee by telephone and by certified mail using the contact information
 275 provided by the employee. The notice to the employee shall identify a reinstatement date if the
 276 test was confirmed negative, or applicable consequences if the test was confirmed positive. If the
 277 employee is reinstated, back pay shall be provided in accordance with the Back Pay law .
 278 However, if the employee fails to return to work on the assigned reinstatement date as instructed in
 279 the notice from the supervisor, the supervisor shall discipline the employee in accordance with the
 280 Nation's laws, rules and policies governing employment, unless an extension is granted in writing
 281 by the supervisor along with the reason for the extension. An employee who is ultimately

282 terminated for failure to return to work on his or her assigned reinstatement date shall not be
283 eligible for employment for one (1) year after the date of termination.

284

285 **202.11. Consequences for Prohibited Behavior**

286 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
287 before being directed to EHN or other designated testing site for the applicant's drug and alcohol
288 testing.

289 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
290 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
291 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
292 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
293 date of the urine drug screening test.

294 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the
295 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
296 section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from
297 duty and subject to respective consequences of this law. The applicant shall not be eligible for
298 hiring consideration in a different position for one hundred eighty (180) days from the date of the
299 urine drug screening test.

300 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section
301 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10)
302 business days (which shall be deemed thereafter as a definite positive test), the employee shall be
303 removed from duty and subject to the respective consequences of this law.

304 202.11-5. *Consequences.*

305 (a) *First Violation.*

306 (1) Any employee who engages in prohibited behavior as defined in section 202.6
307 for the first time shall be removed from duty without pay and shall receive a
308 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
309 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
310 testing is required, the testing shall be at the employee's expense.

311 (2) The employee shall be required to sign an ONEAP Return-to-Work Agreement
312 and submit the agreement to his or her supervisor within ten (10) calendar days or
313 the employee shall be terminated and ineligible for re-hire for one (1) year.

314 (A) When the supervisor signs the Return-to-Work Agreement the
315 employee shall be placed back on the work schedule by the next regularly
316 scheduled workday.

317 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
318 employee being terminated and ineligible for re-hire for one (1) year.

319 (b) *Second Violation.*

320 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
321 second time within his or her lifetime of employment with the Nation shall be
322 removed from duty without pay and shall receive a mandatory referral to ONEAP
323 for an assessment.

324 (2) The employee shall be required to sign an ONEAP Return-to-Work Agreement
325 and submit it to the employee's supervisor for signature within ten (10) calendar
326 days or the employee shall be terminated and ineligible for re-hire for one (1) year.

327 After a second violation the employee shall not be placed back on the work
328 schedule until:

329 (A) The employee receives approval from the ONEAP that they have
330 demonstrated sufficient progress in a treatment program that would indicate
331 the employee is drug and alcohol free within thirty (30) days of the
332 employee being removed from duty; and

333 (B) The employee completes a return-to-duty drug screening and alcohol
334 test at a SAMHSA-certified facility at their own expense, which shall be
335 negative within thirty (30) days of the employee being removed from duty;

336 (C) The ONEAP notifies the supervisor of the employee's eligibility to
337 return to work.

338 (3) As a condition of continuing employment, the employee shall participate in
339 follow-up testing with continued negative results as directed by the ONEAP and
340 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
341 employee's expense.

342 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
343 result in the employee being terminated and ineligible for re-hire for one (1) year.

344 (c) *Third Violation.*

345 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
346 third time in his or her lifetime of employment with the Nation shall be terminated.
347 The employee shall not be eligible for employment unless he or she receives a
348 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives
349 forgiveness shall not be eligible for re-hire for one (1) year after the date of
350 termination.

351 **202.12. Re-hire**

352 202.12-1. A former employee that was terminated due to violations of this law shall provide,
353 along with the former employee's application for employment, the following:

354 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

355 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
356 within the last thirty (30) days. This drug screening and alcohol test shall be done at the
357 former employee's own expense.

358

359 **202.13. Other Potential Consequences**

360 202.13-1. The violation of this law may result in consequences to the employee beyond any
361 discipline or corrective action that may be taken. Other potential consequences include the
362 following:

363 (a) *Disqualification of Unemployment Benefits:* An employee who is terminated as a
364 result of a violation of this law may be ineligible for unemployment benefits.

365 (b) *Reduction of Workers Compensation Benefits:* An employee who incurs an injury in a
366 work-related accident that occurred while engaged in a violation of this law may have any
367 workers compensation benefits reduced.

368 (c) *Criminal Penalties:* An employee whose conduct violates state or federal criminal
369 laws may be referred to appropriate law enforcement for criminal prosecution.

370 (d) *Liability for Accidents:* An employee whose conduct in violation of this law causes an
 371 accident may be held personally responsible for losses associated with the accident, and the
 372 employee may be required to pay for those losses.
 373

374 **202.14. Confidentiality**

375 202.14-1. Information related to the application of this law is confidential. Access to this
 376 information is limited to those who have a legitimate “need to know” in compliance with relevant
 377 laws and personnel policies and procedures.

378 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
 379 records which are separate from the employee’s clinical and personnel files. The employee may
 380 request a copy of the employee’s records. The records may be requested by a third party in
 381 accordance with the Oneida Nation’s laws, rules and policies governing employment.
 382

383 **202.15. Communication**

384 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
 385 their role in supporting this law:

386 (a) All employees shall be given information on how to access this law.

387 (b) This law shall be reviewed in new employee orientation and other means, as deemed
 388 appropriate by HRD.

389 (c) All employees shall sign an acknowledgment form stating they have received a copy of
 390 this law, have read and understand it, and agree to follow this law.
 391

392 *End.*
 393

394 See GTC-01-31-94-B

395 Adopted by the OBC on 08-17-94

396 Emergency Amendments BC-04-20-95-C

397 Adopted BC-10-25-95-A (repealed previous versions)

398 Amended BC-10-20-99-A

399 Amended BC-12-05-07-B

400 Amended BC-12-11-13-F

401 Amended BC-10-26-16-D
 402



Legislative Operating Committee
February 1, 2017

Budget Management and Control

| | |
|-------------------------------------|--|
| Submission Date: 9/17/14 | Public Meeting: 12/15/16 |
| LOC Sponsor: Brandon Stevens | Emergency Enacted: n/a Expires: 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 P. Jordan, 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.

10/19/16: *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.

10/20/16LOC: 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.

11/16/16LOC: Motion by Tehassi Hill to approve the Budget Management and Control Law public meeting packet and direct the LRO to hold a public meeting on December 15, 2016; seconded by Fawn Billie. Motion carried unanimously.

12/15/16: *Public Meeting held.*

1/4/17 LOC: Motion by Jennifer Webster to accept the Budget Management and Control Law public comments; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Fawn Billie to direct the LRO to put together an adoption packet with the noted changes; seconded by Tehassi Hill. Motion carried unanimously.

Noted changes include: 1) replace “entity” with “fund unit”, 2) include physical infrastructure to the definition of capital improvement, 3) clarify that “capital expenditure” is non-physical and “capital improvements” is physical, 4) include a footnote after the definition for “Capital expenditure” which states that acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of capital expenditure, 5) fix the grammatical error in section 121.3(i), 6) include the language “or that have been modified” to section 121.6-1, and 7) include the following language to section 121.7-1 “until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the general fund to 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.”

Next Steps:

- Review the fiscal impact statement, accept the Budget Management and Control Law adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: February 8, 2017
RE: Budget Management and Control Law

Please find the following attached backup documentation for your consideration of the Budget Management and Control law:

1. Resolution: Adoption of the Budget Management and Control Law
2. Statement of Effect: Budget Management and Control Law
3. Budget Management and Control Law Legislative Analysis
4. Budget Management and Control Law
5. Budget Management and Control Law Fiscal Impact Statement

Overview

This is a proposal to adopt 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;
- Provide a budget contingency plan to respond to extreme financial distress to include cost savings tools and a business continuity fund;
- Require community input in the budget development process;
- Require the OBC to create a priority list of services provided by the Nation and use the list to distribute the budget. Also, requires fund units with like services to meet and formulate a plan to meet budgetary requirements for their service group;
- Include guidelines and implementation requirements for capital improvement plans for government services and enterprises;
- Provide guidelines for expending the Nation's funds in accordance with the adopted budget;
- Restrict budget transfers once budgets are adopted by the GTC;
- Provide reporting and auditing requirements;
- Codify sign-off authority and delegate rulemaking authority for developing fees and charges for services provided;
- Provide compliance and enforcement mechanisms for violations of this law; and
- Include timelines for draft budget completion prior to presentation to GTC for adoption.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Budget Management and Control law was held on December 15, 2016.

Requested Action

Approve the Resolution: Adoption of the Budget Management and Control Law

BC Resolution _____*Adoption of the Budget Management and Control Law*

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

6 **WHEREAS**, the Oneida General Tribal Council is the governing body of the Oneida Nation;
7 and

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

11 **WHEREAS**, the Nation does not have a set process for putting the Nation's annual budget
12 together in order to present for the General Tribal Council's consideration; and

13 **WHEREAS**, the Oneida Business Committee, based on the Treasurer and the Finance
14 Committee recommendation, directed that a budget management law be
15 developed that sets a standardized process for putting the annual proposed budget
16 together; and

17 **WHEREAS**, this Budget Management and Control law requires both the Oneida Business
18 Committee and the Nation's fund units to prepare triennial strategic budget plans;
19 and

20 **WHEREAS**, this Budget Management and Control law implements a budgeting process
21 focused on value based budgeting wherein budget increases and budget cuts are
22 allocated based on a priority list approved by the Oneida Business Committee;
23 and

24 **WHEREAS**, this Budget Management and Control law requires the Treasurer to schedule and
25 conduct community input meetings both prior to preparing the budget to gather
26 feedback and after preparing the budget to present information prior to the annual
27 General Tribal Council budget meeting; and

28 **WHEREAS**, this Budget Management and Control law delegates joint rulemaking authority to
29 the Community Development Planning Committee and the Development Division
30 to create capital improvement rules; and

31 **WHEREAS**, this Budget Management and Control law delegates rulemaking authority to the
32 Purchasing Department to create procurement manual rules; and

33 **WHEREAS**, a public meeting on the proposed law was held on December 15, 2016 in
34 accordance with the Legislative Procedures Act.

Resolution _____

Page 2

35 **NOW THEREFORE BE IT RESOLVED**, that any rules required to be developed pursuant
36 to the Budget Management and Control law shall be in effect no later than October 1, 2017.

37 **NOW THEREFORE BE IT FURTHER RESOLVED**, that the Budget Management and
38 Control law is hereby adopted and shall become effective for the next fiscal year, on October 1,
39 2017.



Statement of Effect

Resolution: Adoption of the Budget Management and Control Law

Summary

This resolution adopts a new Budget Management and Control law. This is a new law which will:

- Require a triennial (3 year) strategic planning with short and long term policy and budget goals at both the OBC and departmental level;
- Provide a budget contingency plan to respond to extreme financial distress to include cost savings tools and a business continuity fund;
- Require community input in the budget development process;
- Require the OBC to create a priority list of services provided by the Nation and use the list to distribute the budget. Also, requires fund units with like services to meet and formulate a plan to meet budgetary requirements for their service group;
- Include guidelines and implementation requirements for capital improvement plans for government services and enterprises;
- Provide guidelines for expending the Nation's funds in accordance with the adopted budget;
- Restrict budget transfers once budgets are adopted by the GTC;
- Provide reporting and auditing requirements;
- Codify sign-off authority and delegate rulemaking authority for developing fees and charges for services provided;
- Provide compliance and enforcement mechanisms for violations of this law; and
- Include timelines for draft budget completion prior to presentation to GTC for adoption.

Submitted by Krystal L. John, Staff Attorney

Analysis

This resolution adopts the Budget Management and Control law which includes the provisions summarized above. This law merely provides the process required to develop the budget for the purpose of presenting the annual budget to the General Tribal Council for its consideration and/or modification. For that reason, General Tribal Council directives related to budget expenditure are not superseded by this Law; the Law, in section 121.5-9 recognizes that the General Tribal Council has sole authority to adopt the Nation's annual budget.

Based on a review of existing Oneida Business Committee and General Tribal Council resolutions and consultation with the Finance Department, to the best of my knowledge there is only one (1) resolution that speaks to the budget development/amendment process, resolution BC-10-08-08-A. That resolution is titled *Adopting Expenditure Authorization and Reporting Requirements*. Section 121.2-4 of the Law specifically provides that nothing in the Budget

Management and Control law amends or repeals resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*, so the requirements contained in that resolution will apply in addition to the budgeting process requirements contained in this Law.

The Nation does not currently have any laws adopted that address the matter of budget development, so this Law does not conflict with any of the Nation's laws.

Conclusion

Adoption of this Resolution maintains the General Tribal Council's sole authority to approve and adopt the Nation's annual budget, implements budget process requirements in addition to those contained in resolution BC-10-08-08-A, and does not conflict with any of the Nation's laws.



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Budget Management and Control Legislative Analysis

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| <i>Analysis by the Legislative Reference Office</i> | | | | | |
|---|---|----------------|-----------------|----------------|-----------------|
| Title | Budget Management and Control (law) | | | | |
| Sponsor | Brandon Stevens | Drafter | Krystal L. John | Analyst | Maureen Perkins |
| Requester & Reason for Request | OBC – Finance Committee To formalize the process for the Oneida Business Committee and fund units in developing the annual budget for the Oneida Nation for presentation to the General Tribal Council for formal approval. | | | | |
| Purpose | The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and fund units 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. | | | | |
| Authorized/ Affected Entities | The Nation's Treasurer, Chief Financial Officer, Gaming General Manager, Chief Legal Counsel, Chief Executive Manager/General Manager, Oneida Business Committee, managers, Internal Audit Department, Purchasing Department, Community Development Planning Committee, General Tribal Council, fund units | | | | |
| Related Legislation | 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) | | | | |
| Enforcement & Due Process | 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, conflicts of interest, ethics and removal from an elected position [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]. | | | | |
| Public Meeting Status | A public meeting was held December 15, 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. | | | | |

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Overview

9 This law was requested by the Oneida Business Committee (OBC), specifically the
10 Finance Committee, to guide the process used to develop the Nation's budget for presentation to
11 the General Tribal Council for formal approval and also to create a triennial strategy planning
12 process for the Nation's budget. This budget process detailed in the law includes value based
13 budgeting strategies that consider the needs of the community in the budget development process
14 [see 121.1-2].

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- 15 ▪ Triennial (3 year) strategic planning at both the OBC and departmental level to include
- 16 short and long term policy and budget goals for the Nation *[see 121.4]*.
- 17 ▪ Budget contingency plan to respond to extreme financial distress to include cost savings
- 18 tools and a business continuity fund *[see 121.4-3]*.
- 19 ▪ Provides for community input into the budget development process *[121.5-2]*.
- 20 ▪ The OBC will create a priority list of services provided by the Nation that guide in the
- 21 development of the budget to ensure that budget cuts do not affect high priority areas the
- 22 same as low priority areas. Also requires funding units with like services to meet and
- 23 formulate a plan to meet budgetary guidelines *[see 121.5-4]*.
- 24 ▪ Includes guidelines for capital improvement plans for government services and
- 25 enterprises as well as implementation requirements *[see 121.6-2]*.
- 26 ▪ Provides guidelines for expending the Nation's funds in accordance with the adopted
- 27 budget *[see 121.8]*.
- 28 ▪ Restricts budget transfers once budgets are adopted by the GTC *[see 121.9-1]*. Budget
- 29 amendments are not permitted except by the OBC on an emergency basis *[see 121.9-2]*.
- 30 ▪ Provides reporting and auditing requirements *[see 121.10]*.
- 31 ▪ Codifies sign-off authority and creates guidelines for developing fees and charges for
- 32 services provided *[see 121.11]*.
- 33 ▪ Provides compliance and enforcement mechanisms for violations of this law *[see*
- 34 *121.12]*.
- 35 ▪ Includes timelines for draft budget completion prior to presentation to GTC for adoption.

Budget Process

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38 The OBC and executive managers create a triennial (3 year) strategic plan for the Nation
39 which includes long and short term major policy and budgetary goals, specific strategies and
40 planned action to achieve each goal, and performance targets and indicators to track the progress
41 *[see 121.4-1(a) to (c)]*. Managers create a triennial strategic plan that aligns with the OBC
42 triennial plan which is submitted to the CFO yearly *[see 121.4-2(a) to (d)]*.

43 The CFO will be required to develop guidelines, which must be approved by the
44 Treasurer and the OBC, including specific deadlines, to be followed by department managers
45 that have budget responsibility in preparing and submitting proposed budgets *[see 121.5-4]*. At a
46 minimum the guidelines must include increase or decrease in cumulative budget for each service
47 group *[see 121.5-4]*.

48 A budget contingency plan is required to plan for periods of extreme financial distress
49 that includes cost savings tools and a business continuity fund which can only be used for
50 specific purposes *[see 121.4-3(a) to (b)]*.

51 Non-negotiable grant funds are exempt from the requirements of the budgetary
52 contingency fund and any cost containment initiatives *[see 121.4-3(c)]*.

53 The Treasurer will hold community input budget meetings to gather feedback on what
54 should be included in the next year's budget *[see 121.5-2]*. After reviewing the feedback
55 provided at the community budget input meetings, the OBC shall establish a priority list of
56 services to guide any budget cuts or increases *[see 121.5-3]*. Fund units offering like services
57 will be requested to meet and decide how to comply with budgetary guidelines and make any
58 necessary cuts to their respective proposed budgets which are guided by the priority list.

59 The draft budget is compiled by the CFO and presented to the OBC for review and
60 modification *[see 121.5-4(a) to (b)]*. The OBC will work with fund unit managers regarding any

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61 OBC proposed budget modifications. A final draft budget is then approved by the OBC by
62 resolution and presented at community meetings prior to being presented to GTC for adoption
63 *[see 121.5-6 to 121.5-9]*.

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Capital Improvements

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Budget Authority, Transfers, Amendments, and Reporting

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Administrative Rulemaking

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The following fund units have been granted rulemaking authority to implement, interpret and/or enforce this law:

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- 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 fund units 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

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106 remain appropriated for the same purpose as originally budgeted
107 *[see 121.7-1]*.

108 • Procurement Manual Rules

109 ○ Shall be developed by the Purchasing Department *[see 121.8-1]*

110 ■ Minimum requirements for the rules included in this law:

111 ■ Shall provide the sign-off process and authorities required to
112 expend funds on behalf of the Nation *[see 121.11-1]*.

113 ■ Executive managers job descriptions shall include delegated
114 authority to expend appropriated funds based upon the
115 procurement manual rules *[see 121.8-1]*.

116 • Fee Waivers Rules

117 ○ Programs and services charging fees may offer fee waivers, provided that the
118 program/service has developed rules outlining the fee waiver eligibility and
119 requirements *[see 121.11-2]*.

120 **Other**

121 • The Human Resources Department may be required to update job descriptions to reflect
122 authority delegated to expend funds based upon the procurement manual rules developed
123 by the Purchasing Department *[see 121.8-1]*.

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Title 1. Government and Finances – Chapter 121
BUDGET MANAGEMENT AND CONTROL

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We have a certain amount of money

| | | | | | |
|----|--------|-----------------------------|----|---------|-------------------------------------|
| 6 | 121.1. | Purpose and Policy | 12 | 121.7. | Appropriation of the Nation’s Funds |
| 7 | 121.2. | Adoption, Amendment, Repeal | 13 | 121.8. | Budget Authority |
| 8 | 121.3. | Definitions | 14 | 121.9. | Budget Transfers; Amendments |
| 9 | 121.4. | Strategic Planning | 15 | 121.10. | Reporting |
| 10 | 121.5. | Budget Process | 16 | 121.11. | Authorizations and Signatures |
| 11 | 121.6. | Capital Improvements | 17 | 121.12. | Enforcement and Penalties |

18

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 fund units 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 and/or the General Tribal Council 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 any non-recurring and non-physical improvement as follows:

(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 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

57 alterations; acquisition of fixed equipment; landscaping; physical infrastructure; and
58 similar expenditures with a cost of five thousand dollars (\$5,000.00) or more and an
59 estimated life of one (1) year or more.¹

60 (d) “CFO” means the Nation’s Chief Financial Officer.

61 (e) “Debt” means the secured or unsecured obligations owed by the Nation.

62 (f) “Economic life” means the length of time an asset is expected to be useful.

63 (g) “Executive manager” means any one of the following positions within the Nation:
64 Chief Executive Officer/General Manager, Gaming General Manager, Chief Legal
65 Counsel and/or Chief Financial Officer.

66 (h) “Expenditure report” means a financial report which includes, but is not limited to, a
67 statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement
68 of financial position.

69 (i) “Fiscal year” means the one (1) year period each year from October 1st to September
70 30th.

71 (j) “Fund unit” means any board, committee, commission, service, program, enterprise,
72 department, office, or any other division or non-division of the Nation which receives an
73 appropriation approved by the Nation.

74 (k) “General reserve fund” means the Nation’s main operating fund which is used to
75 account for all financial resources not accounted for in other funds.

76 (l) “GTC allocations” means expenditures directed by the General Tribal Council as
77 required payments and/or benefits to the Nation’s membership and are supported by
78 either a General Tribal Council or Oneida Business Committee resolution.

79 (m) “Line item” means the specific account within a fund unit’s budget or category that
80 expenditures are charged to.

81 (n) “Manager” means the person in charge of directing, controlling and administering the
82 activities of a fund unit.

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

84 (p) “Rule” means a set of requirements, including citation fees and penalty schedules,
85 enacted in accordance with the Administrative Rulemaking law based on authority
86 delegated in this law in order to implement, interpret and enforce this law.

87 (q) “Treasurer” means the elected Oneida Nation Treasurer or his or her designee.
88

89 **121.4. Strategic Planning**

90 121.4-1. *Triennial Strategic Plan.* Prior to December 1st of each year, the Oneida Business
91 Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan
92 which includes, but is not limited to:

93 (a) Major policy and budgetary goals for the Nation, both long and short term;

¹ Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of “Capital Improvement.”

94 (b) Specific strategies and planned actions for achieving each goal; and
95 (c) Performance targets and indicators to track progress which, to the extent available,
96 includes, but is not limited to:

97 (1) Statistics and trending data for, at a minimum, the last three (3) complete
98 fiscal years; and

99 (2) Performance targets for, at a minimum, the next three (3) complete fiscal
100 years moving forward.

101 121.4-2. *Fund Units' Contributions to the Triennial Strategic Plan.* Managers shall annually
102 develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns
103 with the triennial strategic plan established by the Oneida Business Committee pursuant to
104 121.4-1. Managers shall submit the fund unit's triennial strategic plan to the CFO when the fund
105 unit's budget is due and, at a minimum, shall include the following in the plan:

106 (a) A statement of the fund unit's mission;

107 (b) Specific goals including a description of the fund unit's strategies as part of its service
108 group provided in 121.5-3(c) which aligns with the goals established in the Nation's
109 triennial strategic plan;

110 (c) Specific strategies for achieving each of the fund unit's goals; and

111 (d) Performance targets and indicators to track progress which, to the extent available,
112 includes, but is not limited to:

113 (1) Statistics and trending data for, at a minimum, the last three (3) complete
114 fiscal years; and

115 (2) Performance targets for, at a minimum, the next three (3) complete fiscal
116 years moving forward.

117 121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO,
118 executive managers and managers to create a budget contingency plan which provides a strategy
119 for the Nation to respond to extreme financial distress that could negatively impact the Nation.
120 The Oneida Business Committee shall approve, by resolution, the budget contingency plan and
121 any amendments thereto. The Oneida Business Committee is responsible for the implementation
122 of the budget contingency plan, provided that such implementation is predicated on the Oneida
123 Business Committee's determination that the Nation is under extreme financial distress. For the
124 purposes of this section, extreme financial distress includes, but is not limited to, natural or
125 human-made disasters, United States Government shutdown, Tribal shutdown (which occurs
126 when the General Tribal Council has not approved a budget for the Nation prior to the beginning
127 of a new fiscal year) and economic downturns.

128 (a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business
129 Committee may require stabilization funds, reductions of expenditures, furloughs and
130 other cost saving tools provided that such tools are in compliance with the Nation's laws,
131 specifically the Nation's employment laws, rules and policies.

132 (b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a
133 Permanent Executive Contingency account within the ownership investment report to be
134 used to prevent default on debt and to sustain operations during times of extreme
135 financial distress. The Treasurer, in consultation with the CFO, shall establish, and the
136 Oneida Business Committee shall approve, the level of business continuity funds required
137 in the Permanent Executive Contingency account. The Treasurer shall set aside business
138 continuity funds in the Permanent Executive Contingency account until the established
139 level has been achieved. Funds in the Permanent Executive Contingency may only be

140 used for the following purposes and only to the extent that alternative funding sources are
141 unavailable:

- 142 (1) Payments to notes payable to debt service, both principal and interest, and
143 applicable service fees;
- 144 (2) Employee payroll, including all applicable taxes;
- 145 (3) Payments to vendors for gaming and retail;
- 146 (4) Payments to vendors for governmental operations;
- 147 (5) Payments to any other debt; and
- 148 (6) To sustain any of the Nation’s other operations during implementation of the
149 budget contingency plan.

150 (c) *Grant Funds.* Grant funds are exempt from requirements of the budget contingency
151 plan and any cost containment initiatives as such funding is not reliant on Tribal
152 contributions. Grant funds shall be spent according to any non-negotiable grant
153 requirements and guidelines of the granting agency to include purchases, travel, training,
154 hiring grant required positions and any other requirements attached to the funds as a
155 condition of the Nation’s acceptance of the grant funds.

156

157 **121.5. Budget Process**

158 121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the
159 annual budget adopted by the General Tribal Council. In creating the budget to present to the
160 General Tribal Council for consideration, the Oneida Business Committee, executive managers
161 and managers shall follow the processes provided in this law. The Oneida Business Committee
162 may alter the deadlines provided in this law only upon a showing of good cause, provided that,
163 the Oneida Business Committee shall approve any such alterations by resolution.

164 121.5-2. *Community Input Budget Meeting(s).* The Treasurer’s office shall schedule, at a
165 minimum, one (1) community input budget meeting(s) prior to December 1st of each year. At the
166 community input budget meeting(s), the Treasurer shall afford community members an
167 opportunity to provide input as to what should be included in the upcoming fiscal year budget.
168 Any fund units that plan to request forecast variations for the upcoming budget shall present the
169 need and anticipated dollar amount of the requested forecast variation. For the purposes of this
170 section, a forecast variation is a fund unit’s requested deviation from the performance targets the
171 fund unit submitted pursuant to 121.4-2(d)(2).

172 (a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded
173 and transcribed.

174 (b) The CFO shall provide recommendations as to any forecast variations requested by
175 fund units.

176 (c) The CFO and any relevant managers shall provide responses and/or recommendations
177 to all comments and considerations presented by community members.

178 (d) The Treasurer shall work with the CFO to place a community budget input meeting
179 packet on the Oneida Business Committee agenda no later than the last Oneida Business
180 Committee Meeting in January. At a minimum, the packet is required to include:

- 181 (1) The community input budget meeting(s) transcript(s);
- 182 (2) Any applicable fund unit’s requested forecast variations; and
- 183 (3) Responses and/or recommendations by the CFO and any relevant managers
184 regarding requests for forecast variations and community members’ comments
185 and considerations related to forecast variations.

186 121.5-3. *Priority List Established by the Oneida Business Committee.* The Oneida Business
187 Committee shall review the community input budget meeting packet and shall hold work
188 meetings to create a priority list.

189 (a) The Oneida Business Committee shall establish the priority list by placing the
190 following services provided by the Nation in chronological order with the lowest number
191 having the highest priority. The order of the following service groups provided below
192 has no relation to the service groups' anticipated and/or required placement within the
193 Oneida Business Committee's priority list; the Oneida Business Committee's priority list
194 may vary from year to year based on the needs of the Nation.

- 195 (1) Protection and Preservation of Natural Resources
- 196 (2) Protection and Preservation of Oneida Culture and Language
- 197 (3) Education and Literacy
- 198 (4) Health Care
- 199 (5) Economic Enterprises
- 200 (6) Building and Property Maintenance
- 201 (7) Human Services
- 202 (8) Public Safety
- 203 (9) Housing
- 204 (10) Utilities, Wells, Wastewater and Septic
- 205 (11) Planning, Zoning and Development
- 206 (12) Membership Administration
- 207 (13) Government Administration

208 (b) The Oneida Business Committee shall approve the priority list by resolution no later
209 than the last meeting in February.

210 (c) The CFO shall maintain a list which places each fund unit into a corresponding
211 service group.

212 121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including
213 specific deadlines, to be followed by the managers that have budget responsibility in preparing
214 and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall
215 include in the guidelines the exact amount that each service group's cumulative budget is
216 required to be increased/decreased in accordance with its placement on the priority list. The
217 CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business
218 Committee for review in accordance with the deadline as set by the Oneida Business Committee.
219 The Oneida Business Committee may revise the guidelines as it deems necessary and shall
220 approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary
221 guidelines proposed by the CFO were received.

222 (a) In accordance with the approved budgetary guidelines, fund units offering like
223 services shall meet together to review each fund unit's budget and discuss strategies for
224 attaining compliance with the approved budgetary guidelines. Each service group shall
225 submit one (1) draft budget which contains each fund unit's individual proposed budget
226 and demonstrates cumulative compliance with the approved budgetary guidelines.

227 (b) The CFO shall receive, review and compile the proposed budgets into the Nation's
228 draft budget which the CFO shall present to the Oneida Business Committee no later than
229 the last Oneida Business Committee meeting in May. The CFO may not alter any
230 proposed budgets until such budgets have been reviewed by the Oneida Business
231 Committee.

232 (1) The CFO shall return any service group’s draft budget that is in non-
233 compliance with the approved budgetary guidelines within ten (10) business days
234 of the date the budget was submitted to the CFO.

235 (2) Upon return, the CFO shall notice the service group of the amount of its non-
236 compliance and provide the service group with a deadline for a compliant
237 resubmission.

238 (3) Any service group’s budget that remains in non-compliance upon the
239 expiration of the deadline provided by the CFO shall be included in the draft
240 budget submitted to the Oneida Business Committee noting the dollar amount of
241 the service group’s non-compliance. A service group’s continued non-
242 compliance may result in employee discipline according to the Nation’s laws,
243 rules and policies governing employment.

244 121.5-5. *Content of Budget.* The CFO shall present the Nation’s draft budget to the Oneida
245 Business Committee for review each year to ensure that it is consistent with the Nation’s
246 spending priorities and budget strategy. The Nation’s draft budget shall include, but is not
247 limited to:

248 (a) Estimated revenues to be received from all sources for the year which the budget
249 covers;

250 (b) The individual budgets of each fund unit;

251 (c) A description of each line item within each fund unit’s budget;

252 (d) The estimated expenditures by each fund unit; and

253 (e) Each fund unit’s strategic plan showing alignment with the Nation’s goals.

254 121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida
255 Business Committee to review the draft budget and provide any recommendations for
256 modifications.

257 (a) Following the Oneida Business Committee’s review of the draft budget with the
258 CFO, the Oneida Business Committee shall schedule meetings with managers of each
259 fund unit for which the Oneida Business Committee is considering altering the fund
260 unit’s proposed budget.

261 (b) The Oneida Business Committee shall complete all meetings with fund unit managers
262 required by this section by the end of June each year.

263 121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit
264 managers and the CFO to compile a final draft budget to be presented to the General Tribal
265 Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to
266 be presented to the General Tribal Council by the end of July each year.

267 121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final
268 draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings
269 to present the contents of the final draft budget that will be presented to the General Tribal
270 Council.

271 121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the
272 General Tribal Council with a request for adoption by resolution no later than September 30th of
273 each year. In the event that the General Tribal Council does not adopt a budget by September
274 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such
275 time as a budget is adopted.

276

277 **121.6. Capital Improvements**

278 121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee
279 shall develop and the General Tribal Council shall approve a capital improvement plan for
280 government services and shall reassess the plan once every five (5) years. The capital
281 improvement plan for government services shall cover a period of five (5) to ten (10) years and
282 shall include any risks and liabilities. The Oneida Business Committee shall provide a status
283 report and recommendation for any improvements that have not been completed or that have
284 been modified at the time of the reassessment.

285 121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises
286 may be brought forward as needed in accordance with the capital improvement rules which the
287 Community Development Planning Committee and the Development Division shall jointly
288 create, provided that the rules shall include a provision that the Oneida Business Committee shall
289 approve all capital improvement plans.

290 121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be
291 implemented, contingent on available funding capacity, using the capital improvement rules.

292

293 **121.7. Appropriation of the Nation's Funds**

294 121.7-1. *Unexpended Capital Improvement Funds.* Unless the fund unit qualifies for an
295 exception as provided in the capital improvement rules, unexpended capital improvement funds
296 carry over to the next fiscal year's budget, provided that such funds are required to remain
297 appropriated for the same purpose as originally budgeted until the project is complete. Once a
298 capital improvement project is complete, any remaining unexpended funds shall be returned to
299 the general fund to be re-allocated in accordance with the Oneida Business Committee's priority
300 list under 121.5-3 using the regular budget process under 121.5.

301 121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended
302 capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the
303 fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in
304 accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular
305 budget process under 121.5.

306

307 **121.8. Budget Authority**

308 121.8-1. *Authority to Expend Funds.* The Treasurer's authority to expend appropriated funds is
309 delegated to the CFO, who shall make such expenditures in accordance with the adopted budget.
310 This authority is necessarily delegated to other managers, including executive managers, of the
311 Nation who manage the budgets, pursuant to their job descriptions based on the procurement
312 manual rules developed by the Purchasing Department.

313 121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as
314 applicable to a function for which the Nation's funds have also been appropriated, those grant
315 funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed
316 to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the
317 grant funds that provide otherwise.

318 121.8-3. In addition to the authority and responsibilities provided elsewhere in this law, the
319 following positions and fund units shall have the authority and responsibilities as outlined below:

320 (a) *Oneida Business Committee.* Once the Nation's annual budget is adopted by the
321 General Tribal Council, the authority of the Oneida Business Committee is limited to
322 budget oversight except as otherwise provided in this law. However, these limitations do

323 not prevent the Oneida Business Committee, with input from the CFO, from taking
324 necessary action, on an emergency basis and within the scope of its authority, to protect
325 and safeguard the resources and general welfare of the Nation and ensure compliance
326 with applicable laws, regulations and requirements. The OBC shall ensure that the CFO
327 performs the duties and responsibilities as assigned under this law.

328 (b) *Treasurer*. In addition to the Treasurer’s Constitutional responsibilities, the Nation’s
329 Treasurer shall:

330 (1) Submit expenditure reports and other financial reports as deemed necessary by
331 the Oneida Business Committee and/or the General Tribal Council at:

332 (A) The annual General Tribal Council meeting;

333 (B) The semi-annual General Tribal Council meeting; and

334 (C) Other such times as may be directed by the Oneida Business
335 Committee and/or the General Tribal Council.

336 (2) Present the proposed draft budget to the General Tribal Council at the annual
337 budget meeting as required by section 121.5-9.

338 (c) *Chief Financial Officer*. Once the Nation’s budget is properly adopted, the CFO shall
339 ensure that it is properly implemented. The CFO shall:

340 (1) Provide managers with monthly revenue and expense reports in order for the
341 managers to track their expenditures;

342 (2) Submit, to the Oneida Business Committee, a written report of any monthly
343 variances that are either a difference of three percent (3%) or more from the
344 adopted annual budget or \$50,000 or more in total; and

345 (3) Conduct financial condition meetings with the Nation’s management on a
346 quarterly basis.

347 (d) *Managers*. Managers of each business unit shall:

348 (1) Ensure that their business units operate, on a day-to-day basis, in compliance
349 with the budget adopted pursuant this law;

350 (2) Report to the CFO explanations and corrective actions for any monthly
351 variance that are either a difference of three percent (3%) or more from the
352 adopted annual budget or \$50,000 or more in total; and

353 (3) Submit budget review reports to the CFO on a reasonable and timely basis not
354 to exceed thirty (30) calendar days from the end of the month.

355
356 **121.9. Budget Transfers; Amendments**

357 121.9-1. *Budget Transfers*. After the budget is adopted, transfer of funds within the budget is
358 not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the
359 approved budget as required to accurately reflect the amount of grant funding actually received.

360 121.9-2. *Budget Amendments*. After the budget is adopted, amendments of the budget are not
361 permitted except as provided in section 121.8-3(a).

362
363 **121.10. Reporting**

364 121.10-1. *Monthly Reporting*. The CFO shall provide copies of the monthly Treasurer’s reports
365 and quarterly operational reports from direct reports to the Oneida Business Committee in
366 accordance with Secretary’s Oneida Business Committee packet schedule for the Oneida
367 Business Committee Meeting held for the acceptance of such reports.

368 121.10-2. *Audits.* The Internal Audit Department, annually, shall conduct independent
369 comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting
370 Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of
371 randomly selected fund units or of fund units deemed necessary by the Oneida Business
372 Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to
373 the Internal Audit Department. The Oneida Business Committee may, as it deems necessary,
374 contract with an independent audit firm to conduct such audits.
375

376 **121.11. Authorizations and Signatures**

377 121.11-1. *General.* The procurement manual rules developed by the Purchasing Department
378 shall provide the sign-off process and authorities required to expend funds on behalf of the
379 Nation.

380 121.11-2. *Fees and Charges.* Managers of programs and services requiring Tribal contribution
381 that desire to charge fees for their services shall determine the full cost of providing the program
382 and/or service and, only then, may charge fees to cover operational costs. The full cost of
383 providing a program and/or service includes all costs including operation costs, overhead such as
384 direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service
385 and/or goods whenever such fee or charge would not present an undue financial burden to
386 recipient. Programs and services charging fees may offer fee waivers, provided that the
387 program/service has developed rules outlining the fee waiver eligibility and requirements.
388

389 **121.12. Enforcement**

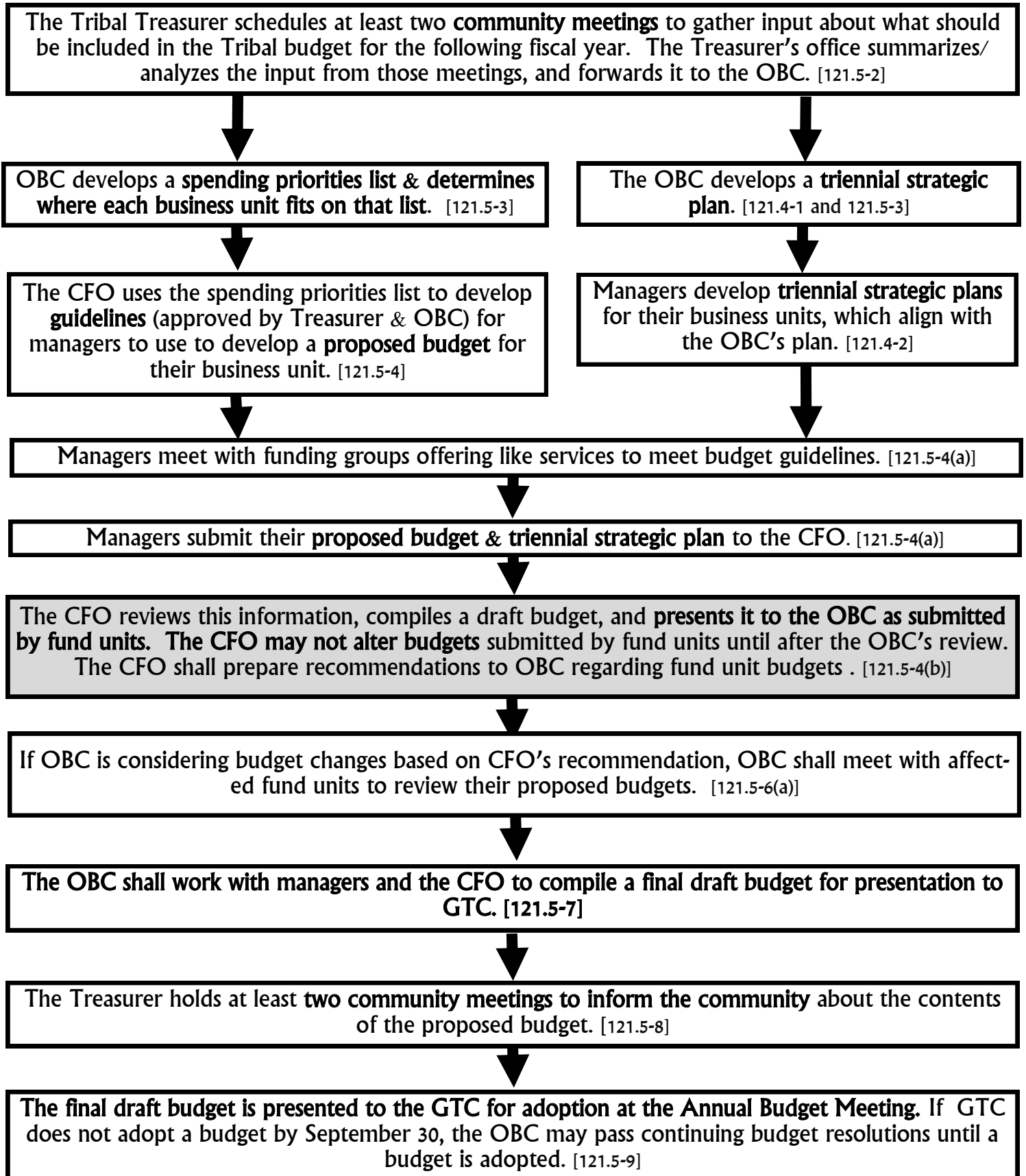
390 121.12-1. *Compliance and Enforcement.* All employees and officials of the Nation shall comply
391 with and enforce this law to the greatest extent possible.

392 121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement
393 tools provided by the Nation's laws, policies and rules, including but not limited to, those related
394 to employment with the Nation, conflicts of interest, ethics and removal from an elected position.

395 121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation
396 from pursuing civil and/or criminal charges under applicable law. Violations of applicable
397 federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any
398 such matter.
399

400
401 *End.*
402

The Annual Budget Process in the Budget Management and Control Law



MEMORANDUM

DATE: January 25, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Budget Management and Control Law**

I. Background

This is a new Law requested by the Oneida Business Committee to formalize the process for developing the budget. A public meeting was held December 15, 2016. This analysis was completed on Draft 13 of the Law. The budget process contained in the new Law includes the following:

- Strategic Planning
 - Triennial (3 year) strategic planning process to include:
 - long and short term policy and budget goals;
 - strategies and actions to achieve each goal;
 - performance targets and indicators.
- Contingency Planning
 - The Oneida Business Committee, Chief Financial Officer, and managers will develop a budget contingency plan to respond to extreme financial distress. The plan is to include cost savings tools to reduce expenditures and implement furloughs. The permanent executive contingency account funding shall be set by the Treasurer and the Chief Financial Officer and approved by the Oneida Business Committee. It is to be utilized to prevent credit default and sustain operations in the event of extreme financial distress.
- Budget Process
 - The Treasurer shall afford community members an opportunity to provide input on items to include in the upcoming budget prior to December 1st.
 - All comments are to be documented and responded to by the Chief Financial Officer or the relevant manager.

- The Oneida Business Committee will create a priority list of services provided.
- The Chief Financial Officer will create guidelines for budget cuts in accordance with the priority list.
 - Like services to meet and formulate a plan to meet budgetary guidelines.
 - The Chief Financial Officer will receive, review, and compile unaltered draft budgets to present to the Oneida Business Committee.
 - Non-compliant service groups must become compliant with the budget guidelines or be subject to employee discipline.
- The Chief Financial Officer shall include the following in the presentation of the Nation's draft budget to the Oneida Business Committee.
 - Estimated revenues
 - Fund unit budgets
 - Line item descriptions
 - Estimated expenditures
 - Strategic plan (Financial)
- The process for review and modifications consists of the following;
 - Chief Financial Officer to present to the Oneida Business Committee
 - Oneida Business Committee to meet with Managers
 - Final draft compiled by Chief Financial Officer for Oneida Business Committee approval
 - Oneida Business Committee to community, minimum of two meetings
 - Oneida Business Committee to General Tribal Council for approval
 - Provides guidelines for expending the Nation's funds in accordance with the adopted budget
- **Budget Appropriations, Responsibility, Authority, Transfers, and Reporting**
 - The Oneida Business Committee shall:
 - The Oneida Business Committee will develop a plan for capital improvements (CIP) for Governmental Services and reassess every 5 years.
 - Have oversight authority and responsibility and is limited to act except on an emergency basis;
 - Ensure the Chief Financial Officer performs responsibilities as assigned under Law;
 - Contract with an independent Audit firm as deems necessary.
 - The Treasurer shall:
 - Delegate budget authority to the Chief Financial Officer;

- Submit expenditure/financial reports to Oneida Business Committee and/or General Tribal Council for annual/semi-annual meeting or as directed;
- Present budget to General Tribal Council.
- Community Development Planning Committee and the Development Division shall:
 - Develop Capital Improvement Project Rules. Unless exempt from the rules, unused Capital Improvement Project funds will carry over from year to year.
 - Improvements are contingent on available funding capacity.
- The Chief Financial Officer shall:
 - Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;
 - Submit monthly Treasurers reports, quarterly operational reports and monthly variances reports of three percent (3%) or \$50,000 or more in total in compliance with the Tribal Secretary's schedule;
 - Conduct financial condition meetings with the Nation's management on a quarterly basis.
 - Ensure unexpended Capital Improvement Project funds will be returned to the general fund to be reallocated in accordance with the Oneida Business Committee priority list.
- The Purchasing Department shall:
 - Develop procurement manual rules.
- Internal Audit shall:
 - Conduct independent comprehensive performance audits.
- Managers shall:
 - Bring forth enterprise capital improvement plans as needed.
 - Ensure budget compliance.
 - Report monthly variances to the Chief Financial Officer.
 - Submit monthly budget reports within 30 days.
 - Restrict budget transfers.
 - Ensure non-Tribal funds are to be expended prior to Tribal funds when appropriate.
 - Determine the full cost of providing the program and/or service and, may charge fees to cover operational costs. Fees and charges cannot present an undue financial burden to recipients and may be waived provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.
- Employees and elected officials shall:
 - Comply and enforce the Law to the greatest extent possible;

- Violations shall be addressed using the Employment Law, and/or the Conflict of Interest and/or, Code of Ethics and/or the Removal Law and/or criminal or civil Laws.

II. Executive Summary of Findings

A “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The new Law provides a general budget process and the associated roles and responsibilities. This is a process change, therefore, it is assumed that existing internal resources will be utilized to implement the Law and there will be no additional expenditures. According to the Oneida Law Office, the new Law will go into effect October, 1, 2017 for the Fiscal Year 2019 budget. Therefore, those areas delegated rulemaking authority will need to have their rules approved prior to the effective date of 10-1-17.

III. Financial Impact

No impact.

IV. Recommendation

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



Legislative Operating Committee
February 1, 2017

Probate Law

| | |
|-------------------------------------|--|
| Submission Date: 10/7/15 | Public Meeting: None |
| LOC Sponsor: David P. Jordan | Emergency Enacted: n/a Expires: n/a |

Summary: *Is a new law that will explain the process for administering the estate of a deceased person, including resolving all claims and distributing the deceased person's property. This law is being developed because the Land Commission's hearing responsibilities are transferring the Judiciary.*

10/7/15 LOC: Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

A decision was made to keep probate language in the Real Property law for the time. The LOC may look at this again in the future.

Next Steps:

- Remove Probate Law from the Active Files List.



Legislative Operating Committee
February 1, 2017

Independent Contractor Policy Amendments

| | |
|-------------------------------------|--|
| Submission Date: 12/28/16 | Public Meeting: n/a |
| LOC Sponsor: David P. Jordan | Emergency Enacted: n/a Expires: n/a |

Summary: *This policy was added to the Active Files List because it may conflict with the Indian Preference Law.*

10/12/16 OBC: Motion by David Jordan to defer this item to the Legislative Operating Committee, Law Office, and Purchasing Department to develop policies and solutions; and for an update to be brought back within sixty (60) days, seconded by Jennifer Webster. Motion carried with one abstention.

01/04/17 LOC: Motion by Tehassi Hill to add the Independent Contractor Policy to the active files list with David P. Jordan as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

1/11/17 OBC: Motion by David Jordan to accept the update regarding Departments of Public Works HVAC contracts; and to delete from the agenda, seconded by Trish King. Motion carried unanimously.

Next Steps:

- Accept the draft Independent Contractor Policy and forward for legislative and fiscal analyses.

Independent Contractor Policy

Title 5. Business – Chapter 503 INDEPENDENT CONTRACTORS

503.1. Purpose and Policy

503.2. Adoption, Amendment, Repeal

503.3. Definitions

503.4. Form of Contract

503.5. Approval Requirements

Article I-503.1. Purpose and Policy

503.1-1.- Purpose. –The purpose of this Independent Contractor Policy law is to regulate the hiring of persons to complete work in order to minimize the costs of Independent Contractorsindependent contractors.

503.1-2.-Policy.

(a) –It is the policy of the TribeNation to utilize Native American businesses to complete work that the TribeNation is unable to complete through use of its own employees.– All programs, enterprises, and government agencies are encouraged to seek within their own employees those with expertise in any matter before going to Independent Contractorsindependent contractors.

(b) –It is further the policy of the TribeNation that the order of preference, as set out in the Tribe’sNation’s Indian Preference Lawlaw, be used in the selection of Independent Contractorsindependent contractors; in accordance with this law.

Article II503.2. Adoption, Amendment, Repeal

503.2-1. –This policylaw was adopted by motion of the Oneida Business Committee by motion on July 27, 1994 and was amended by resolution BC-02-27-13-A.

2-503.2.-2. This policylaw may be amended pursuant to the procedures set out in Tribal lawor repealed by the Oneida Business Committee or the Oneida General Tribal Council: pursuant to the procedures set out in the Legislative Procedures Act.

503.2-3. –Should a provision of this policylaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policylaw which are considered to have legal force without the invalid portions.

503.2-4.- In the event of a conflict between a provision of this policylaw and a provision of another policylaw, the provisions of this policylaw shall control.

503.2-5. –This policylaw is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin: Nation.

Article III503.3. Definitions

503.3-1.- 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) –“Deliverable” means an object with specified content and format and mustshall be adequately described as to final content.

(b) –“Employee” means any individual who is employed by the TribeNation and is subject to the direction and control of the TribeNation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. –“Employee” includes, but is not limited to, individuals employed by any program or enterprise of the

Draft #1 (redline to current)
2/1/17

TribeNation, but does not include elected or appointed officials or individuals employed by a ~~Tribally Chartered Corporation~~ chartered corporation. For the purposes of this ~~policy~~ law, individuals employed under an employment contract as a limited term employee are employees of the TribeNation, not consultants.

(c) ~~“Employee-owned Business Entity~~ business entity” means a for-profit business which is majority owned and managed by an individual who is employed by the ~~Tribe~~ Nation. Employee-owned ~~Business Entity~~ business entity includes, but is not limited to, a partnership, corporation or limited liability company.

(d) ~~“Independent Contractor~~ contractor” means an individual who receives payments for services or deliverables, and who receives any tax reporting form other than a W-2 at the end of a taxable year.

(e) “Nation” means the Oneida Nation.

(f) “Service” means an action performed by an Independent Contractor independent contractor and ~~must~~ shall be adequately described as to the actions that will be taken and final result of the actions taken.

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

~~Article IV.~~

503.4. Form of Contract

503.4-1. -All contracts with the TribeNation shall be in the format approved by the Oneida Law Office. -All departments, programs, enterprises and other agencies of the TribeNation shall use Oneida Law Office ~~approved~~ approved contracts.

503.4-2. - All contracts shall be reviewed and approved by the Oneida Law Office before being executed.

503.4-3. -At a minimum, the Oneida Law Office review shall ~~consist of the following:~~

(a) ~~include~~ include verification that:

(a) sovereign immunity has not been waived;

(b) ~~verification that Independent Contractor~~ independent contractor status has not been violated; and

(c) ~~verification that~~ the content of the contract meets the legal needs for the protection of ~~Tribal~~ the Nation’s assets, description of services, payment and other similar items.

~~Article V.~~ **503.5. Approval Requirements**

503.5-1. -The TribeNation may hire an individual who is also an employee of the TribeNation as an ~~Independent Contractor~~ independent contractor, if:

(a)- the services performed by the individual as an employee of the TribeNation are not related to the services to be provided by the individual as an ~~Independent Contractor;~~ independent contractor;

(1) This requirement shall apply even if the individual would otherwise qualify for Indian preference as an independent contractor; and even if the individual is the only independent contractor who would otherwise qualify for Indian preference.

(b)- there is no relation between the wages paid to the individual as an employee of the TribeNation and the compensation received by the individual for the services to be provided as an ~~Independent Contractor~~ independent contractor;

Draft #1 (redline to current)
2/1/17

85 | (c)– the individual is engaged in an independent trade, business or profession that is
86 | traditionally pursued by ~~Independent Contractors~~independent contractor and the services
87 | to be provided by the individual as an ~~Independent Contractor~~independent contractor
88 | relate to such trade, business or profession; and

89 | (d) –the individual offers services as an ~~Independent Contractor~~independent contractor in
90 | such trade, business or profession to the general public.

91 | 503.5-2. –The ~~Tribe~~Nation may engage an ~~Employee~~employee-owned ~~Business Entity~~business
92 | entity as an ~~Independent Contractor~~independent contractor if the following conditions are met:

93 | (a) –the ~~Employee~~employee-owned ~~Business Entity~~business entity has a valid Tax
94 | Identification Number which is different than the employee’s Social Security
95 | ~~Number~~number;

96 | (b) –the ~~Tribe~~Nation has no right to direct or control the employees of the
97 | ~~Employee~~employee-owned ~~Business Entity~~business entity; and

98 | (c) –all payments for ~~Independent Contractor~~independent contractor services are made
99 | directly to the ~~Employee~~employee-owned ~~Business Entity~~business entity, not to an
100 | individual.

101 |
102 | *End.*
103 |

104 | Adopted - 7-27-94, motion

105 | Adopted - BC-2-15-95-A, Emergency Action Article VII (503.7)

106 | Adopted - BC-7-5-95-B, Emergency Action Article VII (503.7)

107 | Emergency Amended – BC-04-25-12-E

108 | Emergency Extension Amended – BC-10-10-12-B

109 | Amended – BC-02-27-13-A
110 |



Legislative Operating Committee
February 1, 2017

Landlord-Tenant Amendments

| | |
|-------------------------------------|--|
| Submission Date: 12/21/16 | Public Meeting: |
| LOC Sponsor: David P. Jordan | Emergency Enacted: 01/25/17 Expires: 08/09/17 |

Summary: *Emergency amendments are requested to allow Oneida Housing Authority's Rent-to-Own program to fit within the confines of the Law. Currently, the Law applies to rental agreements which are contracts where the tenant is granted the right to use or occupy the premises for a residential purpose for one year or less. Amendments will revise the definition of "rental agreement" to allow for longer than one year when the contract is on a rent-to-own basis.*

12/21/16 LOC: Motion by David P. Jordan to add the Landlord-Tenant Law Emergency Amendments to the Active Files list with David Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

1/18/17 LOC: Motion by Jennifer Webster to approve the emergency amendments adoption packet and forward the Landlord-Tenant Emergency Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

1/25/17 OBC: OBC adopts Landlord-Tenant Law Emergency Amendments through BC-01-25-17-C.

Next Steps:

- Forward to the Finance Office for a fiscal analysis, due to the Legislative Reference Office February 15, 2017.
- Approve the public meeting packet and forward the Landlord-Tenant law amendments to a public meeting to be held on March 2, 2017.

NOTICE OF
PUBLIC MEETING
TO BE HELD
THURSDAY MARCH 2 at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

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

**TOPIC: LANDLORD TENANT
AMENDMENTS**

This is a proposal to amend the Landlord-Tenant law which would:

- ◆ Permanently adopt an emergency amendment to the Landlord-Tenant law which modified the definition of “rental agreement” so that the Oneida Housing Authority’s Rent-to-Own Program was included.

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

**PUBLIC COMMENT PERIOD
OPEN UNTIL MARCH 9, 2017**

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@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Landlord-Tenant Amendments Legislative Analysis

SECTION 1. BACKGROUND

| REQUESTER: Krystal L. John | SPONSOR: David P. Jordan | DRAFTER: Clorissa N. Santiago | ANALYST: Maureen Perkins |
|--------------------------------------|--|----------------------------------|-----------------------------|
| Intent of Proposed Amendments | The current amendments are proposed by the Oneida Law Office in consultation with the Oneida Housing Authority in order to ensure the Rent to Own rental agreements are covered by the law. | | |
| Purpose of the Law | To provide mechanisms for protecting the rights of the landlords and tenants within the reservation <i>[see 710.1-1]</i> . | | |
| Affected Entities | Comprehensive Housing Division (Oneida Housing Authority, Division of Land Management and Elder Services), Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law | | |
| Affected Legislation | Eviction and Termination, Administrative Rulemaking, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness, and Real Property | | |
| Enforcement/Due Process | The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement <i>[see 710.10-1]</i> . | | |
| Public Meeting | A public meeting has not yet been held. | | |

SECTION 2. LEGISLATIVE DEVELOPMENT

A. The current amendments permanently adopt the emergency amendments adopted by resolution 1-25-17-C to correct an error in the current law by covering Rent to Own rental agreements that last longer than one year *[see 710.3-1(e)]*.

SECTION 3. CONSULTATION

A. The Oneida Housing Authority and the Oneida Law Office recognized that the current law does not cover the Rent to Own programs because these are rental agreements that last longer than one year.
 B. This change does not require additional research.

SECTION 4. PROCESS

A. This amendment to the law permanently adopts the emergency amendment adopted by resolution 1-25-17-C. This is the correct legislative process.
 B. The emergency amendments were added to the Active Files List on December 21, 2016, were adopted by resolution 1-25-17-C and expire August 9, 2017.

SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

A. The term for “Rental Agreements” is restricted to one year or less in the recently adopted Landlord-Tenant law. This definition excludes rent to own contracts which are for fifteen (15) year terms. The amendment adds rent to own contracts to the definition of rental agreements to include rent to own contracts which are for terms longer than one year *[see 710.3-1(e)]*.

24 **SECTION 6. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR**
25 **OBLIGATIONS**

26 A. The proposed amendments will permanently ensure the Landlord-Tenant law covers existing rent to
27 own contracts and future rent to own contracts and ensures Tribal members who enter into these
28 contracts have the same due process and other rights as all other rental agreements under the Landlord-
29 Tenant law.

30

31 **SECTION 7. OTHER CONSIDERATIONS**

32 A. The Landlord-Tenant law was adopted on October 12, 2016 and becomes effective on February 9,
33 2017. The emergency amendments to the Landlord-Tenant law became effective: February 9, 2017
34 and expire August 9, 2017.

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Title 7. Property - Chapter 710611
LANDLORD-TENANT
Tsi? Yuhwatsyawá·ku Aolihwá·ke
where it bound to the earth - issues

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6 710611.1. Purpose and Policy
7 710611.2. Adoption, Amendment, Repeal
8 710611.3. Definitions
9 710611.4. Rental Programs
10 710611.5. Rental Agreement Documents

11 710611.6. Rights and Duties of Landlords and Tenants
12 710611.7. Domestic Abuse Protections
13 710611.8. Sex Offender Registry
14 710611.9. Termination of Tenancy at Death of Tenant
15 710611.10. Landlord or Tenant Actions
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710611.1. Purpose and Policy

710611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation’s rental programs.

710611.1-2. *Policy.* It is the Nation’s policy to provide a fair process to all landlords and tenants of the Nation’s rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

25

710611.2. Adoption, Amendment, Repeal

710611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C.

710611.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Counsel –pursuant to the procedures set out in the Legislative Procedures Act.

710611.2-3. 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.

710611.2-4. 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.

710611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

38

710611.3. Definitions

710611.3-1. 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) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

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¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

48 (d) “Premises” means the property covered by a rental agreement, including not only the
49 real property and fixtures, but also any personal property furnished by the landlord
50 pursuant to a rental agreement.

51 (e) “Rental Agreement” means a written contract between a landlord and a tenant,
52 whereby the tenant is granted the right to use or occupy the premises for a residential
53 purpose for one (1) year or less, provided that the term may be longer than one (1) year in
54 circumstances where the contract is on a rent to own basis.-

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

58 (g) “Rule” means a set of requirements, including citation fees and penalty schedules,
59 enacted jointly by the Land Commission and the Comprehensive Housing Division in
60 accordance with the Administrative Rulemaking law based on authority delegated in this
61 law in order to implement, interpret and/or enforce this law, provided that where such
62 requirements relate solely to premises administered pursuant to federal funding, the
63 Comprehensive Housing Division has sole authority.

64 (h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a
65 rental agreement.

66 (i) “Security Deposit” means a payment made to the landlord by the tenant to ensure that
67 rent will be paid and other responsibilities of the rental agreement performed.
68

69 **710611.4. Rental Programs**

70 710611.4-1. Available Rental Programs. Consistent with available funds, the Comprehensive
71 Housing Division shall provide residential rental programs for providing housing to the
72 following types of tenants and the Oneida Land Commission and the Comprehensive Housing
73 Division shall jointly establish rules naming said programs and providing the specific
74 requirements and regulations that apply to each program:

75 (a) Elder tribal members;

76 (b) Low-income Oneida tribal members and families; and

77 (c) Tribal members in general.

78 710611.4-2. Rental Eligibility Requirements. In order to be eligible for a rental agreement,
79 applicants shall meet the following conditions:

80 (a) Be eighteen (18) years of age at the time of the application;

81 (b) Have no felony or drug convictions within the past two (2) years from the date of
82 application, provided that a pardon or forgiveness received pursuant to the Pardon and
83 Forgiveness law may provide an exception to this condition;

84 (c) Meet the local governments’ laws’ requirements regarding residency restrictions for
85 convicted sex offenders;

86 (d) Meet the income requirements for entering the rental agreement as determined by the
87 rental program’s governing rules;

88 (e) Not hold a residential lease with the Nation; and

89 (f) Meet any other eligibility requirements set by the rental program’s rules, which may
90 not be less strict than this law, but may be stricter than this law.

91 710611.4-3. Tenant Selection. The Land Commission and the Comprehensive Housing
92 Division shall jointly develop rules governing the selection of applicants for the issuance of
93 rental agreements.

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710611.5. Rental Agreement Documents

710611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

710611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 710611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 710611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

710611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

710611.6. **Rights and Duties of Landlords and Tenants**

710611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

710611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

710611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or

185 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or
186 air conditioning.

187 (C) Make all necessary structural repairs.

188 (D) Except as provided in section [740611.6-3\(b\)\(2\)](#), repair or replace any
189 plumbing, electrical wiring, machinery, or equipment furnished with the
190 premises and no longer in reasonable working condition.

191 (E) Comply with any laws or rules of the Nation that are applicable to the
192 premises.

193 (2) If the premises are part of a building where other parts are occupied by one (1)
194 or more other tenants, negligence or improper use by one (1) tenant does not
195 relieve the landlord from the landlord's duty to make repairs as provided
196 in [740611.6-3\(a\)\(1\)](#), provided that the landlord may require the responsible tenant
197 to pay for such repairs.

198 (3) A landlord shall disclose to a prospective tenant, before entering into a rental
199 agreement with or accepting any earnest money or security deposit from the
200 prospective tenant, any violation of either the Building Code of the Oneida Nation
201 or the Zoning and Shoreland Protection Ordinance if all of the following apply:

202 (A) The landlord has actual knowledge of the violation;

203 (B) The violation affects the dwelling unit that is the subject of the
204 prospective rental agreement or a common area of the premises;

205 (C) The violation presents a significant threat to the prospective tenant's
206 health or safety; and

207 (D) The violation has not yet been corrected but the landlord shall correct
208 the violation prior to the tenant taking occupancy of the premises.

209 (4) If the premises are damaged by fire, water or other casualty, not the result of
210 the negligence or intentional act of the landlord, this subsection is inapplicable
211 and either section [740611.6-3\(b\)](#) or (c) governs.

212 (5) The landlord is responsible for all required pest control to keep the premises
213 in a safe and healthy condition, provided that where an infestation has occurred
214 due to the acts or inaction of the tenant the pest control costs may be assessed
215 against the tenant.

216 (b) *Duties of the Tenant.*

217 (1) If the premises are damaged, including by an infestation of insects or other
218 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the
219 tenant to remediate or repair the damage and restore the appearance of the
220 premises by redecorating. However, the landlord may elect to undertake the
221 remediation, repair, or redecoration, and in such case the tenant shall reimburse
222 the landlord for the reasonable cost thereof; the cost to the landlord is presumed
223 reasonable unless proven otherwise by the tenant.

224 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment
225 furnished with the premises in reasonable working order.

226 (3) Tenants shall comply with all laws and rules of the Nation.

227 (c) *Untenability.* If the premises become untenable because of damage by fire, water or
228 other casualty or because of any condition hazardous to health, or if there is a substantial
229 violation of section [740611.6-3\(a\)](#) materially affecting the health or safety of the tenant,
230 the tenant may move from the premises unless the landlord promptly repairs, rebuilds or

231 eliminates the health hazard or the substantial violation of 740611.6-3(a) materially
232 affecting the health or safety of the tenant.

233 (1) The tenant may also move and terminate the rental agreement if the
234 inconvenience to the tenant by reason of the nature and period of repair,
235 rebuilding or elimination would impose undue hardship on the tenant.

236 (2) If the tenant remains in possession, the landlord shall decrease rent for each
237 month to the extent the tenant is deprived of the full normal use of the premises.
238 The Land Commission and the Comprehensive Housing Division shall jointly
239 develop rules governing how and when rent is decreased pursuant to this section.
240 This subsection does not authorize rent to be withheld in full, if the tenant remains
241 in possession.

242 (3) If the tenant justifiably moves out under this subsection, the tenant is not
243 liable for rent after the premises become untenable and the landlord shall repay
244 any rent paid in advance apportioned to the period after the premises become
245 untenable. This subsection is inapplicable if the damage or condition is caused by
246 negligence or improper use by the tenant.

247 (d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when
248 the tenant commences his or her occupancy of the premises that the tenant may use to
249 make comments, if any, about the condition of the premises. The landlord shall provide
250 the tenant with seven (7) days from the date the tenant commences his or her occupancy
251 to complete the check-in sheet and return it to the landlord. The landlord is not required
252 to provide the check-in sheet to a tenant upon renewal of a rental agreement.

253 (e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written
254 notice prior to entering the tenant's premises where notice is required to either be
255 personally served to the tenant or posted on the premises. A landlord is exempt from this
256 notice requirement in the case of an emergency welfare check. The basis of a welfare
257 check may include, but is not limited to the following:

258 (1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy
259 based on reports of child abuse or neglect, medical concerns, suspicious activity
260 or other reported information;

261 (2) The landlord suspects the tenant has abandoned the premises; and/or

262 (3) The landlord receives notice that the premise's utilities have been
263 disconnected.

264 (f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as
265 landlord a person other than the tenant's original landlord can prejudice the right of the
266 original landlord to possession of the premises.

267 (g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for
268 additional terms, the landlord shall, at a minimum, inspect the premises once annually.

270 **740611.7. Domestic Abuse Protections**

271 740611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following
272 documentation, regardless of marital status, the landlord shall change the locks to the premises
273 and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the
274 domestic abuser:

275 (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

- 276 (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a
277 co-tenant;
- 278 (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the
279 tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute
280 sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat.
281 940.32, or attempting or threatening to do the same;
- 282 (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the
283 tenant;
- 284 (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a
285 child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- 286 (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the
287 tenant under Wis. Stat. 940.32; or
- 288 (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant
289 being arrested for committing a domestic abuse offense against the tenant under Wis.
290 Stat. 968.075.

291 | 710611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a
292 co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to
293 remain on the premises for the longer of either the duration of the rental agreement or ninety (90)
294 days from the date the rental agreement is modified. If the latter applies, in addition to removing
295 the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to
296 extend its duration.

297 | 710611.7-3. The Eviction and Termination law provides tenants that are victims of domestic
298 abuse with a defense to eviction should the abusers actions be the cause for eviction.
299

300 | 710611.8. Sex Offender Registry

301 | 710611.8-1. Should a tenant request information about whether any other tenants are required
302 to register as a sex offender, the landlord shall provide the tenant with written notice that he or
303 she may obtain information about the sex offender registry and persons registered within the
304 registry by contacting the department of corrections. The landlord shall include in such notice
305 the appropriate telephone number and internet site of the department of corrections.
306

307 | 710611.9. Termination of Tenancy at Death of Tenant

308 | 710611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- 309 (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes
310 aware of the tenant's death;
- 311 (b) The expiration of the term of the rental agreement.

312 | 710611.9-2. The deceased tenant or his or her estate is not liable for any rent after the
313 termination of his or her tenancy. A landlord may not contact or communicate with a member of
314 the deceased tenant's family for the purpose of obtaining from the family member rent for which
315 the family member has no liability.

316 | 710611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's
317 premises from any obligation under a rental agreement or any other liability to the landlord.

318 | 710611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no
319 longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises
320 for the longer of either the duration of the rental agreement or ninety (90) days from the date of

321 the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental
322 agreement to extend its duration.

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325 **710611.10. Landlord or Tenant Actions**

326 710611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding
327 actions taken pursuant to this law and/or a rental agreement.

328 710611.10-2. No administrative hearing body, including a board, committee or commission, is
329 authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental
330 agreement.

331 710611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions
332 authorized under this law and complaints filed with the Oneida Judiciary shall name the
333 Comprehensive Housing Division and the specific program.

334

335 *End.*

336

337 Adopted – BC-10-12-16-C

338 Emergency Amended – BC-01-25-16-C

Title 7. Property - Chapter 611
LANDLORD-TENANT
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| 611.1. | Purpose and Policy | 11 | 611.6. | Rights and Duties of Landlords and Tenants |
| 611.2. | Adoption, Amendment, Repeal | 12 | 611.7. | Domestic Abuse Protections |
| 611.3. | Definitions | 13 | 611.8. | Sex Offender Registry |
| 611.4. | Rental Programs | 14 | 611.9. | Termination of Tenancy at Death of Tenant |
| 611.5. | Rental Agreement Documents | 15 | 611.10. | Landlord or Tenant Actions |
| | | 16 | | |

611.1. Purpose and Policy

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation’s rental programs.
611.1-2. *Policy.* It is the Nation’s policy to provide a fair process to all landlords and tenants of the Nation’s rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

611.2. Adoption, Amendment, Repeal

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C.
611.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Counsel pursuant to the procedures set out in the Legislative Procedures Act.
611.2-3. 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.
611.2-4. 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.
611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

611.3. Definitions

611.3-1. 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) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹
(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.
(c) “Nation” means the Oneida Nation.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

48 (d) “Premises” means the property covered by a rental agreement, including not only the
49 real property and fixtures, but also any personal property furnished by the landlord
50 pursuant to a rental agreement.

51 (e) “Rental Agreement” means a written contract between a landlord and a tenant,
52 whereby the tenant is granted the right to use or occupy the premises for a residential
53 purpose for one (1) year or less, provided that the term may be longer than one (1) year in
54 circumstances where the contract is on a rent to own basis.

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

58 (g) “Rule” means a set of requirements, including citation fees and penalty schedules,
59 enacted jointly by the Land Commission and the Comprehensive Housing Division in
60 accordance with the Administrative Rulemaking law based on authority delegated in this
61 law in order to implement, interpret and/or enforce this law, provided that where such
62 requirements relate solely to premises administered pursuant to federal funding, the
63 Comprehensive Housing Division has sole authority.

64 (h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a
65 rental agreement.

66 (i) “Security Deposit” means a payment made to the landlord by the tenant to ensure that
67 rent will be paid and other responsibilities of the rental agreement performed.
68

69 **611.4. Rental Programs**

70 611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive
71 Housing Division shall provide residential rental programs for providing housing to the
72 following types of tenants and the Oneida Land Commission and the Comprehensive Housing
73 Division shall jointly establish rules naming said programs and providing the specific
74 requirements and regulations that apply to each program:

75 (a) Elder tribal members;

76 (b) Low-income Oneida tribal members and families; and

77 (c) Tribal members in general.

78 611.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement,
79 applicants shall meet the following conditions:

80 (a) Be eighteen (18) years of age at the time of the application;

81 (b) Have no felony or drug convictions within the past two (2) years from the date of
82 application, provided that a pardon or forgiveness received pursuant to the Pardon and
83 Forgiveness law may provide an exception to this condition;

84 (c) Meet the local governments’ laws’ requirements regarding residency restrictions for
85 convicted sex offenders;

86 (d) Meet the income requirements for entering the rental agreement as determined by the
87 rental program’s governing rules;

88 (e) Not hold a residential lease with the Nation; and

89 (f) Meet any other eligibility requirements set by the rental program’s rules, which may
90 not be less strict than this law, but may be stricter than this law.

91 611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division
92 shall jointly develop rules governing the selection of applicants for the issuance of rental
93 agreements.

94

95 **611.5. Rental Agreement Documents**

96 611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement
97 are severable. If any provision of a rental agreement is void or unenforceable by reason of any
98 law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does
99 not affect other provisions of the rental agreement that can be given effect without the invalid or
100 unenforceable provision.

101 611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or
102 termination of a rental agreement is not enforceable unless it meets the requirements of this law
103 and is in writing.

104 (a) All rental agreements shall:

105 (1) Set forth the amount of rent or other consideration provided in exchange for
106 the ability to use/occupy the premises;

107 (2) Set forth the required amount of security deposit and require payment of the
108 security deposit prior to the tenant(s) taking use/occupancy of the premises;

109 (3) Set the time of commencement and expiration of the rental agreement;

110 (4) Provide a reasonably definite description of the premises;

111 (5) State that nothing in the agreement may be considered a waiver of the
112 Nation's sovereign immunity, provided that tenants may seek enforcement of a
113 rental agreement or dispute an action taken pursuant to a rental agreement with
114 the Oneida Judiciary; and

115 (6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking
116 use/occupancy of the premises;

117 (A) The rental agreement is not required to be signed by all adults
118 using/occupying the premises, provided that the rights and responsibilities
119 contained in the rental agreement do not extend to persons that are not
120 named as tenants in the rental agreement.

121 (B) Unless legally separated, if a tenant(s) is married, the landlord shall
122 require that each spouse sign the rental agreement.

123 (b) Any provision of a rental agreement that does any of the following is void and
124 unenforceable.

125 (1) Allows a landlord to do or threaten to do any of the following because a tenant
126 has contacted an entity for law enforcement services, health services or safety
127 services:

128 (A) Increase rent;

129 (B) Decrease services;

130 (C) Bring an action for eviction pursuant to the Eviction and Termination
131 law; and/or

132 (D) Refuse to renew a rental agreement.

133 (2) Except as otherwise provided in this law in regards to domestic abuse,
134 authorizes the eviction or exclusion of a tenant from the premises other than
135 through the process described in the Eviction and Termination law.

136 (3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in
137 any legal action or dispute arising under the rental agreement except as supported
138 by a court order.

139 (4) States that the landlord is not liable for property damage or personal injury
140 caused by negligent acts or omissions of the landlord. This subsection does not
141 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed
142 by a tenant under a rental agreement or other written agreement between the
143 landlord and the tenant.

144 (5) Imposes liability on the tenant for any of the following:

145 (A) Personal injury arising from causes clearly beyond the tenant's control.

146 (B) Property damage caused by natural disasters or by persons other than
147 the tenant or the tenant's guests or invitees. This subsection does not
148 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or
149 assumed by a tenant under a rental agreement or other written agreement
150 between the landlord and the tenant.

151 (6) Waives any obligation on the part of the landlord to deliver the premises in a
152 fit and habitable condition or to maintain the premises during the tenant's
153 tenancy.

154 (7) Allows for periodic tenancy, which for the purposes of this section means
155 when a tenant uses/occupies a premises without an effective and valid rental
156 agreement by paying rent on a periodic basis including, but not limited to, day-to-
157 day, week-to-week and month-to-month.

158 611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements
159 are not permitted under any circumstances.

160 **611.6. Rights and Duties of Landlords and Tenants**

161 611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of
162 any inconsistent provision found in a valid rental agreement.

163 611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is
164 evicted from the premises and leaves personal property, the landlord may presume that the tenant
165 has abandoned the personal property and may dispose of said property in any manner that the
166 landlord, in his or her sole discretion, determines is appropriate, provided that:

167 (a) The landlord shall hold personal property for a minimum of five (5) business days
168 and the tenant may retrieve said personal property by contacting the landlord.

169 (b) The landlord shall keep a written log of the date and the work time that the Nation's
170 staff expends storing and/or removing personal property and/or removing/disposing of
171 debris left at the property after the expiration of the timeframe provided in the order to
172 vacate.

173 (c) The Land Commission and the Comprehensive Housing Division shall jointly create
174 rules further governing the disposition of personal property.

175 611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary
176 provision in writing signed by both parties.

177 (a) *Duties of the Landlord.*

178 (1) Except for repairs made necessary by the negligence of, or improper use of the
179 premises by the tenant, the landlord has a duty to do all of the following:

180 (A) Keep in a reasonable state of repair portions of the premises over
181 which the landlord maintains control.

182 (B) Keep in a reasonable state of repair all equipment under the landlord's
183 control necessary to supply services that the landlord has expressly or
184

- 185 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or
186 air conditioning.
- 187 (C) Make all necessary structural repairs.
- 188 (D) Except as provided in section 611.6-3(b)(2), repair or replace any
189 plumbing, electrical wiring, machinery, or equipment furnished with the
190 premises and no longer in reasonable working condition.
- 191 (E) Comply with any laws or rules of the Nation that are applicable to the
192 premises.
- 193 (2) If the premises are part of a building where other parts are occupied by one (1)
194 or more other tenants, negligence or improper use by one (1) tenant does not
195 relieve the landlord from the landlord's duty to make repairs as provided in 611.6-
196 3(a)(1), provided that the landlord may require the responsible tenant to pay for
197 such repairs.
- 198 (3) A landlord shall disclose to a prospective tenant, before entering into a rental
199 agreement with or accepting any earnest money or security deposit from the
200 prospective tenant, any violation of either the Building Code of the Oneida Nation
201 or the Zoning and Shoreland Protection Ordinance if all of the following apply:
- 202 (A) The landlord has actual knowledge of the violation;
- 203 (B) The violation affects the dwelling unit that is the subject of the
204 prospective rental agreement or a common area of the premises;
- 205 (C) The violation presents a significant threat to the prospective tenant's
206 health or safety; and
- 207 (D) The violation has not yet been corrected but the landlord shall correct
208 the violation prior to the tenant taking occupancy of the premises.
- 209 (4) If the premises are damaged by fire, water or other casualty, not the result of
210 the negligence or intentional act of the landlord, this subsection is inapplicable
211 and either section 611.6-3(b) or (c) governs.
- 212 (5) The landlord is responsible for all required pest control to keep the premises
213 in a safe and healthy condition, provided that where an infestation has occurred
214 due to the acts or inaction of the tenant the pest control costs may be assessed
215 against the tenant.

216 (b) *Duties of the Tenant.*

- 217 (1) If the premises are damaged, including by an infestation of insects or other
218 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the
219 tenant to remediate or repair the damage and restore the appearance of the
220 premises by redecorating. However, the landlord may elect to undertake the
221 remediation, repair, or redecoration, and in such case the tenant shall reimburse
222 the landlord for the reasonable cost thereof; the cost to the landlord is presumed
223 reasonable unless proven otherwise by the tenant.
- 224 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment
225 furnished with the premises in reasonable working order.
- 226 (3) Tenants shall comply with all laws and rules of the Nation.

227 (c) *Untenability.* If the premises become untenable because of damage by fire, water or
228 other casualty or because of any condition hazardous to health, or if there is a substantial
229 violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the
230 tenant may move from the premises unless the landlord promptly repairs, rebuilds or

231 eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting
232 the health or safety of the tenant.

233 (1) The tenant may also move and terminate the rental agreement if the
234 inconvenience to the tenant by reason of the nature and period of repair,
235 rebuilding or elimination would impose undue hardship on the tenant.

236 (2) If the tenant remains in possession, the landlord shall decrease rent for each
237 month to the extent the tenant is deprived of the full normal use of the premises.
238 The Land Commission and the Comprehensive Housing Division shall jointly
239 develop rules governing how and when rent is decreased pursuant to this section.
240 This subsection does not authorize rent to be withheld in full, if the tenant remains
241 in possession.

242 (3) If the tenant justifiably moves out under this subsection, the tenant is not
243 liable for rent after the premises become untenable and the landlord shall repay
244 any rent paid in advance apportioned to the period after the premises become
245 untenable. This subsection is inapplicable if the damage or condition is caused by
246 negligence or improper use by the tenant.

247 (d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when
248 the tenant commences his or her occupancy of the premises that the tenant may use to
249 make comments, if any, about the condition of the premises. The landlord shall provide
250 the tenant with seven (7) days from the date the tenant commences his or her occupancy
251 to complete the check-in sheet and return it to the landlord. The landlord is not required
252 to provide the check-in sheet to a tenant upon renewal of a rental agreement.

253 (e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written
254 notice prior to entering the tenant's premises where notice is required to either be
255 personally served to the tenant or posted on the premises. A landlord is exempt from this
256 notice requirement in the case of an emergency welfare check. The basis of a welfare
257 check may include, but is not limited to the following:

258 (1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy
259 based on reports of child abuse or neglect, medical concerns, suspicious activity
260 or other reported information;

261 (2) The landlord suspects the tenant has abandoned the premises; and/or

262 (3) The landlord receives notice that the premise's utilities have been
263 disconnected.

264 (f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as
265 landlord a person other than the tenant's original landlord can prejudice the right of the
266 original landlord to possession of the premises.

267 (g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for
268 additional terms, the landlord shall, at a minimum, inspect the premises once annually.
269

270 **611.7. Domestic Abuse Protections**

271 611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following
272 documentation, regardless of marital status, the landlord shall change the locks to the premises
273 and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the
274 domestic abuser:

275 (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

- 276 (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a
277 co-tenant;
- 278 (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the
279 tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute
280 sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat.
281 940.32, or attempting or threatening to do the same;
- 282 (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the
283 tenant;
- 284 (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a
285 child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- 286 (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the
287 tenant under Wis. Stat. 940.32; or
- 288 (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant
289 being arrested for committing a domestic abuse offense against the tenant under Wis.
290 Stat. 968.075.

291 611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-
292 tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain
293 on the premises for the longer of either the duration of the rental agreement or ninety (90) days
294 from the date the rental agreement is modified. If the latter applies, in addition to removing the
295 co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend
296 its duration.

297 611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse
298 with a defense to eviction should the abusers actions be the cause for eviction.
299

300 **611.8. Sex Offender Registry**

301 611.8-1. Should a tenant request information about whether any other tenants are required to
302 register as a sex offender, the landlord shall provide the tenant with written notice that he or she
303 may obtain information about the sex offender registry and persons registered within the registry
304 by contacting the department of corrections. The landlord shall include in such notice the
305 appropriate telephone number and internet site of the department of corrections.
306

307 **611.9. Termination of Tenancy at Death of Tenant**

308 611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- 309 (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes
310 aware of the tenant's death;
- 311 (b) The expiration of the term of the rental agreement.

312 611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination
313 of his or her tenancy. A landlord may not contact or communicate with a member of the
314 deceased tenant's family for the purpose of obtaining from the family member rent for which the
315 family member has no liability.

316 611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises
317 from any obligation under a rental agreement or any other liability to the landlord.

318 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer
319 eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the
320 longer of either the duration of the rental agreement or ninety (90) days from the date of the

321 Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement
322 to extend its duration.

323
324

325 **611.10. Landlord or Tenant Actions**

326 611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding
327 actions taken pursuant to this law and/or a rental agreement.

328 611.10-2. No administrative hearing body, including a board, committee or commission, is
329 authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental
330 agreement.

331 611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions
332 authorized under this law and complaints filed with the Oneida Judiciary shall name the
333 Comprehensive Housing Division and the specific program.

334

335 *End.*

336

337 Adopted – BC-10-12-16-C
338 Emergency Amended – BC-01-25-16-C



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REFERRAL FORM

- 1) Today's Date: 2/1/17 Date of Referral Action: 1/13/17
- 2) Entity that referred this item to the LOC: Oneida Business Committee
- 3) Individuals or Entities to contact regarding this item: Tribal Secretary

- 4) Item referred:
Verified petition submitted by Sherrole Benton regarding pre-employment drug testing

- 5) Background information, including applicable actions and dates: _____
The OBC accepted the petition and requested that the LRO complete a
legislative analysis w/i 60 days and a progress report w/i 45 days

- 6) Due Date: 2/8/17

Please send this form and all supporting materials to:

LOC@oneidation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: 1/26/17
- 2) Contact Person(s): Krystal John and Robert Collins Dept: Oneida Law Office
 Phone Number: _____ Email: oneidalaw@oneidanation.org
- 3) Agenda Title: Landlord-Tenant Rules Extension
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Elder Services' rental program and the Oneida Housing Authority's rent-to-own program
will not have rules ready in time for the Landlord-Tenant law's effective date. An extension,
with an interim plan is needed to allow the departments additional time to fulfill the
requirements of the Administrative Rulemaking law.

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

- 1) Resolution 3) _____
- 2) Statement of Effect 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Landlord-Tenant Law
- 6) Please List all other departments or person(s) you have brought your concern to:
Elder Services and Oneida Housing Authority
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: the law's effective date is 2/9/2017

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

Signature of Requester: Krystal L. John

Digitally signed by Krystal L. John
DN: cn=Krystal L. John, o=Oneida Law Office, ou, email=kjohn4@oneidanation.org, c=US
Date: 2017.01.26 16:28:22 -0600

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

BC Resolution _____
Landlord-Tenant Rules Extension

- 1
2
3
- 4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
5 recognized by the laws of the United States of America; and
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation;
7 and
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV,
9 Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal
10 Council; and
- 11 **WHEREAS,** the Oneida Business Committee adopted the Landlord-Tenant law (Law) pursuant
12 to resolution BC-10-12-16-C and thereafter adopted an emergency amendment
13 pursuant to BC Resolution 01-25-17-C which revised the definition of “rental
14 agreement” to include language that rent-to-own contracts may be longer than one
15 (1) year pursuant to; and
- 16 **WHEREAS,** the Law as originally adopted and the emergency amendment to the Law both
17 become effective on February 9, 2017; and
- 18 **WHEREAS,** the Law delegates joint rulemaking authority to the Land Commission and the
19 Comprehensive Housing Division to create rules naming each rental program and
20 the specific requirements related to each, and
- 21 **WHEREAS,** the Law provides that all rentals shall be in accordance with the respective
22 program rules and that, at a minimum, rental programs are required to be
23 developed, by rule, that function to serve (1) the general population; (2) the low-
24 income population; and (3) the elder population; and
- 25 **WHEREAS,** the Oneida Housing Authority’s rent-to-own program rule and Oneida Elder
26 Services’ elder rental program rule will not be ready in time for the February 9,
27 2017 effective date of the Law; and
- 28 **WHEREAS,** currently there is no rent-to-own inventory available; therefore, the Oneida
29 Housing Authority focused first on the Landlord-Tenant law Rental Rule 2:
30 Income Based Rental Program Eligibility, Selection and Other Requirements; and
- 31 **WHEREAS,** the Landlord-Tenant law Rental Rule 2: Income Based Rental Program
32 Eligibility, Selection and Other Requirements was certified by the Legislative
33 Operating Committee for procedural compliance on February 1, 2017 with an
34 effective date of February 9, 2017; and

35 **WHEREAS**, given that there is no current rent-to-own inventory available, the Oneida Housing
36 Authority determined that it would be best to assess the homeownership program
37 for the purpose improving the program and making any necessary policy revisions
38 rather than adopt a rule based on current practice; and

39 **WHEREAS**, the Oneida Housing Authority needs additional time to develop the rent-to-own
40 program rule in accordance with the process set forth in the Administrative
41 Rulemaking law; and

42 **WHEREAS**, the Oneida Elder Services program has recently experienced a significant change
43 in management which has made finalization of the rule and implementation of the
44 rulemaking process difficult; and

45 **WHEREAS**, the Oneida Elder Services program has a public meeting for the Landlord-Tenant
46 law Rental Rule 3: Elder Rental Program Eligibility, Selection and Other
47 Requirements scheduled for February 16, 2017; and

48 **WHEREAS**, the Oneida Elder Services program needs additional time to develop the elder
49 rental program rule in accordance with the process set forth in the Administrative
50 Rulemaking law; and

51 **NOW THEREFORE BE IT RESOLVED**, the Oneida Housing Authority and Oneida Elder
52 Services are hereby each granted a 60-day extension to create and make effective the rules
53 governing the rent-to-own program and the elder rental program.

54 **NOW THEREFORE BE IT FURTHER RESOLVED**, the homeownership program and the
55 elder rental program shall continue to operate under the current standard operating procedures
56 until the respective rules are effective.

57 **NOW THEREFORE BE IT FURTHER RESOLVED**, that any agreements entered by the
58 Oneida Housing Authority's rent-to-own program or the Oneida Elder Services elder rental
59 program during the interim period shall be temporary and that permanent agreements shall be
60 entered immediately after the respective rules are effective.

61 **NOW THEREFORE BE IT FINALLY RESOLVED**, the 60-day extension does not impact
62 the effective date of Landlord-Tenant law.

63



Statement of Effect

Landlord-Tenant Rules Extension Resolution

Summary

This Resolution grants the Oneida Housing Authority (OHA) and Oneida Elder Services (Elder Services) a 60-day extension to create and make effective the rules governing the rent-to-own program and the elder rental program. The Resolution also specifies that the homeownership program and elder rental program will continue to operate under the current standard operating procedures until the rules become effective. Agreements entered by the rent-to-own program or elder rental program during the extension period will be temporary and permanent agreements will be made after the rules become effective.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis

On October 12, 2016, the Oneida Business Committee (OBC) adopted a new law entitled Landlord-Tenant (Law) pursuant to BC Resolution 10-12-16-C. On January 25, 2017, an emergency amendment to the Law was adopted in accordance with BC Resolution 01-25-17-C which revised the definition of “rental agreement” to include language that rent-to-own contracts can be longer than one year. Both BC Resolutions 10-12-16-C and 01-25-17-C identify an effective date of February 9, 2017.

The Law grants joint rulemaking authority to the Land Commission and the Comprehensive Housing Division and requires these entities to, among other things; develop rental programs by rule to serve 1) the general population, 2) the low-income population and 3) the elder population [*See Landlord-Tenant 710.4-1*]. Because there is no rent-to-own inventory currently available, the OHA focused on the Landlord-Tenant law Rental Rule 2: Income Based Rental Program Eligibility, Selection and Other Requirements. Now that the rule regarding income based rental program is near completion, the OHA has decided to assess the homeownership program in order to determine if 1) the program can be improved and 2) if policy revisions are required. The OHA will not have the rent-to-own rule completed by the effective date of the Law, February 9, 2017. In order to comply with the process set forth in the Administrative Rulemaking law, OHA is requesting more time to develop the rent-to-own program rule.

The Elder Services program has recently experienced a change in management. This has caused delays in finalizing the rule as required in the Administrative Rulemaking [*See Administrative Rulemaking 17.10-1 (a) (4)*]. Elder Services has developed Landlord-Tenant law Rental Rule 3: Elder Rental Program Eligibility, Selection and Other Requirements and has scheduled a public meeting date of February 16, 2017. This rule will not be effective prior to the Law’s effective date of February 9, 2017. In order to comply with the process set forth in the Administrative Rulemaking law, Elder Services is requesting more time to develop the elder rental program rule.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation’s laws.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: 1/26/17
- 2) Contact Person(s): Krystal John and Kelly McAndrews Dept: Oneida Law Office
 Phone Number: _____ Email: oneidalaw@oneidanation.org
- 3) Agenda Title: Eviction and Termination Rules Extension
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
The parties responsible for creating rules governing the disposition of personal property
in the effect a rental/lease contract termination occurs need additional time to fulfill the
requirements of the Administrative Rulemaking law.

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

- 1) Resolution 3) _____
- 2) Statement of Effect 4) _____

- 5) Please List any laws, ordinances or resolution that might be affected:
Eviction and Termination Law
- 6) Please List all other departments or person(s) you have brought your concern to:
Division of Land Management, Land Commission, Elder Services, OHA
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: the law's effective date is 2/9/2017

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

Signature of Requester: Krystal L. John

Digitally signed by Krystal L. John
DN: cn=Krystal L. John, o=Oneida Law Office, ou, email=kjohn4@oneidanation.org, c=US
Date: 2017.01.26 16:28:22 -0600

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

BC Resolution _____*Eviction and Termination Rules Extension*

- 1
2
3
- 4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
5 recognized by the laws of the United States of America; and
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation;
7 and
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV,
9 Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal
10 Council; and
- 11 **WHEREAS,** the Oneida Business Committee adopted the Eviction and Termination law (Law)
12 pursuant to resolution BC-10-12-16-A with an effective date of 120 days from the
13 date of adoption, February 9, 2017; and
- 14 **WHEREAS,** the Law delegates joint rulemaking authority to the Land Commission and the
15 Comprehensive Housing Division to create rules related to disposition of personal
16 property regarding to residential contract terminations and to the Land
17 Commission and the Division of Land Management to create rules related to
18 disposition of personal property regarding agriculture and business contract
19 terminations, and
- 20 **WHEREAS,** the Law's adopting resolution required that such rules related to disposition of
21 personal property be created and adopted no later than the law's effective date;
22 and
- 23 **WHEREAS,** the rules related to disposition of personal property when contracts are terminated
24 will not be ready in time for the February 9, 2017 effective date of the Law; and
- 25 **WHEREAS,** the Law, in section 709.6-1(b)(1), does provide a minimum requirement that
26 requires any property left behind to be held for a minimum of five (5) business
27 days; and
- 28 **WHEREAS,** the required rules would solely govern what is done with personal property left
29 behind in a unit after the five (5) business day period for claiming personal
30 property has expired; and
- 31 **NOW THEREFORE BE IT RESOLVED,** the parties responsible for developing and
32 adopting rules governing the disposition of personal property related to terminated contracts
33 are hereby granted a 90-day extension to create and make effective such rules.

34 **NOW THEREFORE BE IT FURTHER RESOLVED**, that personal property left behind in
35 rental units shall be held by the Nation and may not be disposed of until the required rules
36 governing disposition of personal property are duly adopted.

37 **NOW THEREFORE BE IT FINALLY RESOLVED**, the 90-day extension does not impact
38 the effective date of Eviction and Termination law.

39



Statement of Effect
Eviction and Termination Rules Extension Resolution

Summary

This Resolution grants the parties responsible for developing and adopting rules governing the disposition of personal property related to terminated contracts a 90-day extension to create and make effective such rules. The Resolution also specifies that personal property left behind in unit for which the contract was terminated must be held until the rules governing disposition of personal property are duly adopted.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis

On October 12, 2016, the Oneida Business Committee (OBC) adopted a new law entitled Eviction and Termination (Law) pursuant to BC resolution 10-12-16-A. The resolution identified an effective date of February 9, 2017 and directed that any rules required to be created to support the Law be adopted in accordance with the Administrative Rulemaking law no later than the effective date of the Law.

The Law grants joint rulemaking authority to the Land Commission and the Comprehensive Housing Division to create rules governing disposition of personal property as related to termination of a residential contract and to the Land Commission and the Division of Land Management as related to termination of an agricultural or business contract. [See *Eviction and Termination 709.6-1*]. These rules will not be completed by the effective date of the Law, February 9, 2017. In order to comply with the process set forth in the Administrative Rulemaking law, the Land Commission, the Comprehensive Housing Division, as defined for the Eviction and Termination law in resolution BC-10-12-16-B, and the Division of Land Management are requesting more time to develop rules governing disposition of personal property as related to terminated contracts.

The Law is able to become effective on February 9, 2017 without a disruption in service due to the lack of rules as the Law already provides the minimum requirement that personal property be held for five (5) business days following a termination and eviction. This is the period the occupant has to claim such property. The rules come into play when the period for claiming property expires and shall govern what is done with unclaimed property. The resolution provides that until such rules are developed the Nation, as the owner, shall hold all property with disposition prohibited until the rules are duly adopted.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.



Agenda Request Form

- 1) Request Date: January 12, 2017
2) Contact Person(s): Scott Denny Dept: OHA
Phone Number: 920-869-6193 Email: sdenny@oneidanation.org
3) Agenda Title: Certification of Rule No. 2 - Income Based Rental Program Eligibility, Selection and Other Requirements
4) Detailed description of the item and the reason/justification it is being brought before the Committee
OHA is seeking LOC certification of Rule No. 2 as OHA complies with Landlord Tenant Law and develops program operational rules.

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

- 1) Rule No. 2
2) Summary Report
3) Public Meeting Notice
4) Public Meeting Sign-in and transcript

- 5) Please List any laws, ordinances or resolution that might be affected:
Business Committee Resolution BC-12-23-09-A
6) Please List all other departments or person(s) you have brought your concern to:
NA
7) Do you consider this request urgent? [X] Yes [] No
If yes, please indicate why: To comply with Landlord Tenant Law effective February 9, 2017.

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

Signature of Requester:

[Handwritten signature]

Digitally signed by Scott Denny
DN: cn=Scott Denny, o=Oneida Tribe of Indians of WI, ou=Oneida Housing Authority, email=sdenny@oneidanation.org, c=US
Date: 2017.01.12 09:44:44 -0500

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



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: February 1, 2017
RE: Certification of Landlord-Tenant Law Rule No.2

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Housing Authority (OHA) for the Landlord-Tenant law Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements (the “Rule”).

If certified by the Legislative Operating Committee, the Rule would become effective on February 9, 2017.

Administrative Record

The certification packet provided by the OHA contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum provided by OHA containing the Rule’s procedural timeline;
- Memorandum from Dale Wheelock, Executive Director of the Oneida Housing Authority approving the draft Rule;
- Draft of the Rule;
- Summary Report;
- Public Meeting Notice;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Public Meeting Sign In Sheet;
- Public Meeting Transcript.

Procedural Requirements

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on December 15, 2016; and
- A public meeting for the Rule was held on January 3, 2017; and
- The public comment period was held open until January 10, 2017; and

- There were no oral or written comments received during the public meeting or the public meeting comment period; and
- The Executive Director of the Oneida Housing Authority approved the Rule on January 26, 2017.

Rulemaking Authority

Although all procedural requirements of the Administrative Rulemaking law were met, the Rule may exceed the rulemaking authority granted under the law for which the Rule is being promulgated because it conflicts with an Oneida Business Committee resolution.

The Administrative Rulemaking law (Section 17.4-1) states, “Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rulemaking authority granted under the law for which the Rule is being promulgated.”

The Landlord-Tenant law (Section 710.4-1) states the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming rental programs and providing the specific requirements and regulations that apply to each program. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means OHA for income-based rental agreements.

The Rule (Section 2.4-4 and 2.4-5) conflicts with the Oneida Business Committee Resolution 12-23-09-A titled, “Oneida Housing Authority Admissions and Occupancy Policy” (“the Policy”). This Policy does not allow OHA to consider debt owed to outside entities, or debt related evictions from a non-OHA entity when determining housing eligibility.

The Rule does allow the consideration of debt owed to outside entities when determining eligibility and will not allow OHA to consider applicants with any outstanding debt owed to a utility provider, or to any landlord for any previous housing. The Rule also allows OHA to consider evictions from the Comprehensive Housing Division, which includes the Division of Land Management and Elder Services in addition to OHA.

Additionally, the Rule (Section 2.2-4) states that in the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control. The Rule (Section 2.2-5) then states that this rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law. It is unclear whether the Rule intends for these provisions to apply to resolutions of the Nation or simply internal policies, procedures, and other regulations.

OHA, through Landlord-Tenant law Rule No. 2, does not have the authority to supersede or repeal an existing Oneida Business Committee resolution through the promulgation of this Rule. In order to avoid the identified conflict, it is recommended that either:

- 1) the Rule be revised by amending or deleting the conflicting language which states applicants for a rental agreement may not have any outstanding balance owed to a

- utility provider or for any previous housing, and that evictions by the Comprehensive Housing Division can be considered; or
- 2) request the Oneida Business Committee to consider amending or repealing BC Resolution 12-23-09-A to allow OHA to consider an applicant's outstanding balance owed to a utility provider or any previous housing when determining whether to enter into a rental agreement, and to consider prior evictions by all parties of the Comprehensive Housing Division, not just OHA.

Since the Rule will not become effective until February 9, 2017, OHA is provided an opportunity to remedy this conflict during the February 8, 2017, Oneida Business Committee meeting. If the Oneida Business Committee refuses to amend or repeal BC Resolution 12-23-09-A then the language in the Rule may need to be modified to prevent the appearance that OHA exceeded its rulemaking authority.

Conclusion

The LOC will need to determine if OHA is exceeding their rulemaking authority and whether or not to certify Landlord-Tenant law Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements. The Administrative Rulemaking law authorizes the LOC to do the following:

- If the LOC is able to certify that OHA has complied with the process set forth in the Administrative Rulemaking law, the LOC must provide the Oneida Business Committee with a written certification stating the requirements of the Administrative Rulemaking law were fulfilled and publish the Rule on the Oneida Register; or
- If the LOC is not able to certify that OHA has complied with the process set forth in the Administrative Rulemaking law, the Rule shall be returned to OHA with specific feedback as to which procedural requirements were not fulfilled [*See Administrative Rulemaking 17.7-2*].



ONEIDA HOUSING AUTHORITY
 P. O. BOX 68
 ONEIDA, WISCONSIN 54155
 (920) 869-2227
 (920) 869-2836 FAX



MEMORANDUM

TO: Legislative Operating Committee
 FROM: Oneida Housing Authority
 SUBJECT: Request for Certification of Procedural Compliance
 Landlord Tenant Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements
 DATE: January 18, 2017

The Oneida Housing Authority is exercising its rulemaking authority to further define sections of Title 7 Property and Land – Chapter 710; Landlord Tenant.

This rule is drafted newly drafted and is not a revision of a prior rule.

In accordance with the Administrative Rulemaking law, a public meeting was held for this rule on January 3, 2017 for which the comment period expired on January 10, 2017. There were no community members in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

| Rulemaking Timeline | |
|---|-------------------|
| Required Action | Date Completed |
| Received Oneida Housing Authority Executive Director approval of DRAFT rule and direction to proceed with holding a public meeting. | December 8, 2016 |
| Public Meeting notice for the rule is posted in the Kalihwisaks (see page 33) and on the Oneida Register. | December 15, 2016 |
| Public Meeting held. | January 3, 2017 |
| Public Comment Period closed; there were no comments received. | January 10, 2017 |

The following attachments are included for your review:

1. Rule No. 2 – Income Based Rental Program Eligibility, Selection, and Other Requirements
2. Summary Report
3. Public Meeting Notice
4. Copy of Public Meeting Published in the Kalihwisaks – Page 33 of the December 15, 2016 issue
5. Sign-in sheet from the January 3, 2017 Public Meeting
6. Public meeting transcription from the January 3, 2017 Public Meeting

Following certification, this rule shall become effective on the effective date of the Landlord-Tenant law, February 9, 2017.

**Memorandum**

To: Legislative Operating Committee
From: Dale Wheelock, Executive Director Housing
Date: January 26, 2017
Subject: Rule 2 – Income Based Rental Program
Eligibility, Selection, and Other Requirements

As Executive Director of the Housing Department, I am approving the proposed Rule # 2 – Income Based Rental Program, Eligibility, Selection, and Other Requirements. This approval is in context as it relates to Title 7 Property and Land - Chapter 710 Landlord - Tenant Law (Administrative Rulemaking 17.10-1. (a)(4).

Signature Approval

Dale Wheelock

Date 01/26/17

Dale Wheelock

Executive Director Oneida Housing Authority



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Title 7. Property and Land – Chapter 710

LANDLORD-TENANT

Rule # 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

- 2.1. Purpose and Delegation
- 2.2. Adoption, Amendment and Repeal
- 2.3. Definitions
- 2.4. Eligibility Requirements
- 2.5. Application Process and Wait List
- 2.6. Tenant Selection
- 2.7. Rental Unit Catalog, Setting Rents and Security Deposits
- 2.8. Annual Inspection and Rental Agreement Renewal
- 2.9. Rental Agreement Cancellation

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2.1. Purpose and Delegation

2.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division’s income-based rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

2.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

2.2. Adoption, Amendment and Repeal

2.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- 44 (a) "Comprehensive Housing Division" means the entity responsible for housing matters
45 specifically related to rental agreements as defined by Oneida Business Committee
46 Resolution.¹
47 (b) "Household" means all persons residing within the income-based rental unit.
48 (c) "HUD" means the United States Department of Housing and Urban Development.
49 (b) "Landlord" means the Nation in its capacity to rent real property subject to a rental
50 agreement.
51 (c) "Nation" means the Oneida Nation.
52 (d) "Premises" means the property covered by a rental agreement, including not only the
53 real property and fixtures, but also any personal property furnished by the landlord
54 pursuant to a rental agreement.
55 (e) "Rental Agreement" means a written contract between a landlord and a tenant,
56 whereby the tenant is granted the right to use or occupy the premises for a residential
57 purpose for one (1) year or less.
58 (f) "Tenant" means the person granted the right to use or occupy a premises pursuant to a
59 rental agreement.
60 (g) "Tribal member" means an enrolled member of the Nation.
61 (h) "Security Deposit" means a payment made to the landlord by the tenant to ensure that
62 rent will be paid and other responsibilities of the rental agreement performed.
63

64 **2.4. Eligibility Requirements**

65 2.4-1. *Tribal Member Status.* At least one (1) of the heads of household required to sign the
66 rental agreement is required to be a Tribal member. Households that do not meet this
67 requirement which are current tenants shall be grandfathered into continual eligibility for one (1)
68 full rental agreement term following adoption of these rules based on the Tribal member
69 requirement so long as one (1) household member is a Tribal member. Comprehensive Housing
70 Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification
71 Card or requesting verification from the Trust Enrollment Department.

72 2.4-2. *Maximum Income.* Pursuant to the Native American Housing Assistance and Self
73 Determination Act (NAHASDA), in order to be eligible for an income-based rental agreement,
74 the household must qualify as low income at the time of initial occupancy. In order to qualify as
75 low-income, applicants' household income may not exceed eighty percent (80%) of the regional
76 gross annual income based on the data from Outagamie County.² For the purposes of this
77 section, gross annual income is all income from any and all sources of income from all adult
78 members of the household anticipated to be received in an upcoming twelve (12) month period
79 unless specifically excluded from income in this section. Applicants shall provide
80 Comprehensive Housing Division staff written verification of income.

- 81 (a) For purposes of calculating income to determine eligibility, the Comprehensive
82 Housing Division staff shall include per capita payments to the extent that receipt of per
83 capita payment may be verified for the prior year based on the tax return.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

² Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County's and results in more persons being eligible based on the income requirements.

84 (b) For the purpose of calculating income to determine eligibility, the Comprehensive
85 Housing Division staff shall include in annual income net income from household assets
86 where net household assets are defined in accordance with 24 CFR 5.603.³

87 (b) For purposes of calculating income to determine eligibility, the Comprehensive
88 Housing Division staff may not include the following:

89 (1) Income from employment of any household minors;

90 (2) Payments received for the care of foster children and/or handicapped/mentally
91 incompetent adults;

92 (3) Lump-sum additions to household assets including, but not limited to,
93 inheritances, insurance payments, capital gains, and settlements for personal
94 and/or property losses, excluding payments in lieu of earnings, such as
95 unemployment, disability compensation, worker's compensation, and severance
96 pay, which are included in income;

97 (4) Amounts received by the household that is specifically for, or in
98 reimbursement of, the cost of medical expenses for any member of the household;

99 (5) Income of a live-in medical aide;

100 (6) Any amounts received as student financial assistance;

101 (7) Income of any adult household members that are students, other than the head
102 of household, in excess of \$480 annually; the first \$480 of annual income
103 received by an adult student household member shall be included as income;

104 (8) Payments made to any member of the household serving in the armed forces
105 for exposure to hostile fire;

106 (9) Amounts received under training programs funded by HUD;

107 (10) Amounts received by persons with disabilities, which amounts are
108 disregarded for a limited time for purposes of Supplemental Security Income
109 eligibility and benefits because such amounts are set aside for use under a Plan for
110 Achieving Self-Support;

111 (11) Temporary, nonrecurring and/or sporadic income (including gifts);

112 (12) Adoption assistance payments that exceed \$480 annually; the first \$480 of
113 annual adoption assistance payments shall be included as income;

114 (13) Deferred periodic amounts from supplemental security income and social
115 security benefits that are received in a lump sum amount or in prospective
116 monthly amounts.

117 (14) Amounts paid by a state agency to a member of the household with a
118 developmental disability to offset the cost of services and/or equipment needed to
119 keep the developmentally disabled member living in the household; and

120 (15) Amounts specifically excluded from income by any applicable federal statute
121 and/or regulation, specifically those identified in the Federal Register.⁴

122 2.4-3. *Minimum Income.* Applicants shall meet a minimum household income of \$7,800 per
123 year.

124 2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have any outstanding
125 balance owed to a utility provider, for any previous housing (which includes prior landlords
126 other than Nation and/or federal housing assistance programs) and/or the Comprehensive

³ See HUD Occupancy Handbook, Exhibit 5-2: Assets.

⁴ The most recent notice of federally required exclusions was published on December 14, 2012 and can be found in the Federal Register at 77 FR 74495.

127 Housing Division.

128 2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental
129 agreement with the Comprehensive Housing Division subject to an eviction and termination
130 within two (2) years from the date of the application are not eligible to participate in the income-
131 based rental program.

132 2.4-6. *Criminal Convictions.* Applicants with any of the following types of convictions are not
133 eligible for participation in the income-based rental program, provided that the Pardon and
134 Forgiveness law may provide an exception to the conditions contained in this section:

- 135 (a) A drug conviction within three (3) years from the date of application;
136 (b) A felony conviction within five (5) years from the date of application; and/or
137 (c) A criminal conviction based upon an act of violence within two (2) years from the
138 date of the application.
139

140 **2.5. Application Process and Wait List**

141 2.5-1. *Applying.* Persons wishing to participate in the income-based housing program shall
142 complete the Comprehensive Housing Division rental agreement application and any other
143 accompanying forms required based on the income-based program eligibility requirements. The
144 Comprehensive Housing Division staff may not consider any applications for selection and/or
145 placement on the wait list until the application and all accompanying forms are complete. Upon
146 receipt of a completed application, including all supplementary forms, Comprehensive Housing
147 Division staff shall date and time stamp the application. If, regardless of a complete application
148 submittal, additional information is required to determine eligibility, the Comprehensive Housing
149 Division staff shall request such information and maintain the application submittal date
150 provided that the applicant responds to the information requests in a reasonably timely fashion.

151 (a) *Household Composition Form.* The Comprehensive Housing Division staff shall
152 require applicants to the income-based housing program to complete a Household
153 Composition Form which provides the full name, age and date of birth of each person
154 contemplated to reside in the income-based rental unit. In order to verify such
155 information, the Comprehensive Housing Division staff shall require that applicants
156 submit the following with the Household Composition Form:

- 157 (1) Copies of social security cards for each person contemplated to reside in the
158 income-based rental unit, provided that for newly born babies that have not yet
159 been issued a social security card a birth certificate is sufficient;
160 (2) A copy of a picture identification card for each adult contemplated to reside in
161 the income-based rental unit;
162 (3) If any adults in the home are enrolled in post-secondary education,
163 verification of enrollment in the form of a financial aid award letter or other
164 documentation directly from the school; and
165 (4) If an adult in the household is the custodial parent/guardian of a minor, a copy
166 of the court documents which awarded such placement.

167 (b) *Background Checks.* In order to ensure compliance with the eligibility requirements
168 of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall
169 perform a background check on each adult in the household. Household adults are also
170 subject to annual background checks upon annual rental agreement renewal pursuant to
171 2.8-5 and as may be determined to be necessary to maintain the safety of the community
172 by the Comprehensive Housing Division staff.

173 2.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing
174 Division staff completes its review of an application and determines the applicant(s) eligible for
175 the income-based rental program, the staff shall:

176 (a) Place the applicant(s) into one (1) of the following categories of renters based on the
177 household size and needs as provided below:

178 (1) Single Adult/Adult Couple – A maximum of two (2) adults in the household,
179 no children.

180 (2) Small Household – A maximum four (4) household members in the
181 household.

182 (3) Large Household – A household of five (5) or more household members.

183 (4) Elder – A household with a maximum of two (2) adults and no children
184 wherein at least one (1) adult is sixty-two (62) years old or older at the time of
185 application.

186 (5) Minimum Handicap Accessibility Required – For each of the category types
187 provided in subsections (1)-(4) above, there shall be an additional category for
188 each requiring minimum handicap accessibility. This category shall be reserved
189 for households with at least one (1) household member requiring permanent and
190 minimal handicap accessibility (i.e. permanent use of a walker); this category
191 includes all handicap needs that do not amount to full wheelchair accessibility.

192 (6) Maximum Handicap Accessibility Required – For each of the category types
193 provided in subsections (1)-(4) above, there shall be an additional category for
194 each in which at least one (1) household member requires full wheelchair
195 handicap accessibility.

196 (b) Determine whether there is a wait list for the type of rental unit required based on the
197 applicant's category of renter.

198 (1) If there is a wait list established, place the applicant on the wait list based on
199 the date and time stamp of the application. At such time, Comprehensive
200 Housing Division staff shall provide the applicant with notice of their placement
201 on the wait list and the requirement to update their application should anything
202 change prior to their designated use of rental unit becoming available. An
203 applicant may request to be removed from the wait list at any time.

204 (2) If there is not a wait list established and there are available rental units
205 available for the applicant's renter category, move to the tenant selection process
206 provided in sections 2.6-3 and 2.6-4.

207 2.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual
208 renewal reveals that an applicant is ineligible to participate in the income-based rental program
209 based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall
210 notify the applicant of the cause of the ineligibility and how the applicant may become eligible in
211 the future. At such time, Comprehensive Housing Division staff shall also inform the applicant
212 of other housing opportunities offered by the Nation for which the applicant may be eligible, if
213 applicable.

214 2.5-4. *Required Application Updates.* Applicants on the wait list are required to update the
215 application, at a minimum, annually, but also whenever information submitted on the application
216 has changed. Applicants that fail to complete the application update within the allotted
217 timeframe will be removed from the wait list and required to re-apply for future consideration
218 absent proof of extenuating circumstances, for which Comprehensive Housing Division staff

219 may provide a grace period of a maximum of ten (10) calendar days. For any updated
220 application that reveals an applicant has become ineligible, Comprehensive Housing Division
221 staff shall remove the applicant from the wait list and provide the applicant notice of the cause
222 for ineligibility.
223

224 **2.6. Tenant Selection**

225 2.6-1. *Household Size and Available Units.* When a rental premise becomes available, the
226 Comprehensive Housing Division staff shall preliminarily select a tenant based on the first
227 applicant on the wait list for the said unit type based on the corresponding renter and unit
228 categorization. In the event that a handicap accessible unit becomes available and there are no
229 applicants on the wait list for the said type of handicap accessible unit, an applicant from the
230 same renter category that does not require handicap accessibility may be selected for the said
231 unit.

232 2.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance
233 with this section, the Comprehensive Housing Division staff shall provide the applicant with
234 notice of tenant selection. The notice, at a minimum, shall include the address of the rental
235 premise, the required security deposit and monthly rent, and a requirement that the applicant
236 respond within fifteen (15) calendar days to accept/reject the rental premise noting that the
237 security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail
238 to complete the selection process to actually take occupancy forfeit the security deposit to the
239 Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing
240 Division shall return the security deposit to the applicant only in circumstances where the
241 applicant is prevented from entering the rental agreement based on a loss of eligibility due to
242 circumstances outside of the applicant's control (i.e. death of a Tribal member that made the
243 household eligible for the income-based rental program).

244 (a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected for
245 any reason or the applicant fails to respond to the notice, Comprehensive Housing
246 Division staff shall remove the applicant from the wait list; in such circumstances the
247 applicant may re-apply for the income-based rental program following a ninety (90)
248 calendar day period of ineligibility.

249 (b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental
250 premise to be complete, the applicant shall submit along with the acceptance a payment
251 for the full security deposit. Prior to accepting a security deposit payment,
252 Comprehensive Housing Department staff shall verify that the applicant remains eligible
253 for the income-based rental program and the rental unit type based on the household's
254 categorization.

255 (1) *Standard Timeframe for Completing the Rental Agreement and Taking*
256 *Occupancy.* Except as provided in subsection (2) below, applicants that have
257 accepted a rental premise from the income-based rental program have five (5)
258 calendar days from the date of acceptance and payment of the security deposit to:

- 259 (A) Reconfirm that they remain eligible for the income-based rental
260 program and remain in the same category of renters;
261 (B) Pay the first month's rent; and
262 (C) Execute the rental agreement and all required supplemental forms,
263 provided that the agreement may not be executed until (A) and (B) are
264 complete.

265 (2) *Extended Timeframe for Completing the Rental Agreement for Applicants*
266 *Providing Termination Notice to Another Landlord or Housing Program.* The
267 Comprehensive Housing Division offers an extended timeframe for applicants
268 required to provide thirty (30) or more calendar or business days' notice of
269 termination of a rental agreement to a current landlord or housing program. In
270 such circumstances, in order to qualify for the extended timeframe, the applicant
271 shall provide proof of the notice requirement in his/her current rental agreement
272 by submitting the signed rental agreement to the Comprehensive Housing
273 Division. Upon submittal of such proof, the applicant shall have thirty (30)
274 calendar days from the date of acceptance and payment of the security deposit to:

275 (A) Reconfirm that they remain eligible for the income-based rental
276 program and remain in the same category of renters;

277 (B) Pay the first month's rent; and

278 (C) Execute the rental agreement and all required supplemental forms,
279 provided that the agreement may not be executed until (A) and (B) are
280 complete.

281 (3) *Taking Occupancy.* The Comprehensive Housing Division shall provide the
282 tenant with keys to the rental premises upon execution of the rental agreement.
283 As such time, the Comprehensive Housing Division staff shall provide the tenant
284 with a check-in sheet and notice the tenant that he/she has seven (7) calendar days
285 from the date the tenant takes occupancy to complete the check-in sheet and
286 submit it to the Comprehensive Housing Division.
287

288 **2.7. Rental Unit Catalog, Setting Rents and Security Deposits**

289 2.7-1. *Rental Unit Catalog.* The Comprehensive Housing Division shall maintain a catalog of
290 all rental units included in the income-based rental program. Said catalog shall categorize each
291 rental unit based on designated use for the type of renter in accordance with the types of renters
292 established in section 2.5-2(a).

293 2.7-2. *Setting Rents.* The Comprehensive Housing Division shall determine the required
294 monthly rent for each household based on the household's income in accordance with the
295 following:

296 (a) Rent may not exceed thirty percent (30%) of the household's adjusted gross income
297 based on the income calculation requirements provided in section 2.4-3. Adjusted gross
298 income means the annual household income remaining after the Comprehensive Housing
299 Division staff applies the following deductions:

300 (1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each
301 household minor dependent or adult dependent where the adult dependent is
302 either a full-time student or a person with disabilities.

303 (2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual
304 income for a household in which:

305 (A) A household member is sixty-two (62) years of age or older; and/or

306 (B) A household member is a person with a disability.

307 (3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-
308 2(a)(2), a deduction for medical expenses⁵ that are in excess of three percent (3%)
309 of annual income and all expenses for live-in periodic attendant care assistance or

⁵ Medical expenses are those identified in Title VII, Section IV of NAHASDA.

310 apparatus to the extent necessary to enable a member of the family to be
311 employed.

312 (4) *Child Care Expenses.* A deduction for reasonable child care expenses from
313 annual income if the child care:

314 (A) Enables an adult household member to seek employment activity, be
315 gainfully employed, or further his/her education; and

316 (B) Expenses are not reimbursed.

317 (5) *Child Support for a Household Minor.* A deduction for the full amount of
318 child support paid by a household member for a household minor (i.e. when the
319 parent paying child support lives in the same household as the child for which the
320 parent is paying child support).

321 (6) *Earned Income of Minors.* A deduction in the amount of any earned income
322 of any minor household member.

323 (7) *Travel Expenses for Employment or Education-Related Travel.* A maximum
324 deduction of \$25.00 per week for travel expenses for employment or education
325 related travel.

326 (b) Monthly rent may not exceed the fair market rents of the rental premise as determined
327 by the data for Outagamie County.

328 (c) Households with any member that qualifies as a party listed below shall receive
329 preferential rent wherein the Comprehensive Housing Division may not charge rent that
330 exceeds twenty percent (20%) of the household's adjusted gross income based on the
331 income calculation requirements provided in section 2.4-3.

332 (1) Elder Tribal Member – A Tribal member that is sixty-two (62) years old or
333 older.

334 (2) Handicapped Tribal Member – A Tribal member that has a physical disability
335 as documented by a medical provider/or proof of disability payments.

336 (3) Legally Incompetent Adult Tribal Member – A Tribal member that has been
337 determined to be a legally incompetent adult based on the findings of a court of
338 competent jurisdiction.

339 (4) Mentally Disabled Minor Tribal Member – A Tribal member under the age of
340 eighteen (18) years old that has a mental disability as documented by a medical
341 provider.

342 2.7-3. *Standard Security Deposit.* Comprehensive Housing Division staff shall set the standard
343 security deposit required for each rental premise in the income-based rental program at \$350.00.

344 2.7-4. *Increased Security Deposit for Pets.* Tenants in the Comprehensive Housing Division's
345 general rental program may have pets in accordance with the Domestic Animal Ordinance,
346 provided that an increased security deposit is required.

347 (a) The standard security deposit does not apply to tenants with pets. Comprehensive
348 Housing Division staff shall set the increased security deposit required for households
349 with pets at a rate of \$350.00 plus an additional \$200.00 per pet.

350 (b) In the event that a tenant wishes to acquire a pet after the rental agreement has been
351 signed, the tenant shall notify the Comprehensive Housing Division and shall pay the
352 difference between the increased security deposit for pets and the standard security
353 deposit. Tenants that fail to report a pet in the household may be assessed charges for an
354 increased security deposit for pets if such pets are reported to the Comprehensive
355 Housing Division and/or discovered at the time of an inspection.

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2.8. Annual Inspection and Rental Agreement Renewal

2.8-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule tenants' annual inspections for a date that is within ninety (90) calendar days of the expiration of the tenants' rental agreement.

2.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

2.8-3. *Damages.* Tenants are required to pay costs to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear. Payment for such costs must be received by the Comprehensive Housing Division prior to signing a rental agreement renewal, provided that the Comprehensive Housing Division may offer the tenant a payment agreement in for the damages, in which case the repayment agreement shall be signed prior to the rental agreement renewal.

2.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual renewal.

(a) *Change in Household Composition.* If a change in the household composition changes the tenant's category of renter based on section 2.5-2(a), the Comprehensive Housing Division staff shall work to transfer the household to a rental unit of corresponding category as soon as possible. If no such units are currently available, Comprehensive Housing Division staff shall move the tenant to the top of the waiting list. In order to be transferred or placed on a wait list, the tenant shall demonstrate that they remain eligible for the income-based rental program and are current with rent and utility payments. Tenants are only eligible for rental unit transfers within their current category of renter if, in the Comprehensive Housing Division's discretion, the transfer is needed to better accommodate the household composition.

(b) *Change in Household Income.* A change in household income may cause a change in the amount of monthly rent required, accordingly, any change in household income that is not reported within thirty (30) calendar days of the change shall result in a retroactive adjustment of the rent if the change results in an increase of rent payments. Retroactive rent shall be applied for each month there was a change in income that was not reported, excluding the initial thirty (30) calendar days provided to the tenant to report the change. The tenant is responsible for payment of all current and retroactive adjustments of rent and may be eligible for a repayment agreement, provided that in all circumstances and retroactive rental arrears shall be paid in full within one (1) year.

(c) *Rental Agreement Amendment.* Should a change in household size and/or income cause a change in the terms of the tenant's rental agreement, an amendment to the rental agreement is required to be executed.

2.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to complete the annual rental agreement renewal by verifying that the household continues to meet all eligibility requirements contained in the Landlord-Tenant law and rules. Once continued eligibility is verified, tenants that remain eligible are required to sign a rental agreement renewal.

(a) The Comprehensive Housing Division may, in its discretion, decline renewal of a

402 rental agreement if it determines that the renewal is not in the best interest of the Nation.
403 (b) In the event a tenant fails to enter a rental agreement renewal and has not vacated the
404 rental premises within thirty (30) calendar days of the expiration of the rental agreement,
405 the Comprehensive Housing Division shall initiate the eviction process pursuant to the
406 Eviction and Termination law.

407 2.8-6. *Ineligibility Due to Renewal or an Update of Household Information.* Comprehensive
408 Housing Division staff shall provide tenants that become ineligible to participate in the income-
409 based rental program based on a renewal or update of household information with notice
410 specifying the cause of the ineligibility and, if possible, how the household may reinstate
411 eligibility.

412 (a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility
413 as part of the annual renewal, Comprehensive Housing Division staff shall include in the
414 notice of ineligibility that renewal of the rental agreement is not available at such time
415 and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by
416 reinstating eligibility, or vacate.

417 (1) In circumstances where ineligibility is due to the tenants' increased income,
418 the Comprehensive Housing Division recognizes such change to be an
419 achievement of the tenant and not a fault based ineligibility. Accordingly, under
420 these limited circumstances, the Comprehensive Housing Division staff shall
421 continue to offer the tenant thirty (30) calendar days to cure by reinstating
422 eligibility, but shall provide the tenant with an additional sixty (60) days to vacate
423 which amounts to ninety (90) calendar days from the date of the notice of
424 ineligibility.

425 (2) The extended vacate period requires the tenant to enter a limited term rental
426 agreement for the ninety (90) calendar days.

427 (b) *Ineligibility Due to an Update of Household Information.* In circumstances where the
428 tenant learns of ineligibility as part of an update of household information,
429 Comprehensive Housing Division staff shall include in the notice of ineligibility the
430 warning of potential termination in accordance with the rental agreement. In the event
431 the tenant is unable to or fails to reinstate their eligibility in accordance with the timeline
432 provided in the notice, the Comprehensive Housing Division shall permit the tenant to
433 remain in the unit for the longer of the duration of the rental agreement or ninety (90)
434 calendar days from the date of the notice of ineligibility.

435 (1) If the tenants' circumstances result in the tenant completing the term of the
436 rental agreement, eligibility shall be reconsidered at the time of the annual
437 renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a)
438 applies, excluding 2.8-6(a)(1).

439 (2) If the tenants' circumstances result in the tenant receiving a thirty (30)
440 calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant
441 shall enter a limited term rental agreement to cover any time which exceeds the
442 current rental agreement.

443 (c) *Limited Term Rental Agreements.* Limited term rental agreements are available in
444 accordance with article 2.8-6(a)(1) and 2.8-6(b)(2) of these rules and section 710.9-4 of
445 the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

446 (1) The date of the original notice of ineligibility;

447 (2) An explanation that the tenant has thirty (30) calendar days to reinstate

- 448 eligibility;
- 449 (3) As applicable, an explanation that if eligibility is not timely reinstated, that the
- 450 limited term rental agreement takes the place of the thirty (30) calendar day notice
- 451 to cure or vacate required by the Eviction and Termination law; and
- 452 (4) An explanation that if eligibility is not timely reinstated, the rental unit will
- 453 be reclaimed with locks being changed on the ninety-first (91st) day from the date
- 454 of the original notice of ineligibility.
- 455

456 **2.9. Rental Agreement Cancellation**

457 2.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general

458 rental program are requested to provide the Comprehensive Housing Division with a minimum

459 of two (2) weeks of notice.

460 2.9-2. *Prorated Rent.* In the event of cancellation of a rental agreement or abandonment of the

461 rental premises, the Comprehensive Housing Division staff shall prorate the required last

462 month's rent payment based upon the greater of the following:

- 463 (a) The number of calendar days the unit was occupied in the last month; or
- 464 (b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing
- 465 Division learns of abandonment.
- 466

467 *End.*

468

469 Original effective date:

470

Summary Report for: Income Based Rental Program Eligibility, Selection, and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Income Based Rental Program Eligibility, Selection, and Other Requirements

Name of law being interpreted: Title 7. Property and Land – Chapter 710 Landlord-Tenant

Rule Number: 2

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Rule No. 2 identifies the following:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.

Financial Analysis for: Income Based Rental Program Eligibility, Selection, and Other Requirements

| Type of Cost | Description/Comment | Dollar Amount |
|---|--|---------------|
| Start Up Costs | | \$0.00 |
| Personnel | | \$0.00 |
| Office | | \$0.00 |
| Documentation Costs | | \$0.00 |
| Estimate of time necessary for an individual or agency to comply with the rule after implementation | | N/A |
| Other, please explain | <p>Rule No. 2, Section 2.6-2 Notice of Tenant Selection – Line 226.</p> <p>Applicants paying security deposit and fail to complete selection process forfeit security deposit.</p> <p>The anticipation is some increased revenue may occur with forfeited security deposits.</p> <p>In general, currently limited applicants turn down a unit once a security deposit is paid.</p> | Unknown |
| Total | Annual Net Revenue | |



Statement of Effect

Landlord-Tenant Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

Summary

This rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's income-based rental programs.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

Section 710.4 of the Landlord-Tenant Law confers administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking Law. Section 710.4-1 of the Landlord-Tenant Law states that the Comprehensive Housing Division shall provide residential rental programs that provide housing to tenants that are elder tribal members, low-income Oneida tribal members and families, and tribal members in general. Section 710.4-1 further states that the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means the Oneida Housing Authority for income-based rental agreements.

Section 710.4-2 of the Landlord-Tenant Law requires that in order to be eligible for a rental agreement, one of the conditions the applicants shall meet are any eligibility requirements set by the rental program's rules. Section 710.4-3 of the Landlord-Tenant Law then goes on to state that the Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements. This joint delegation of rulemaking authority excludes the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules

Landlord-Tenant Law Rule No. 2 provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's income-based rental programs. The mission of the Nation's income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

Section 2.4 of Landlord-Tenant Law Rule No. 2 provides eligibility requirements for participation in the Nation's income-based rental programs. Eligibility requirements include the requirement of tribal member status, maximum and minimum income requirements, and requirements involving outstanding debts, evictions, and criminal convictions.

Section 2.4-4 of the Landlord-Tenant Law Rule No. 2 conflicts with Oneida Business Committee Resolution BC-12-23-09-A, the Oneida Housing Authority Admissions and Occupancy Policy (the “Policy”). This resolution contains social eligibility criteria for Oneida Housing Authority housing programs. One criteria used in the Policy is that debt owed to entities outside of the Oneida Housing Authority is not considered when determining eligibility for Oneida Housing Authority housing. Section 2.4-4 of the Landlord-Tenant Law Rule No. 2 conflicts with the Policy because the rule requires that applicants for a rental agreement may not have any outstanding balance owed to a utility provider, for any previous housing and/or the Comprehensive Housing Division.

Section 2.5 of Landlord-Tenant Law Rule No. 2 describes the application process and requirements, as well as the process for notification of eligibility and ineligibility, and required application updates for those applicants placed on the waitlist.

Section 2.6 of Landlord-Tenant Law Rule No. 2 provides what factors are considered in the tenant selection process for income-based housing, as well as the process for providing notice to tenants for either accepting or rejecting a rental premise.

Section 2.7 of Landlord-Tenant Law Rule No. 2 discusses Comprehensive Housing Division’s required rental unit catalog and how it should be categorized, and the process in which rent and security deposits for income-based housing applicants is determined.

Section 2.8 of Landlord-Tenant Law Rule No. 2 provides for the scheduling of annual inspections and what checklist should be used in the inspection, as well as the process for rental agreement renewal.

Section 2.9 of the Landlord-Tenant Law Rule No. 2 discusses rental agreement cancellations, and provides for a required two week notice for cancellation and a process for prorating rent when a renting agreement is canceled.

Conclusion

A conflict exists between this Rule and Oneida Business Committee Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy.

Section 17.4-1(b) of the Administrative Rulemaking Law states that rules developed pursuant to this Law have the same force and effect as the law which delegated the authorized agency rulemaking authority and must be followed by both the general public and the authorized agency promulgating the rule. Section 2.2-4 of the Landlord-Tenant Law Rule No. further states that in the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control. Section 2.2-5 of the Landlord-Tenant Law Rule No. 2 then states that this rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

Although these provisions may be interpreted to allow Section 2.4-4 of the Landlord-Tenant Law Rule No. 2 to supersede the conflicting Oneida Business Committee Resolution BC-12-23-09-A,

for the sake of clarity and consistency in moving forward towards adoption, it is recommended that either the rule is amended or the resolution is amended or repealed to eliminate the conflict.

NOTICE OF
PUBLIC MEETING

TO BE HELD

January 3, 2016 at 1:15 PM

IN THE

OBC Conference Room

2nd Floor Norbert Hill Center

N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPIC:

- Income Based Rental Program Eligibility, Selection and Other Requirements Rule

The Income Based Rental Program Eligibility, Selection and Other Requirements Rule Identifies:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

**PUBLIC COMMENT PERIOD
OPEN UNTIL Tuesday, January 10, 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 OHA by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155**

jhill7@oneidanation.org

Phone: 920-869-2227

Fax: 920-869-2836

Oneida Arts Board**One (1) of vacancy****Qualifications:**

- a) A majority of the members shall be enrolled members of the Oneida Tribe.
- b) Any vacancies which cause non-Tribal members to make up the majority of the Board shall be filled within three (3) months. If such vacancies are not filled within three (3) months, a sufficient number of non-Tribal board members shall be re-designated as alternates until Tribal members again make up a majority of the Board.
- c) When non-Tribal board members are to be re-designated as alternates, all such non-Tribal members shall first be invited to volunteer to serve as an alternate. If there are not sufficient volunteers, then the members that have served the shortest time on the Board shall be selected first.

Deadline: 4:30pm, Friday, January 13, 2017**Oneida Personnel Commission****One (1) vacancy****Qualifications:**

- a) Must be enrolled members of the Oneida Nation.
- b) The entire combined commission may not consist of more than two (2) members from any one division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.
- c) Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethic Code, the Judicial Code and the Oneida Rules of Civil Procedure.
- d) A member may not be and employee of the Human Resources Department, any advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.
- e) Commissioners shall be available for meetings, trainings, interviews, pre-screenings, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OPC.
- f) Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely my required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications are made.

Deadline: 4:30pm Friday, January 13, 2017**SEOTS****SEOTS**

Two (2) vacancies (1 to finish a term until 11/12/17 and 1 to finish a term until 2/28/19)

Qualifications:

- a) Applicants who wish to be considered for membership shall be enrolled Oneida Tribal members who are eighteen (18) years of age or older.
- b) Board members shall reside within one of the six (6) Southeastern Wisconsin counties of Milwaukee, Racine, Kenosha, Waukesha, Ozaukee and Washington.
- c) Appointments to the Board shall be made in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.
- d) Board members shall agree to firm commitments for attending the Board's meetings and General Tribal Council meetings, as well as, training, functions and other events as established by the Board, SEOTS office or the Tribe.

Deadline: 4:30pm, Friday, January 13, 2017

To submit an application by email sent to: TribalSecretary@oneidanation.org

To submit an application by mail send to: Tribal Secretary's Office, PO Box 365 Oneida WI 54155. To submit an application in person go to N7210 Seminary Road.

NOTICE OF

PUBLIC MEETING

TO BE HELD

January 3, 2016 at 1:15 PM

IN THE

OBC Conference Room**2nd Floor Norbert Hill Center****N7210 Seminary Road, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPIC:

- Income Based Rental Program Eligibility, Selection and Other Requirements Rule

The Income Based Rental Program Eligibility, Selection and Other Requirements Rule Identifies:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Tuesday, January 10, 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 OHA by U.S. mail, interoffice mail, e-mail or fax.

Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155
jhill7@oneidanation.org
Phone: 920-869-2227
Fax: 920-869-2836



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING
Business Committee Conference Room-2nd Floor Norbert Hill Center
January 3, 2017 1:15p.m.

OHA Public Meeting - Rule No. 2 Income Based Program Eligibility, Selection, and Other Requirements
PUBLIC MEETING SIGN IN SHEET

| | Name: (Print clearly) | Email Address / Phone # | Department/Roll # | Oral Testimony (Y) or (N) |
|-----|-----------------------|-------------------------|-------------------|---------------------------|
| 1. | <i>Dale Wheelock</i> | <i>869-6198</i> | <i>Housing</i> | |
| 2. | <i>[Signature]</i> | <i>869-6193</i> | <i>OHA</i> | |
| 3. | | | | |
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ONEIDA HOUSING AUTHORITY
P. O. BOX 68
ONEIDA, WISCONSIN 54155
(920) 869-2227
(920) 869-2836 FAX



Page 1 of 179

**Oneida Housing Authority
Public Meeting**

Rule No.2 – Income Based Rental Program Eligibility, Selection and Other Requirements

Business Committee Conference Room-2nd Floor Norbert Hill Center

January 3, 2017 1:15 p.m.

Present: Dale Wheelock, Oneida Housing Authority; Scott Denny, Oneida Housing Authority

Scott Denny : Good Afternoon, the time is 1:25 pm, and today's date is Tuesday, January 3, 2016*. I will now call the public meeting for the Rule No. 2 Income Based Rental Program Eligibility, Selection and Other Requirements to order. The Housing Authority is hosting this public meeting to gather feedback from the community regarding these legislative proposals, well actually my bad, to get feedback regarding the rule and impacts on the community. All persons who wish to present oral testimony need to register on the sign-in sheet in the back of the room. Written comments may be submitted to the Tribal Secretary's Office or the Legislative Reference Office in person, by US mail, interoffice mail, email, or fax as provided on the Public Meeting Notice. These comments must be received by Tuesday, January 10, 2017. In attendance from Housing Authority is Scott Denny and Dale Wheelock. We will begin today's public meeting for Rule No. 2 the Income Based Rental Program Eligibility, Selection, and Other Requirements at this time.

*Speaker made a mistake by stating the incorrect year. The year is 2017

Scott Denny: With there being no speakers registered the public meeting for Rule No 2 the Income Based Rental Program Eligibility, Selection and Other Requirements is now closed at 12, I'm sorry, 1:40 pm. Written comments may be submitted until close of business day on Tuesday, January 10, 2017.

-End of Meeting-

BC Resolution _____

Repeal of Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

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

WHEREAS, prior to adoption of the Landlord-Tenant law and the Eviction and Termination law, Oneida Housing Authority (OHA) rentals and evictions were solely governed by OHA's Admission and Occupancy Policy; and

WHEREAS, resolution BC-12-23-09-A entitled *Oneida Housing Authority Admissions and Occupancy Policy* was adopted December 23, 2009 and placed a minimum requirement on OHA's Admission and Occupancy Policy wherein social eligibility criteria was minimized; and

WHEREAS, resolution BC-12-23-09-A prohibited OHA from using a failure to pay previous debt owed to a party other than OHA to find an applicant or occupant ineligible for participating in OHA's rental program; and

WHEREAS, resolution BC-12-23-09-A prohibited OHA from using a previous debt related eviction (i.e. failure to pay rent) from a housing entity other than OHA to find an applicant or occupant ineligible for participating in OHA's rental program; and

WHEREAS, when assessing the eligibility criteria for the OHA's income based rental program, OHA determined that resolution BC-12-23-09-A set both the landlord and the tenant up for failure by prohibiting consideration of unpaid utilities and debts owed to other housing programs even within the Nation such as the Division of Land Management and Elder Services' rentals; and

WHEREAS, the Landlord-Tenant law's Rule #2, Income Based Rental Program Eligibility, Selection and Other Requirements, was certified by the Legislative Operating Committee on February 1, 2017 with an effective date of February 9, 2017; and

WHEREAS, in article 2.4-4 and 2.4-5 of the Landlord-Tenant law's Rule #2 OHA proposes the following be including in the eligibility criteria:

2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have any outstanding balance owed to a utility provider, for any previous housing (which includes

36 prior landlords other than Nation and/or federal housing assistance programs) and/or the
37 Comprehensive Housing Division.

38 2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a
39 rental agreement with the Comprehensive Housing Division subject to an eviction and
40 termination within two (2) years from the date of the application are not eligible to participate
41 in the income-based rental program; and

42 **WHEREAS,** article 2.4-4 of the Landlord-Tenant law Rule #2 conflicts with the resolution BC-
43 12-23-09-A to the extent that it allows OHA to find an applicant ineligible based
44 on housing related debts including utilities, and landlords (both the Nation and
45 private landlords); and

46 **WHEREAS,** article 2.4-4 of the Landlord-Tenant law Rule #2 conflicts with the resolution BC-
47 12-23-09-A to the extent that it allows OHA to find an applicant ineligible based
48 on an eviction from the Comprehensive Housing Division, which as defined by
49 the Oneida Business Committee, consists of OHA, the Division of Land
50 Management or Elder Services' rentals whereas the resolution only allows
51 consideration of OHA evictions; and

52 **NOW THEREFORE BE IT RESOLVED,** that resolution BC-12-23-09-A entitled *Oneida*
53 *Housing Authority Admissions and Occupancy Policy* is hereby repealed.

54



Statement of Effect

Repeal of Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy

Summary

This Resolution repeals resolution BC-12-23-09-A, entitled *Oneida Housing Authority Admissions and Occupancy Policy* as it conflicts with the Landlord-Tenant law Rule #2, *Income Based Rental Program Eligibility, Selection and Other Requirements*. Resolution BC-12-23-09-A prohibited the Oneida Housing Authority (OHA) from using a failure to pay previous debt owed to a party other than OHA to find an applicant or occupant ineligible for participating in OHA's rental program. Similarly, resolution BC-12-23-09-A prohibited OHA from using a previous debt related eviction (i.e. failure to pay rent) from a housing entity other than OHA to find an applicant or occupant ineligible for participating in OHA's rental program.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis

On October 12, 2016, the Oneida Business Committee (OBC) adopted a new law entitled Landlord-Tenant (Law) pursuant to BC Resolution 10-12-16-C. The resolution identified an effective date of 120 calendar days or February 9, 2017. OHA's assessment of its eligibility criteria when developing the rules required by the Landlord-Tenant law to govern the income-based rental program led OHA to a request of the Oneida Business Committee to repeal BC-12-23-09-A, entitled *Oneida Housing Authority Admissions and Occupancy Policy*. By repealing resolution BC-12-23-09-A, OHA proposes to consider all housing related debts as a part of eligibility and evictions from any rental program administered by the Nation, as opposed to just OHA evictions.

The Landlord-Tenant law is silent as to debt/eviction considerations as related to eligibility in section 710.4-2, but section 710.4-2(f) does allow rental programs to set additional eligibility requirements by rule. The portions of the Landlord-Tenant law Rule #2 that conflict with resolution BC-12-23-09-A are articles 2.4-4 and 2.4-5, excerpted below:

2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have any outstanding balance owed to a utility provider, for any previous housing (which includes prior landlords other than Nation and/or federal housing assistance programs) and/or the Comprehensive Housing Division.

2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within two (2) years from the date of the application are not eligible to participate in the income-based rental program.

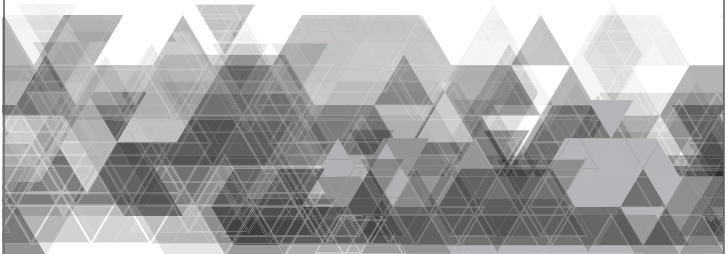
The Landlord-Tenant law Rule #2 is set to become effective February 9, 2017.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws, provided that adoption of this Resolution will require a 2/3 vote.



FEATURED LEGISLATION: **EMPLOYMENT LAW**



INTRO

- ▼ We have not updated our employment policies comprehensively in over 30 years.
- ▼ 23 meetings were held and almost 424 employees reviewed the law and/or provided input.



POINTS

- ▶ Updates our employment practices to maximize efficiency and reduce conflict.
- ▶ Future updates will require public meetings and opportunities for public input.
- ▶ Personal and vacation accruals will remain the same and can only be changed by GTC.
- ▶ Provide employees a fair and efficient grievance process which transfers hearing responsibilities to the Judiciary.
- ▶ When hearings transfer to the Judiciary, the Oneida Personnel Commission will be dissolved.
- ▶ HRD and the proposed Chief Executive Director of Administration will develop an Employee Handbook that implements the Employment Law.

***ATTEND
the March 19, 2017
GTC Meeting
to vote on the
Employment Law.***

FOR MORE INFORMATION INCLUDING DRAFTS, PUBLIC COMMENTS, AND ANALYSIS, GO TO:

<https://oneida-nsn.gov/government/register/employmentlaw/>



Oneida Nation
ENROLLMENT DEPARTMENT
PO Box 365
Oneida, WI 54155-0365

ONEIDA

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ONEIDA WI 54155
PERMIT NO. 4



January 2017

January 2017

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February 2017

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|----------------|-----------|--|---|---|--|---|-----|
| Jan 1 - 7 | Jan 1, 17 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | | 12:15pm 2:15pm 2017 01 03 Public Meeting: Con | 9:00am 2:00pm FW: LOC Meeting (BC_Conf_Ro om) - Taniquelle J. Thurner | | | |
| Jan 8 - 14 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| | | | | 8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center) | | | |
| Jan 15 - 21 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| | | | | 9:00am 2:00pm FW: LOC Meeting (BC_Conf_Ro om) 9:00am 2:00pm LOC Meeting (BC_Conf_Ro om) - LOC | 3:00pm 4:00pm FW: 2nd Quarter Update (BC_Exec_Con f_Room) - Jennifer A. Falck | 9:00am 10:00am FW: 2nd Quarter Update Meeting (BC_Exec_Con f_Room) - Jennifer A. Fal | |
| Jan 22 - 28 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| | | | | 8:30am 12:00am BC Meeting (Business Committee Conference Room, 2nd Floor Norber | | | |
| Jan 29 - Feb 4 | 29 | 30 | 31 | Feb 1 | 2 | 3 | 4 |
| | | 9:00am 10:00am FW: 2nd Quarter Upda 2:00pm 3:00pm FW: 2nd Quarter Upda 3:30pm 4:30pm FW: RAP- Che | 1:00pm 2:00pm FW: LOC Prep Meeting (BC_Exec_Con f_Room) - Candice E. Skenandore | | | | |

February 2017

February 2017

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March 2017

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| Jan 29 - Feb 4 | Jan 29 | 30 | 31 | Feb 1 | 2 | 3 | 4 |
| | | | | 9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner | 3:00pm 4:30pm FW: Rules of Administrative Procedure (TBD) - Taniquelle J. Thurner | 9:00am 10:00am FW: 2nd Quarter Update Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck | |
| Feb 5 - 11 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| | | | | 8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center) | | | |
| Feb 12 - 18 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| | | GTC Meeting (F) | 3:00pm 4:00pm FW: LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck | 9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC | 12:15pm 2:00pm FW: Endowments Amendments Public Meeting (BC_Exec_Conf_Room) - Ma | | |
| Feb 19 - 25 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| | | GTC Meeting (F) | | 8:30am 12:00am BC Meeting (Business Committee Conference Room, 2nd Floor Norber | | | |
| Feb 26 - Mar 4 | 26 | 27 | 28 | Mar 1 | 2 | 3 | 4 |
| | | | | | | | |