



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

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

June 21, 2017 9:00 a.m.

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

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

1. June 7, 2017 LOC Meeting Minutes

### **III. Current Business**

1. Domestic Animals (Tribal Regulation of) Amendments
2. Vehicle Driver Certification and Fleet Management
3. Professional Conduct for Attorneys and Advocates
4. Legal Resource Center
5. Landlord-Tenant Amendments
6. Conflict of Interest Amendments
7. Audit Law Amendments
8. Business Committee Meetings Law
9. Workplace Violence

### **IV. New Submissions**

### **V. Additions**

### **VI. Administrative Updates**

1. Second Extension of the Effective Date of the Community Support Fund Law
2. Petition: Delgado Trust Land Distribution
3. Health Board Memorandum

### **VII. Executive Session**

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



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## **LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**

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

June 7, 2017 9:00 a.m.

**Present:** Tehassi Hill, Brandon Stevens, Fawn Billie, David P. Jordan

**Others Present:** Jennifer Falck, Candice Skenandore, Clorissa Santiago, Tani Thurner, Rae Skenandore, Krystal John, Robert J. Collins II, Bonnie Pigman, Mike Debraska, Leyne Orosco, Cathy Bachhuber, Dakota Oskey, Jamel Ness, RC Metoxen, Michelle Gordon, Brad Graham, Bill Graham, Patti Hoeft, Wes Martin, Dale Powless, Kelly McAndrews, Ed Delgado

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

Brandon Stevens called the June 7, 2017 Legislative Operating Committee meeting to order at 9:01 a.m.

Motion by Tehassi Hill to adopt the agenda, seconded by David P. Jordan. Motion carried unanimously.

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

#### **1. May 17, 2017 LOC Meeting Minutes**

Motion by Tehassi Hill to approve the May 17, 2017 LOC meeting minutes; seconded by David P. Jordan. Motion carried unanimously.

### **III. Current Business**

#### **1. Comprehensive Policy Governing Boards, Committees, and Commissions**

##### **Amendments (01:04-02:20)**

Motion by Tehassi Hill to approve the public meeting packet with the changes discussed yesterday and forward the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by Fawn Billie. Motion carried unanimously.

#### **2. Cemetery Law Amendments (02:20-27:54)**

Motion by David P. Jordan to approve the public meeting memorandum and make the changes discussed today; seconded by Fawn Billie. Motion carried unanimously.

Motion by David P. Jordan to direct the Legislative Reference Office to prepare an adoption packet; second by Tehassi Hill. Motion carried unanimously.

#### **3. GTC Meetings Law (27:54-29:54)**

Motion by David P. Jordan to approve the public meeting packet and to forward the GTC Meetings Law to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by Tehassi Hill. Motion carried unanimously.

4. **Sanctions and Penalties Law (29:59-32:22)**

Motion by Fawn Billie to forward the Sanctions and Penalties Law to the Legislative Reference Office for a legislative analysis to be brought back for the July 5, 2017 LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

5. **Petition: Child Care Department Consumer Complaint Policy (32:22-33:30)**

Motion by Fawn Billie to approve the public meeting packet and forward the Petition: Child Care Department Consumer Complaint law to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by David P. Jordan. Motion carried unanimously.

6. **Administrative Rulemaking Amendments (33:30-36:15)**

Motion by Tehassi Hill to approve the public meeting packet and forward the Administrative Rulemaking Amendments to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by David P. Jordan. Motion carried unanimously.

7. **Children's Code (36:15-01:46:25)**

Motion by Fawn Billie to accept the public meeting comment response memorandum and to direct the Legislative Reference Office to update the legislative analysis based on the changes resulting from public meeting comment consideration; seconded by Tehassi Hill. Motion carried unanimously.

8. **Business Committee Meetings Law (01:46:30-01:47:25)**

Motion by Fawn Billie to accept the Business Committee Meetings Law public comments and to defer to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.

9. **Workplace Violence (01:47:25-01:47:56)**

Motion by David P. Jordan to accept the Workplace Violence public meeting comments and to defer to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

**IV. New Submissions**

**V. Additions**

**VI. Administrative Updates**

1. **Oneida Nation Seal and Flag Rules Extension (01:47:56-01:48:25)**

Motion by David P. Jordan to accept the Resolution: Oneida Nation Seal and Flag Rules Second Extension and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

2. **Real Property Rules Extension (01:48:25-01:48:53)**

Motion by David P. Jordan to accept the Resolution: Real Property Law Probate Rules Extension and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

3. **Legal Resource Center E-Poll (01:48:53-01:49:25)**  
Motion by David P. Jordan to approve the May 17, 2017 E-Poll regarding the Legal Resource Center; seconded by Fawn Billie. Motion carried unanimously.
4. **Hunting, Fishing, and Trapping E-Poll (01:49:25-01:49:44)**  
Motion by Tehassi Hill to approve the May 23, 2017 E-Poll regarding the Hunting, Fishing, and Trapping law; seconded by Fawn Billie. Motion carried unanimously.
5. **LOC Update – Kalihwisaks (01:49:44-01:50:52)**  
Motion by Fawn Billie to accept the LOC update for publication in the Kalihwisaks; seconded by Tehassi Hill. Motion carried unanimously.
6. **Oneida Housing Authority Home Ownership Rule Certification (01:50:52-01:52:29)**  
Motion by Tehassi Hill to certify the Oneida Housing Authority Home Ownership Rule and forward to the Oneida Business Committee for review; seconded by Fawn Billie. Motion carried unanimously.

*Note: the memorandum identifies that the rule will not become effective until the day after Oneida Business Committee review.*

## **VII. Executive Session**

## **VIII. Adjourn**

Motion by Fawn Billie to adjourn the June 7, 2017 Legislative Operating Committee meeting at 10:54 a.m.; seconded by Tehassi Hill. Motion carried unanimously.





Legislative Operating Committee  
June 21, 2017

## Domestic Animals (Tribal Regulation of) Amendments

<b>Submission Date:</b> 9/16/15	<b>Public Meeting:</b> 6/5/17
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *Amendments were requested to protect community members from disease, set minimum standards for treatment of animals, prohibit certain animals from being brought on the Reservation, regulate livestock, and establish consequences for damages caused by domestic animals.*

**9/16/15 LOC:** Motion by Tehassi Hill to add the Domestic Animals Law Amendments to the Active Files List with Tehassi Hill as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**10/21/15 LOC:** Motion by David P. Jordan to defer the Domestic Animals Law Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

**2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.

**3/13/17:** *Work meeting held.* Attendees include: Rich Vanboxtel, Jeff Mears, Tani Thurner, Candice Skenandore, Jen Falck, Steve Linskens

**3/20/17:** *Work meeting held.* Attendees include: Steve Linskens, Tehassi Hill, Rich Vanboxtel, Eric Boulanger, Jeff Mears, Candice Skenandore, Krystal John, Jen Falck

**4/19/17 LOC:** Motion by David P. Jordan to approve the draft with the noted changes and send for a legislative analysis to be completed for May 3; seconded by Jennifer Webster. Motion carried unanimously.

*The noted changes include moving hybrid dogs and wolves from animals allowed to animals that are prohibited and in section 304.10-3 (b) (3) if an order is issued*

*to destroy the animal, the owner must submit proof of destruction within five business days from a licensed veterinarian.*

**5/3/17 LOC:** Motion by Fawn Billie to direct the Legislative Reference Office to update the legislative analysis and then conduct an e-poll to approve the public meeting packet, and hold a public meeting on June 5, 2017; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to forward to the Finance Department for a fiscal analysis to be completed by June 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

**5/17/17 LOC:** Motion by Fawn Billie to accept the e-poll results of May 5, 2017 into the record; seconded by David P. Jordan. Motion carried unanimously.

**6/5/17:** Public meeting held.

**Next Steps:**

- Accept the public meeting comments.
- Approve the Domestic Animals Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)  
FROM: Krystal John, Staff Attorney, Oneida Law Office  
DATE: June 21, 2017  
RE: Domestic Animals Amendments: Public Meeting Comment Review

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On June 5, a public meeting was held regarding the Domestic Animals Amendments. There were no oral or written comments received during the public meeting on June 5, 2017, or during the public meeting comment period ending on June 12, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Domestic Animals Amendments**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
June 5, 2017, 12:15 p.m.

**Present:** Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candace Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

**Name of LOC Member Chairing Meeting:** Brandon Yellowbird-Stevens

In attendance from the LOC is: Jennifer Webster and David Jordan

We'll open this public meeting for the Domestic Animals Amendments; it is 12:22 p.m.

This is a proposal to amend the Domestic Animals Law to:


- Protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of diseases carried by domestic animals;
- Set minimum standards for the treatment of animals;
- Prohibit certain species of animals from being brought onto the Reservation;
- Regulate the keeping of livestock on lots zoned residential within the Reservation;
- Establish consequences for damages caused by domestic animals;
- Authorize Oneida Police Officers and Conservation Warden to investigate complaints and enforce this Law;
- Transfer hearing authority from the Environmental Resources Board to the Trial Court; and
- Delegate rulemaking authority to the Environmental Health & Safety Division, Environmental Resources Board, Emergency Management Coordinator and Comprehensive Health Division.

Not seeing anyone signed up to provide oral testimony, I'll ask if anyone would like to comment orally today. Last call. Okay we'll move on to the next.

**Add name of LOC member closing meeting:** Brandon Yellowbird-Stevens

**-End of Meeting-**



TO: Oneida Business Committee  
FROM: Brandon Stevens, LOC Chairperson   
DATE: June 28, 2017  
RE: Domestic Animal Ordinance Amendments

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Please find the following attached backup documentation for your consideration of the Domestic Animal Ordinance Amendments:

1. Resolution: Domestic Animal Ordinance Amendments
2. Statement of Effect: Domestic Animal Ordinance Amendments
3. Domestic Animal Ordinance Amendments: Legislative Analysis
4. Domestic Animal Ordinance Amendments: Clean Draft
5. Domestic Animal Ordinance Amendments: Redline to Current Draft
6. Domestic Animal Ordinance Amendments: Fiscal Impact Statement

#### *Overview*

This resolution adopts amendments to the Domestic Animal Ordinance to:

- Change the name of the law from “Domestic Animal Ordinance” to “Domestic Animals”;
- Protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of diseases carried by domestic animals;
- Set minimum standards for the treatment of animals;
- Prohibit certain species of animals from being brought onto the Reservation;
- Regulate the keeping of livestock on lots zoned residential within the Reservation;
- Establish consequences for damages caused by domestic animals;
- Authorize Oneida Police Officers and Conservation Warden to investigate complaints and enforce this Law;
- Transfer hearing authority from ERB to the Trial Court; and
- Delegate rulemaking authority to the Environmental Health & Safety Division, Environmental Resources Board, Emergency Management Coordinator and Comprehensive Health Division.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. There were no comments provided. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Thursday, July 13, 2017.

#### **Requested Action**

Approve the Resolution: Domestic Animal Ordinance Amendments

**BC Resolution \_\_\_\_\_**  
*Domestic Animal Ordinance 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 Oneida Business Committee originally adopted the Domestic Animal Ordinance through resolution BC-03-13-96-B and thereafter amended it through resolution BC-06-22-11-G; and

**WHEREAS,** the Amendments respond to concerns related to enforcement of domestic animal encounters and increased reporting of dog bites; and

**WHEREAS,** these Amendments to the Domestic Animal Ordinance:

1. Change the name of the law from “Domestic Animal Ordinance” to “Domestic Animals”;
2. Protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of diseases carried by domestic animals;
3. Set minimum standards for the treatment of animals;
4. Prohibit certain species of animals from being brought onto the Reservation;
5. Regulate the keeping of livestock on lots zoned residential within the Reservation;
6. Establish consequences for damages caused by domestic animals and requirements following animal bites and dangerous animals;
7. Authorize Oneida Police Officers and Conservation Warden to investigate
8. complaints and enforce this Law;
9. Transfer hearing authority from ERB to the Trial Court; and
10. Delegate rulemaking authority to the Environmental Health & Safety Division, Environmental Resources Board, Emergency Management Coordinator and Comprehensive Health Division.

**WHEREAS,** a public meeting on the proposed Amendments was held on June 5, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the Domestic Animal Ordinance Amendments are hereby adopted.





## **Statement of Effect**

### *Domestic Animals Ordinance Amendments*

#### ***Summary***

This Resolution adopts Amendments to the Domestic Animals Ordinance (the “Law”) which:

1. Change the name of the law from “Domestic Animal Ordinance” to “Domestic Animals”;
2. Protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of diseases carried by domestic animals;
3. Set minimum standards for the treatment of animals;
4. Prohibit certain species of animals from being brought onto the Reservation;
5. Regulate the keeping of livestock on lots zoned residential within the Reservation;
6. Establish consequences for damages caused by domestic animals and requirements following animal bites and dangerous animals;
7. Authorize Oneida Police Officers and Conservation Warden to investigate
8. complaints and enforce this Law;
9. Transfer hearing authority from ERB to the Trial Court; and
10. Delegate rulemaking authority to the Environmental Health & Safety Division, Environmental Resources Board, Emergency Management Coordinator and Comprehensive Health Division

*Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office*

#### ***Analysis by the Legislative Reference Office***

This Law was originally adopted by Resolution BC-03-13-96-B and was thereafter amended by Resolution BC-06-22-11-G.

The actual revisions contained in these Amendments are listed above and are being brought forward in response to concerns related to enforcement of domestic animal encounters and increased reporting of dog bites.

A public meeting was held for these Amendments on June 5, 2017 for which the public comment period expired on June 12, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

The Nation does not currently have any other laws or resolutions that govern domestic animal related issues and has the authority to regulate the keeping of domestic animals within the



reservation boundaries. There is no applicable state or federal law that would preclude the Nation from exercising such authority through the adoption of these amendments.

***Conclusion***

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



## Domestic Animals Amendments Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Jeff Mears (EHS)	SPONSOR: Tehassi Hill	DRAFTER: Krystal John	ANALYST: Candice E. Skenandore
<b>Intent of the Amendments</b>	To protect community members from disease, set minimum standards for treatment of animals, prohibit certain animals from being brought on the Reservation, regulate livestock and establish consequences for damages caused by domestic animals.		
<b>Purpose</b>	To protect the health, safety and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for the treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential within the Reservation; and establish consequences for damages caused by domestic animals [See <i>Domestic Animals</i> , 3 O.C. 304.1-1].		
<b>Affected Entities</b>	All Tribal members; Nation's entities and corporations; members of other federally recognized tribes; individuals and businesses leasing, occupying or using fee and/or trust land owned by/held in trust on behalf of the Nation or by individual Tribal members; individuals who consent to the Nation's jurisdiction [See <i>Domestic Animals</i> , 3 O.C. 304.4-1]. In addition, Oneida Police Department (OPD), Conservation Wardens, Environmental Health & Safety Division, Environmental Resource Board (ERB), Public Health Officer, Oneida Land Commission, Judiciary, Comprehensive Health Division and the Emergency Management Coordinator.		
<b>Affected Legislation</b>	Appealing the Trial Court's decision must follow the process set forth in the Rules of Appellate Procedure; for individuals that failed to pay a citation, ERB can pursue payment pursuant to the Garnishment law and/or Per Capita law [See <i>Domestic Animals</i> , 3 O.C. 304.11-2 (c) & (d)].		
<b>Enforcement/Due Process</b>	If this Law or orders issued under this Law are violated, a citation (fine, penalty, conditions and other orders) may be issued. All issued citations, orders and declarations shall include a prehearing date with the Trial Court. The person wishing to contest a citation must appear at the prehearing where the Trial Court will accept a plea and must schedule a hearing for those that contest the fact that they committed the act for which the citation was issued [See <i>Domestic Animals</i> , 3 O.C. 304.11].		
<b>Public Meeting</b>	A public meeting was held on June 5, 2017.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. These amendments will help protect the community by giving rulemaking authority to certain entities in order to establish rules related to disease investigations and quarantines [See *Domestic Animals*, 3 O.C. 304.5-3]. In addition, these amendments pertain to the standard treatment of animals as well as prohibiting exotic animals from being brought on the Reservation, unless the owner/handler follows the process set forth in this Law. The amendments also regulate livestock in residential areas and establish consequences for damages caused by domestic animals.

### SECTION 3. CONSULTATION

A. The OPD, Judiciary, Oneida Conservation Department, ERB, and Environmental Health & Safety Division were involved in consultations and discussions when developing this Law.

B. A number of Domestic Animal laws were reviewed while developing this Law, they include:

- De Pere Prohibited Animals, Sec. 86
- Exotic Animal Bans Examples (Green Bay, CH 8; Village of Howard, Sec. 4-150; Village of Suamico, 11.04 (b); Village of Hobart, ' 102-5
- Green Bay Ordinance-Public Health & Welfare, CH. 8
- Milwaukee County Animal Ordinance, CH 78
- Wausau Municipal Code, Animals-Care and Control, Title 8, CH. 8.08

### SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors [*See Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were never provided electronically to all managers or directors; however, the public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register as required by the LPA [*See Legislative Procedures Act, 1 O.C. 8-2 (a & b)*].

B. The Law was added to the active files list on September 19, 2015.

C. Work meetings were held in March of 2017.

### SECTION 5. CONTENTS OF THE LEGISLATION

A. *Jurisdiction.* This Law specifies personal and territorial jurisdiction. Personal jurisdiction is over 1) all Tribal members, Nation's entities and corporations, and member of other federal recognized tribes; 2) individuals and businesses leasing, occupying or using fee land owned by the Nation or individual Tribal member and/or lands held in trust on behalf of the Nation or individual Tribal member; and 3) individuals who have consented to the Nation's jurisdiction or federal law. Territorial jurisdiction is over all land owned by the Nation or individual Tribal member's trust or fee land [*See Domestic Animals, 3 O.C. 304.4*].

B. *Authority.* The following authorities specified in Section 304.5 of this Law include the following:

- OPD Officers and Conservation Wardens must investigate complaints involving domestic animals and enforce this Law.
- Environmental Health & Safety Division and ERB will have joint rulemaking authority to establish and maintain a fine and penalty schedule, a licensing fee schedule and other rules necessary to enforce and implement this Law.
- Environmental Health & Safety Division, Emergency Management Coordinator and Comprehensive Health Division will have joint rulemaking authority to establish rules related to disease investigations and quarantines.
- Environmental Health & Safety Division must make all decisions relating to issuing licenses pursuant to this Law [*See Domestic Animals, 3 O.C. 304.5*].

C. *Requirements for Dogs & Cats.* After five months of age, dogs and cats must be licensed annually and vaccinated for rabies. If district quarantine is initiated, the dogs and cats located in the area in

which the district quarantine was issued must be kept securely confined, tied, leashed or muzzled. Animals that are immunized against rabies are exempt from district quarantine requirements. Dogs and cats can only be outside their owner's premises if the animals are crated, penned or on a leash. If the animal is a nuisance, having two or more verified disturbances of excessive barking or running lose or one verified disturbance involving threatening behavior, OPD and Conservation can pick up the animal. A single residential household can have up to 1) three dogs, 2) three cats or 3) a combination of dogs and cats that does not exceed five animals. The Law allows for an exception if they exceed this amount prior to the Law becoming effective, keep or possess a litter or resides on a farm [See *Domestic Animals*, 3 O.C. 304.6].

**D. Treatment of Animals.** The Law sets out how animals are to be treated including requiring access to food and water, setting the minimum standards for animal shelters, and prohibiting the mistreatment of animals as well as requiring employees to report animal mistreatment to OPD [See *Domestic Animals*, 3 O.C. 304.7].

**E. Prohibited Animals.** The Law prohibits exotic animals on the Reservation; the list of exotic animals is found in Section 304.8-2 of this Law. A zoological park and/or sanctuary, educational or medical institution and specially trained entertainment organizations receive a permit from the Oneida Conservation Department can own, harbor or possess exotic animals. If an animal is seized because of being a prohibited animal, the Oneida Conservation Department or its designee will hold the animal in order to determine if the animal is an endangered species, costs for hold the animal may be the responsibility of the defendant. If a prohibited animal is released or escapes, the owner must immediately notify the Oneida Conservation Department and/or OPD and is liable for costs of recapture. Anyone that unlawfully has a prohibited animal must forfeit or surrender the animal to the Oneida Conservation Department or designee. Trial Court can direct the animal be destructed or transferred to the appropriate handler. The defendant will be responsible for the costs [See *Domestic Animals*, 3 O.C. 304.8].

**F. Regulation of Livestock.** Livestock can only be kept in residential zoned area if the Oneida Land Commission issues a conditional use permit. The owner of the livestock is responsible for any damage that occurred due to the livestock escaping from its confined area. In order to keep more than four hens, the owner must receive a permit from the Oneida Conservation Department. Roosters are not allowed [See *Domestic Animals*, 3 O.C. 304.9].

**G. Dangerous Animals.** Dangerous animals are animals that approach or chase humans or domestic animals in a way that risks attack without provocation or animals that bite, inflict injury attack or endanger humans or domestic animals without provocation. No person can harbor or keep dangerous animals within the Reservation unless the animal is leashed and muzzled when it is out of its confined area; when confined, the animal must be securely confined indoors or in a secured enclosed and locked pen or kennel; that the owner display a sign warning of a dangerous animal; that the animal be spayed or neutered; that the owner obtains liability insurance; the animal is micro-chipped; that the owner keeps OPD notified if the animal is at large, attacked another animal or human and when the animal died, was sold, or given away. In addition, ERB can waive any of the above mentioned requirements, minus the ongoing notifications to OPD, if ERB deems it to be unnecessary. If the owner does not comply with these regulations, the animal may be euthanized [See *Domestic Animals*, 3 O.C. 304.10-1 & 304.10-2].

No one can bring or keep a vicious animal on the Reservation. An OPD Officer, Oneida Conservation Warden and/or the Trial Court can declare an animal to be a vicious animal if, among

other things, the animal has killed a domestic animal or pet or inflicted substantial bodily injury to a person without provocation, is suspected of being trained for dog fighting or has been declared to be a prohibited dangerous animal in another jurisdiction. If an owner is found to have a vicious animal, the owner must attend a mandatory Trial Court prehearing and at the prehearing it will be decided if attendance at a hearing is required if restitution is appropriate. The OPD Officer or Conservation Warden are responsible for enforcing to provisions set forth in this Law that pertain to vicious animals. The prehearing and hearing requirements are found in section 304.10-3 (b) of this Law [*See Domestic Animals, 304.10-3*].

The owner must notify OPD if their dog or cat bites another human or other domestic animal and the responding officer or warden will 1) determine if the animal is properly licensed and is current on vaccinations, 2) ensure all information is correct, 3) contact the Environmental, Health & Safety Division, and 4) ensure the animal is vaccinated for rabies, if the animal is vaccinated for rabies, the owner must be ordered to quarantine the animal and have a veterinarian test the animal for rabies. If the animal is not vaccinated for rabies, the officer or warden will order the owner to quarantine the animal and be examined by a veterinarian to check for rabies to be euthanized. The quarantine can be extended by the veterinarian, if the veterinarian believes the animal is showing signs of rabies, the animal may be euthanized [*See Domestic Animals, 3 O.C. 304.10-4*].

- H. Owner Liability for Domestic Animals & Violations, Enforcement and Appeals.** Owners are liable for damages caused by their domestic animals [*See Domestic Animals, 3 O.C. 304.11*]. Citations for violating this Law and/or orders may include fines, penalties and conditional and other orders. All citations, orders and declarations issued pursuant to this Law must include a pre-hearing and if necessary, a hearing to be scheduled within 90 days of the date of the prehearing [*See Domestic Animals, 3 O.C. 304.12*].

## **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- A.** These amendments do not conflict with other laws of the Nation.

## **SECTION 7. ENFORCEMENT**

- A.** OPD Officers and Conservation Wardens must enforce this Law. They have the authority to 1) seize and animal, 2) issue citations, and 3) use force to stop an immediate threat to public safety caused by an animal [*Domestic Animals, 3 O.C. 304.5-1 (b)*].
- B.** According to OPD, the current staffing level is sufficient to implement this Law; no additional staff is required for implementation as OPD is currently handling these complaints.

## **SECTION 8. ACCOUNTABILITY**

- A.** The Environmental Health & Safety Division and ERB have delegated joint rulemaking authority to establish and maintain a fine and fee schedule, a licensing schedule and other rules to enforce and implement the Law. In addition, the Environmental Health & Safety Division, Emergency Management Coordinator and Comprehensive Health Division have delegated joint rulemaking authority to establish rules related to disease investigations and quarantines. Furthermore, Environmental Health & Safety Division will make all decisions related to issuing a license in accordance with this Law [*See Domestic Animals, 3 O.C. 304.5-2 through 304.5-4*].

## SECTION 9. OTHER CONSIDERATIONS

### A. The LOC may want to consider the following:

1. *Number of domestic animal licenses issued & Number of animal bites.* According to Public Health Sanitarian, there are 38 current up-to-date domestic animal licenses issued for 2017. The Public Health Sanitarian also verified that there were 15 bites in 2015, 1 cat bite and 1 dog vs. dog; 15 bite reports in 2016, 1 dog vs. dog; and four bite reports so far in 2017.
2. *Number of Citations and ERB hearings regarding Domestic Animal law violations.* The following table shows how many citations involving violations of the current Domestic Animals Ordinance were issued from 2012 through 2016. In addition, the table identifies how many hearings ERB held involving these citations as well as how many citation issues resulted in stipulations and how many citations were paid after a hearing was scheduled but prior to the hearing commencing [*Information received from ERB*].

Year	# of Citations	# of Hearings Held	# of Stipulations	Paid before Hrg
2012	1	1	0	0
2013	2	1	1	0
2014	3	3	0	0
2015	10	8	2	0
2016	18	1	12	4
<b>Total</b>	34	14	15	4

### B. Please refer to the fiscal impact statement for any financial concerns.

**Title 3. Health and Public Safety - Chapter 304**  
**DOMESTIC ANIMALS**  
**K@tse>na Olihwa@ke**  
*matters concerning the pet animals*

304.1. Purpose and Policy	304.6. Requirements for Dogs and Cats
304.2. Adoption, Amendment, Conflicts	304.7. Treatment of Animals
304.3. Definitions	304.8. Prohibited Animals
304.4. Jurisdiction	304.9. Regulation of Livestock
304.5. Licensing, Authority, Investigation, Responsibilities and Enforcement Powers	304.10. Dangerous Animals and Vicious Animals
	304.11. Violations, Enforcement and Appeals

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**304.1. Purpose and Policy**

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals may be kept as domestic animals.

**304.2. Adoption, Amendment, Repeal**

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G and \_\_\_\_\_.

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**304.3. Definitions**

304.3-1. This section governs the definitions of words and phrases used within this law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "District Quarantine" means a rabid or otherwise diseased Domestic Animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

(b) "Domestic animals" means dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids, and all other animals commonly owned as household pets, provided that domestic animals specifically excludes exotic animals as identified in section 304.8-2.



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(c) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law.

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

(d) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig, or domestic fowl, including game fowl raised in captivity.

(e) “Nation” means the Oneida Nation.

(f) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(g) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Judiciary and restitution.

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

(i) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

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

### 304.4. Jurisdiction

304.4-1. *Personal Jurisdiction.* This law applies to:

(a) All Tribal members; the Nation’s entities and corporations; and members of other federally-recognized tribes.

(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual Tribal members; and/or lands held in trust on behalf of the Nation or individual Tribal members.

(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. For the purposes of this subsection, an individual shall be considered to have consented to the jurisdiction of the Nation:

(1) By entering into a consensual relationship with the Nation, or with the Nation’s entities, corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

304.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by the Nation and individual Tribal member trust and/or fee land.

**304.5. Authority**

304.5-1. *Oneida Police Department.* Oneida Police Officers and Conservation Wardens shall:

- (a) investigate complaints involving domestic animals;
- (b) enforce the provisions of this law through appropriate means, including but not limited to:

- (1) seizing any animal:

- (A) taken, employed, used, or possessed in violation of this law; and/or

- (B) mistreated, rabid or otherwise in danger or dangerous.

- (2) issuing citations consistent with the fine and penalty developed according to section 304.5-2.

- (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal. Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head.

304.5-2. *General Rulemaking Authority.* The Environmental Health and Safety Division and the Environmental Resource Board are hereby delegated joint rulemaking authority to establish and maintain:

- (a) A fine and penalty schedule;

- (b) A licensing fee schedule; and

- (c) Other rules as necessary to enforce and implement this law.

304.5-3. *Disease Investigation and Quarantine Rulemaking Authority.* The Environmental Health and Safety Division, the Emergency Management Coordinator and Comprehensive Health Division are hereby delegated joint rulemaking authority to establish rules related to disease investigations and quarantines.

304.5-4. *Issuance of Licenses.* The Environmental Health and Safety Division shall make all decisions related to the issuance of a license in accordance with this law.

**304.6. Requirements for Dogs and Cats**

304.6-1. *License Required.* An annual license is required to keep any dog or cat over five (5) months of age.

- (a) The license year commences on January 1<sup>st</sup> and ends December 31<sup>st</sup>. To be eligible for a license, the owner shall provide the licensing fee and proof of current rabies vaccination.

- (b) The owner shall securely attach the tag to the animal's collar and shall require the animal wear the collar at all times, provided that this requirement does not apply to dogs or cats:

- (1) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;

- (2) within the owner's residence and/or securely confined in a fenced area; and/or

- (3) being shown during a competition.

304.6-2. *Rabies Vaccinations Required.* Rabies vaccination is required for any dog or cat five (5) months of age or older.

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304.6-3. *District Quarantine.* A district quarantine may be initiated in accordance with the quarantine rules and may be initiated by staff designated by the Environmental Health and Safety Division, an Oneida Police Officer, an Oneida Conservation Warden and/or a Public Health Officer.

(a) If an area is subject to a District Quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the Quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.6-4. *Dogs and Cats Running at Large.* It is unlawful for any dog or cat owner to permit the animal to be at any place except upon the premises of the owner, unless it is crated, penned, or on a leash under the control of a person physically able to control the animal. In addition, a nuisance dog or cat may be picked up by Oneida Police Officers or Oneida Conservation Wardens. For the purposes of this law, a nuisance dog or cat is one whose actions result in two (2) or more verified disturbances due to excessive barking and/or running loose or one (1) or more verified disturbance due to threatening behavior by a loose dog or cat.

(a) Stray dogs and cats shall be referred to the Oneida Police Department or Oneida Conservation Department.

(b) Whenever any Oneida Police Officer, Oneida Conservation Warden, or other person designated by the Chief of Police finds any dog or cat running at large, the officer/warden shall, if possible, pick up, and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

304.6-5. *Limit on Number of Dogs and Cats.* Except as provided in (a), no more than three (3) dogs or three (3) cats; and a total of no more than five (5) dogs and cats combined; may be kept or possessed by a single residential household. For the purposes of this law, each residential lot, excluding residential lots designed as multi-family lots, constitutes a separate residential household. In cases of multi-family lots, each family unit within the lot constitutes a separate household.

(a) *Exception.* The limit on the number of dogs and cats a person may keep or possess does not apply to those persons who:

(1) are eligible for any grandfather provisions included this law's adopting resolution(s);

(2) keep or possess a litter of pups or kittens or a portion of a litter for a period not exceeding five (5) months from birth; and/or

(3) reside on a farm.

**304.7. Treatment of Animals**

304.7-1. *Food and Water.* No owner may refuse or neglect to provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.7-2. *Shelter.*

(a) *Minimum indoor standards of shelter:*

(1) The ambient temperature shall be compatible with the health of the animal.

(2) Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(b) *Minimum outdoor standards of shelter:*

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. "Caged" does not include farm fencing used to confine farm animals.

(2) Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

(3) If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a weather appropriate shelter of suitable size to accommodate the dog shall be provided.

(c) *Space Standards.* Minimum space requirements for both indoor and outdoor enclosures:

(1) The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(2) Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns. Specifically, dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

DOG SIZE (LBS)	REQUIRED BASE KENNEL SPACE	REQUIRED ADDITIONAL KENNEL SPACE PER ADDITIONAL DOG
1-35 lbs	80 Sq. Ft.	12 Sq. Ft.
36-75 lbs	100 Sq. Ft.	18 Sq. Ft.
76 lbs or more	120 Sq. Ft.	24 Sq. Ft.

(d) *Sanitation Standards.* Minimum standards of sanitation for both indoor and outdoor enclosures require excreta to be removed within twenty-four (24) hours of its deposit. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.7-3. *Mistreatment of Animals.* No person may treat any animal in a manner which causes harm, injury or death. This section does not apply to:

(a) normal and accepted veterinary and/or care practices; or

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(b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.7-4. *Criminal Reporting*. In addition to taking civil action under this law, any employee of the Nation shall report animal mistreatment to the Oneida Police Department.

### **304.8. Prohibited Animals**

304.8-1. *Prohibited Animals*. No person may bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation an exotic animal.

304.8-2. *Exotic Animals*. The following orders and families, whether bred in the wild or in captivity, and any or all hybrids are defined as “Exotic Animals”. The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:

#### (a) Class Mammalia.

(1) Order Chiroptera (Any bat species)

(2) Order Artiodactyla, (Hippopotamuses, giraffes, camels, deer) Excluding domestic cattle, swine, sheep, goats, alpaca, and llama.

(3) Order Carnivora.

(A) Family Felidae. (Lions, tigers, cougars, leopards, ocelots, servals) Excluding domestic cats.

(B) Family Canidae (Wolves, wolf hybrids, coyotes, coyote hybrids, foxes, jackals) Excluding domestic dogs.

(C) Family Ursidae. (All bears)

(D) Family Mustelidae. (Weasels, skunks, martins, minks) Excluding ferrets.

(E) Family Procyonidae. (Raccoons, coatis)

(F) Family Hyaenidae. (Hyenas)

(G) Family Viverridae (Civets, genets, mongooses)

(4) Order Edentata. (Anteaters, armadillos, sloths)

(5) Order Marsupialia. (Opossums, kangaroos, wallabies, sugar gliders)

(6) Order Perissodactyla. (Rhinoceroses, tapirs) Excluding horses, goats, and mules.

(7) Order Primates. (Lemurs, monkeys, chimpanzees, gorillas)

(8) Order Proboscidae. (Elephants)

(9) Order Rodentia. (Squirrels, beavers, porcupines, prairie dogs) Excluding guinea pigs, rats, mice, gerbils, and hamsters.

#### (b) Class Reptilia.

(1) Order Squamata.

(A) Family Helodermatidae. (Gila Monsters and Mexican beaded lizards)

(B) Family Varanidae. (Any monitor which will normally grow over two feet in length)

(C) Family Iguanidae. (Only green iguanas and rock iguanas, all others allowed)

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- 246 (D) Family Boidae. (All species whose adult length may exceed eight (8)  
 247 feet)  
 248 (E) Family Colubridae. (Boomsnangs and African twig snakes)  
 249 (F) Family Elapidae. (Coral snakes, cobras, mambas)  
 250 (G) Family Nactricidae. (Only keelback snakes, all others allowed)  
 251 (H) Family Viperidae. (Copperheads, cottonmouths, rattlesnakes)  
 252 (2) Order Crocodilia. (Crocodiles, alligators, caimans, gavials)  
 253 (c) Class Aves.  
 254 (1) Order Falconiformes. (Eagles, hawks, vultures)  
 255 (2) Order Rheiformes. (Rheas)  
 256 (3) Order Struthioniformes. (Ostriches)  
 257 (4) Order Casuariiformes. (Cassowaries and emus)  
 258 (5) Order Strigiformes. (Owls)  
 259 (d) Class Arachnida.  
 260 (1) Order Scorpiones, Family Buthidae.  
 261 (A) Arabian fat-tailed scorpion – *Androctonus crassicauda*  
 262 (B) Arizona centruroides scorpion – *Centruroides exilicauda*  
 263 (C) Death stalker – *Leiurus quinquestriatus*  
 264 (D) Egyptian yellow scorpion – *Androctonus Amoreuxi*  
 265 (E) Israeli black scorpion – *Hottentotta judaicus*  
 266 (F) S.A. giant fat-tailed scorpion – *Parabuthus transvaalicus*  
 267 (G) Sinai desert scorpion – *Androctonus bicolor*  
 268 (H) Yellow desert scorpion – *Androctonus Australia*  
 269 (2) Order Araneae, Family Therididae.  
 270 (A) Argentina red widow spider – *Latrodectus coralinus*  
 271 (B) Brown widow spider – *Latrodectus geometricus*  
 272 (C) Red-black widow – *Lactrodectus hasselti*  
 273 (D) Red widow spider – *Lactrodectus bishop*  
 274 (E) Southern black widow spider – *Lactrodectus mactans*  
 275 (F) Western widow – *Lactrodectus Hesperus*  
 276 (3) Order Araneae, Family Laxoscelidae, Brown recluse spider – *Loxosceles*  
 277 *reclusa*  
 278 (e) Class Chilopoda.  
 279 (1) Order Scolopendromorpha, Family Scolopendridae.  
 280 (A) Amazon giant banded centipede – *Scolopendra giganea*  
 281 (B) Arizona tiger centipede – *Scolopendra virdis*  
 282 (C) Florida keys centipede – *Solopendra alternans*  
 283 (f) Any Federal or State endangered or threatened species.  
 284 304.8-3. This section does not apply to:  
 285 (a) Individuals who are eligible for any grandfather provisions included this law's  
 286 adopting resolution(s). (b) Zoological parks and/or sanctuary, educational or medical  
 287 institution, and specially trained entertainment organizations who receive a permit from  
 288 the Oneida Conservation Department to own, harbor or possess the animals.

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(1) The Environmental Health and Safety Division may issue a permit under this section if:

(A) the animals and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(B) the animals are maintained in quarters so constructed as to prevent their escape.

(2) If approved by the Oneida Conservation Department, wildlife refuges/sanctuaries may release animals within the Reservation without applying for and receiving a permit as otherwise required under this Section.

304.8-4. *Seized Animals*. Any animal seized as a prohibited animal shall be held by the Oneida Conservation Department or its designee until that animal is identified to ascertain whether the animal is an “endangered or threatened species” pursuant applicable laws. At any time after such identification, the Oneida Conservation Department may seek an order from a hearing body as to the care, custody and control of the animal. The Oneida Conservation Department may also request the defendant to post a bond in an amount sufficient to satisfy the costs of holding, housing and/or caring for the animal. If the hearing body finds the animal has been taken, employed, used or possessed in violation of this section, the cost of holding the animal and any costs incurred in identifying the animals shall be assessed against the defendant.

304.8-5. *Notice of Release or Escape*. If an animal identified as prohibited under this section is released or escapes, the owner of the animal shall immediately notify the Oneida Conservation Department and/or the Oneida Police Department and shall be liable for any cost of recapture.

304.8-6. *Forfeiture of the Prohibited Animal*. Anyone found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Conservation Department or designee. Upon such forfeiture or surrender, the Judiciary Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational or scientific institution or qualified private propagator for safekeeping, with costs assessed against the defendant.

### **304.9. Regulation of Livestock**

304.9-1. Livestock may only be kept on land zoned residential if a conditional use permit is received from the Oneida Land Commission, however, not in excess of the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to horses, cows and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to goats and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.9-2. *Liability for Damage Caused by Livestock*. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

304.9-3. *Hens*. A permit from the Oneida Conservation Department, based on the rules it shall develop, is required in order to keep an excess of four (4) hens. Roosters may not be kept.

(a) Persons keeping hens shall keep them in the following manner:

(1) No person may keep a hen over eight (8) weeks of age in a principal structure.



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(2) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet per chicken.

(3) No accessory structure used to keep hens may be located within twenty-five feet (25') of any principal structure which is not owned by the person licensed to possess the hens.

(4) No accessory structure used to keep hens may be located in a front or side yard.

(b) In addition to compliance with the requirements of this section, no person may keep hens that cause any other nuisance associated with unhealthy condition, create a public health threat or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

### **304.10. Dangerous Animals**

304.10-1. *Classifying Dangerous Animals.* Owners of animals meeting the definition of a dangerous animal shall comply with the requirements contained in section 304.10-2 for harboring dangerous animals.

(a) For the purposes of this law, an animal is presumed to be dangerous if it:

(1) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack, without provocation; or

(2) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal without provocation.

(b) An animal may not be deemed a dangerous animal if it bites, attacked or menaces any person or animal to:

(1) defend its owner or another person from an attack by a person or animal;

(2) protect its young or another animal;

(3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or

(4) defend its owner's property against trespassers.

(c) An Oneida Police Officer or Oneida Conservation Warden may, in his or her discretion, declare an animal dangerous, provided that, a citation for a violation of this section may be issued without having previously received such a declaration.

(d) An owner of an animal declared to be dangerous may appeal such declaration in accordance with section 304.12-2. All requirements for harboring dangerous animals in section 304.10-2 except subsections (d)-(f) apply to the animal pending the outcome of the hearing unless specifically stayed by the Judiciary.

304.10-2. *Harboring Dangerous Animals.* No person may harbor or keep a dangerous animal within the Reservation unless all provisions of this section are complied with. Any animal that is determined to be a vicious animal in accordance with section 304.10-3 may not, under any circumstances, be kept or harbored within the Reservation.

(a) *Leash and Muzzle.* No person keeping or possessing a dangerous animal may permit such animal to go outside its kennel or pen unless the animal is securely leashed with a leash no longer than four feet (4') in length.

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(1) No person may permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person who is sixteen (16) years of age or older, competent to govern the animal and capable of physically controlling and restraining the animal is in physical control of the leash.

(2) The animal may not be leashed to inanimate objects such as trees, posts and buildings.

(3) A dangerous animal on a leash outside the animal's kennel must be muzzled in a humane way by a muzzling device sufficient to prevent the animal from biting persons or other animals. The Environmental Health and Safety Division, with approval of the Environmental Resource Board, may provide a written exception excusing an otherwise dangerous animal from being muzzled. If such a written exception is issued, it shall be carried by the animal's owner at all times.

(b) *Confinement*. Except when leashed and muzzled as provided in subsection (a) above, all dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition.

(1) *Confinement Outdoors*. When constructed in an open yard, the pen or kennel shall, at a minimum, be constructed to conform to the requirements of this subsection.

(A) The pen or kennel shall be child-proof from the outside and animal-proof from the inside.

(B) A strong metal double fence with adequate space between fences (at least two feet (2')) shall be provided so that a child cannot reach into the animal enclosure.

(C) The pen, kennel or structure shall have secure sides and a secure top attached to all sides.

(D) A structure used to confine a dangerous animal shall be locked with a key or combination lock when the animal is within the structure.

(E) The structure shall either have a secure bottom or floor attached to the sides of the pen or the sides of the pen shall be embedded in the ground no less than two feet (2')

(F) All structures erected to house dangerous animals shall comply with the requirements of all applicable laws and rules of the Nation.

(G) All structures shall be adequately lighted and ventilated and kept in a clean and sanitary condition.

(2) *Confinement Indoors*. No dangerous animal may be kept on a porch, patio or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. No dangerous animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(c) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two

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inches (2") high warning that there is a dangerous animal on the property. A similar sign is required to be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(d) *Spay and Neuter Requirement.* If declared dangerous by an Oneida Police Officer or Oneida Conservation Officer, the owner shall within thirty (30) days after the declaration shall provide the Environmental Resource Board with written proof from a licensed veterinarian that the animal has been spayed or neutered.

(e) *Liability Insurance.* If declared dangerous by an Oneida Police Officer or Oneida Conservation Officer, the owner of the dangerous animal shall present proof to the Environmental Resource Board that the owner has procured liability insurance in an amount not less than \$1,000,000 for any personal injuries inflicted by the dangerous animal. Whenever such a policy is cancelled or not renewed, the insurer shall so notify the Environmental Resource Board.

(f) *Microchipping.* If declared dangerous by an Oneida Police Officer or Oneida Conservation Officer, the owner of the dangerous animal shall provide proof to the Environmental Resource Board that the dangerous animal has had a microchip inserted for identification purposes within ten (10) calendars from the date the animal is declared dangerous.

(g) *Ongoing Notification Requirements.* After an animal has been declared dangerous, the owner shall have an ongoing duty to notify the Oneida Police Department:

(1) immediately if the dangerous animal is at large, is unconfined, has attacked another animal or has attacked a human being; and

(2) within twenty-four (24) hours if a dangerous animal has died, been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental Resource Board within a reasonable amount of time.

(h) *Waiver by the Environmental Resource Board.* Upon request of an owner, the Environmental Resource Board may waive any requirement specified in subsections (a)-(f) that the Environmental Resource Board deems to be unnecessary for a particular dangerous animal. The Environmental Resource Board may waive the provisions of subsections (a)-(f) for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

(i) *Euthanasia.* If the owner of an animal that has been designated a dangerous animal is unwilling or unable to comply with the regulations for keeping the animal in accordance with this section, he or she may have the animal humanely euthanized by an animal

shelter, the humane society or a licensed veterinarian.

304.10-3. *Vicious Animals*. No person may bring or keep within the Reservation any animal that is a vicious animal under this section.

(a) *Declaration of Vicious Animal*. An Oneida Police Officer, Oneida Conservation Warden and/or the Judiciary Trial Court may declare an animal to be a vicious animal if the animal:

(1) Is a dangerous animal in noncompliance with the requirements under Section 304.10-2;

(2) Has killed a domestic animal or pet without provocation on public or private property;

(3) Without provocation, has inflicted substantial bodily harm on a person on public or private property where substantial bodily harm means bodily injury that causes a laceration that requires stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing;

(4) Is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(5) Has been declared to be a vicious animal and/or ordered to be destroyed in any other jurisdiction.

(b) *Mandatory Hearing*. The owner of an animal declared to be a vicious animal shall attend a mandatory pre-hearing with the Judiciary Trial Court, the date for which shall be included on the declaration of vicious animal. At the pre-hearing it may be determined that mandatory attendance at Judiciary Trial Court hearing is also required if restitution is appropriate. The pre-hearing and any hearings are subject to the requirements contained in section 304.12-2.

(1) All requirements for harboring dangerous animals in section 304.10-2 except subsections (d)-(f) apply to the said animal pending the outcome of the Judiciary Trial Court's pre-hearing and/or hearing.

(2) At the pre-hearing, the Judiciary Trial Court may require the animal to be impounded pending the result of the hearing.

(3) The Judiciary Trial Court may order a vicious animal to be destroyed if it finds it was so declared based on section 304.10-3(a)(3). If such an order is issued, the Judiciary Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(4) If the declaration of vicious animal is upheld upon appeal, the Judiciary Trial Court shall order the animal to be removed from the Reservation. Such order shall include the notification requirements contained in section 304.10-2(g) and provide the owner with a reasonable timeframe for removing the animal from the Reservation, provided that the timeframe may not exceed thirty (30) days after the date of the Judiciary Trial Court's decision.

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(5) If the owner further appeals the determination of the Judiciary Trial Court to the Judiciary Court of Appeals, he or she shall submit the appeal within five (5) business days from the date of the Judiciary Trial Court's decisions, which is a shorter timeframe than required for all other appeals under this law. Upon an appeal to the Judiciary Court of Appeals, the requirement to order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

(c) *Enforcement.* An Oneida Police Officer or Oneida Conservation Warden may make any inquiries deemed necessary to ensure compliance with this section and may seize an animal based on the owner's failure to comply.

(d) *Waiver.* The Judiciary may waive the provisions of this section for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.10-4. *Investigations for Suspected Domestic Animal Bites.* The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

(2) Ensure all information provided is correct.

(3) Contact the Environmental, Health and Safety Division to notify them of the domestic animal bite.

(4) If the cat or dog has current rabies vaccinations, order the owner to:

(A) Quarantine the animal for ten (10) days; and

(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

(5) If the cat or dog does not have current rabies vaccination, order the owner to:

(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or

(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the

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specimen for analysis, to be paid for by the Nation.

(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

### **304.11. Owner Liability for Domestic Animals**

304.11-1. Owners are liable for damages caused by their domestic animal(s).

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal.

(b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

### **304.12. Violations, Enforcement and Appeals**

304.12-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the schedule developed under section 304.5-2. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

304.12-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

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

*End.*

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Adopted - BC-3-13-96-B

Amended – BC-06-22-11-G



**Title 3. Health and Public Safety – Chapter 304**  
**ONEIDA TRIBAL REGULATION OF DOMESTIC ANIMALS ORDINANCE**  
**Kátse'na Olihwa'ke**  
*matters concerning the pet animals*

304.1. Purpose and Policy  
 304.2. Adoption, Amendment, Conflicts  
 304.3. Definitions  
 304.4. Jurisdiction  
 304.5. Licensing, Authority, Investigation, Responsibilities and Enforcement Powers

304.6. Requirements for Dogs and Cats  
 304.7. Treatment of Animals  
 304.8. Prohibited Animals  
 304.9. Regulation of Livestock  
 304.10. Dangerous Animals and Vicious Animals  
 304.11. Violations, Enforcement and Appeals

**304.1. Purpose and Policy**

304.1-1. Purpose. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. Policy. It is the policy of ~~this law~~ the Nation to ~~clearly set out procedures and~~ protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, ~~as well as to regulate what kinds and~~
- (c) regulating the types of animals may be kept as domestic animals. ~~It is also the policy of this law to set out in detail the structure for assessing and collecting license fees and fines to domestic animals, and for investigating and enforcing violations of this law.~~

**304.2. -Adoption, Amendment, Repeal**

304.2-1. This law ~~is was~~ adopted by ~~the~~ Oneida Business Committee ~~in accordance with the Administrative Procedures Act by Resolution~~ by resolution BC-03-13-96-B and amended by ~~Resolution~~ resolutions BC-06-22-11-G, and \_\_\_\_\_.

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the ~~Oneida Administrative~~ Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Council.~~

304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~shall~~ does not affect other provisions of this law which are considered to have legal force without the invalid portions.

~~304.2-4. All other Oneida law, policies, regulations, rules, resolutions, motions, and all other similar actions which are inconsistent with this law are hereby superseded unless specifically re-enacted after adoption of this law.~~

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida ~~Tribe of~~ Indians of Wisconsin Nation.



**304.3. Definitions:**

304.3-1. This section ~~shall contain~~governs the definitions of words and phrases used within this law. All words ~~and phrases~~ not defined ~~within this section, or defined in any section,~~herein are to be used in their ordinary and everyday sense.

~~(a) "Conservation Official" includes any employee of the Conservation Department designated by the Oneida Business Committee to implement and enforce this law.~~

~~(b)-(a) "District Quarantine" results when~~means a rabid or otherwise diseased ~~domestic animal~~Domestic Animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are ~~rounded up and tested for rabies or other diseases~~subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

~~(e)-b) "Domestic Animals" refers to animals" means~~ dogs, cats, ~~weasels~~ferrets, rabbits, guinea pigs, turtles, ~~tropical~~—birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids, and all other animals commonly owned as household pets ~~on tribal land,~~ provided that domestic animals specifically excludes exotic animals as identified in section 304.8-2.

(c) "Fine" means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law.

(d) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(d) "Livestock" includes~~means~~ any equine (i.e. horse, donkey, etc.), bovine, (i.e. cow, steer, heifer, etc.), sheep, goat, pig, or domestic fowl, including game fowl raised in captivity.

~~(e) "Tribal Land" includes all tribal lands held in trust; all tribal lands held in fee status; all fee status lands under the control of individual members of any federally or state recognized Indian tribe, band or community; all heirship lands; and all individual trust lands within the present confines of the Reservation; and to such other lands as may be hereafter added thereto under any law of the United States, except as otherwise provided by applicable law~~

(e) "Nation" means the Oneida Nation.

~~(f)-~~ "Owner" means any person who owns, ~~harbor~~harbors, keeps, ~~or~~ controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(g) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Judiciary and restitution.

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



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(i) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

(j) "Tribal member" means an enrolled member of the Nation.

#### **304.4. Jurisdiction**

##### 304.4-1. Personal Jurisdiction. This law applies to:

(a) All Tribal members; the Nation's entities and corporations; and members of other federally-recognized tribes.

(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual Tribal members; and/or lands held in trust on behalf of the Nation or individual Tribal members.

(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. For the purposes of this subsection, an individual shall be considered to have consented to the jurisdiction of the Nation:

(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

##### 304.4-2. Territorial Jurisdiction. This law extends within the Reservation to all land owned by the Nation and individual Tribal member trust and/or fee land.

#### **304.5. Licensing, Authority, Investigation Responsibilities and Enforcement Powers**

##### 304.5-1. Oneida Police Department. Oneida Police Officers and ~~304.4 1. The Oneida Conservation Department~~

~~(a) The Oneida Conservation Department shall have the power to issue and collect fees for licenses and Warden~~ shall have the power to levy and collect fines against those who violate this law consistent with the penalty provisions as further set out in this law.:

~~(b) All license fees revenue collected by the Oneida Conservation Department shall go into its general fund. All revenue from the collection of fines paid for violations of this ordinance shall go into the Oneida Police Department general fund. The Oneida Conservation Department shall be responsible for implementing this law and for placing animals in the necessary institutions as required by this law.~~

##### 304.4 2. The Oneida Police Department

~~(a) The Oneida Police Department shall be charged with investigating~~ (a) investigate complaints ~~on tribal land involving domestic animals and shall have the authority to issue citations to those;~~

(b) enforce the provisions of this law through appropriate means, including but not limited to:

(1) seizing any animal;

(A) taken, employed, used, or possessed in violation of this law ~~and shall~~



~~be authorized to seize animals suspected to be;~~ and/or

(B) ~~mistreated,~~ rabid or otherwise in danger or dangerous;

(2) issuing citations consistent with the officer may as a last resort kill fine and penalty developed according to section 304.5-2.

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal. Where lethal force is used, such animal execution shall be conducted in as humane manner and in a manner that as possible and, to the extent feasible, avoids damage to the animal's head.

~~304.4-3. Contesting a Fine or Citation. Any person issued a fine or citation under this law may contest it by attending a hearing before~~ 304.5-2. General Rulemaking Authority. The Environmental Health and Safety Division and the Environmental Resource Board, are hereby delegated joint rulemaking authority to establish and maintain:

~~304.5-1. Licensing~~ (a) A fine and penalty schedule;

(b) A licensing fee schedule; and

(c) Other rules as necessary to enforce and implement this law.

304.5-3. Disease Investigation and Quarantine Rulemaking Authority. The Environmental Health and Safety Division, the Emergency Management Coordinator and Comprehensive Health Division are hereby delegated joint rulemaking authority to establish rules related to disease investigations and quarantines.

304.5-4. Issuance of Licenses. The Environmental Health and Safety Division shall make all decisions related to the issuance of a license in accordance with this law.

## **304. Immunization 6. Requirements for Dogs and Cats**

~~304.6-1. 304.5-1. License required.~~

(a) A dog Required. An annual license is required ~~for the keeping of~~ to keep any dog or cat over five (5) months of age.

~~(1) Upon payment of the required dog license fee and upon presentation of evidence that the dog is currently immunized against rabies, the conservation official shall complete and issue to the owner a license for the dog bearing a serial number and in the form prescribed by the Conservation Department stating the date of its expiration, the owner's name and address, and the name, sex, sprayed or unsprayed, neutered or unneutered, breed and color of the dog.~~

~~(2) The conservation official shall keep a duplicate of the license on file.~~

~~(3) After issuing the license, the conservation official shall deliver to the owner a tag of durable material bearing the same serial number as the license, the Oneida Tribe of Indians of Wisconsin as issuer, and the license year.~~

(4)(a) The license year commences on January 1<sup>st</sup> and ends December 31<sup>st</sup>. To be eligible for a license, the owner shall provide the licensing fee and proof of current rabies vaccination.

(b) The owner shall securely attach the tag to the animal's collar and shall require the animal wear the collar with the tag attached shall be kept on the dog for which the license is issued at all times but, provided that this requirement does not apply to a dog while



dogs or cats:

(1) ~~hunting, to a dog securely confined in a fenced area or to a dog while or~~  
actively involved in herding or controlling livestock if the ~~dog~~animal is under  
control of its owner. ~~;~~

(5) ~~A new tag with a new number shall be furnished to the owner by a  
conservation official in place of the original tag upon presentation of the license.  
The conservation official shall then endorse the new tag number on the license  
and shall keep a record on file.~~

(6) ~~The license year commences on January 1 and ends December 31.~~

(7) ~~The owner of a dog more than five months of age on January 1 of any year, or  
five months of age within the license year shall annually, on or before the date the  
dog becomes five months of age, pay the dog license fee and obtain a license.~~

(8) ~~The license fee shall be \$5 for a neutered male dog or spayed female dog, and  
\$10 for an unneutered male dog or unspayed female dog, or one half these  
amounts if the dog became five months of age after July 1.~~

(b) ~~Exemption of dogs for blind, deaf, and mobility impaired.~~

(1) ~~Every dog specially trained to lead blind or deaf person or to provide support  
for mobility impaired persons is exempt from the dog license fee and every  
person owning such dog shall receive annually a free dog license from the  
Conservation Official upon application.~~

(c) ~~Anyone found in violation of section 304.5 1, shall be subject to the following  
penalties:~~

(1) ~~A fine of not less than \$5 nor more than \$100 for failing to obtain a license for  
a dog that requires such license to be paid to the Conservation Department.~~

(2) ~~A fine of not less than \$1 nor more than \$10 for obtaining a license for a dog  
after the required deadline for obtaining such license had passed; to be paid to the  
Conservation Department.~~

(2) within the owner's residence and/or securely confined in a fenced area; and/or

(3) being shown during a competition.

304.6-2. 304.5 2. Rabies vaccinations required.

(a) Vaccinations Required. Rabies vaccination is required for any dog or cat five (5) months of  
age or older.

(1) ~~The owner of a dog shall have the dog vaccinated against rabies by a  
veterinarian within 30 days after the dog reaches four months of age and  
revaccinated within one year after the initial vaccinations.~~

(2) ~~If the owner obtains the dog or brings the dog onto Oneida tribal land after the  
dog has reached four months of age, the owner shall have the dog vaccinated  
against rabies within 30 days after the dog is obtained or brought onto Oneida  
tribal land unless the dog has been vaccinated from the state of Wisconsin or  
another state.~~

(3) ~~The owner of a dog shall have the dog vaccinated against rabies after the first  
two specified vaccinations by a veterinarian before the date that the immunization  
expires as stated on the certificate of vaccinations. Beginning with the second~~



~~vaccination, all vaccinations expire within either one year, two years, or three years, as specified on the certificate of vaccination.~~

~~(b) District Quarantine.~~

~~(1) Dogs confined. If a district is quarantined~~304.6-3. *District Quarantine.* A district quarantine may be initiated in accordance with the quarantine rules and may be initiated by staff designated by the Environmental Health and Safety Division, an Oneida Police Officer, an Oneida Conservation Warden and/or a Public Health Officer.

~~(a) If an area is subject to a District Quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed, or muzzled. Any dog or cat not confined, tied, leashed, or muzzled is declared a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Department officers Wardens shall cooperate in the enforcement of the quarantine.~~Quarantine.

~~(2) Exemption of vaccinated dog from district quarantine. A dog~~(b) *An animal* that is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section~~304.5-2(b)(1).~~

~~(e) Anyone found in violations of section 3045-2 shall be subject to the following penalties:~~

~~(1) Failure to obtain rabies vaccinations. An owner who fails to have a dog vaccinated against rabies as required under section 304.5-2(a) shall be subject to a fine of not less than \$50 nor more than \$1,000 to be paid to the Conservation Department.~~

~~(2) Refusal to comply with order or quarantine. An owner who refuses to comply with an order issued under this section to deliver an animal to an officer, isolation facility or veterinarian shall be fined not less than \$50 nor more than \$1,000.~~

~~304.5-3. *Nuisance and vicious dogs.*~~

~~(a) "Nuisance dog" is defined as one whose actions results in two or more verified disturbances to the owner's neighbors.~~

~~(1) "Disturbance" is defined as a dog engaging in excessive barking, running loose, biting, or engaging in threatening behavior.~~

~~(2) The Oneida Police Department is responsible for verifying the complaints.~~

~~(3) Any nuisance dog may be picked up by the Oneida Police Department or Conservation Department.~~

~~(4) A dog engaging in threatening behavior, biting, or running loose shall be ordered kept securely confined, muzzled and otherwise securely leashed until such time as the Oneida Conservation Department shall be informed that the behavior of the dog has changed. An owner violating an order issued under this subsection shall be subject to a fine not less than \$50 nor more than \$1000.~~

~~(b) A vicious dog is defined as one who commits two or more unprovoked attacks on anyone, including the owner. The Oneida Police Department is responsible for verification.~~

~~(1) The Oneida Police Department may dispose of vicious dogs at any time when public safety is immediately threatened. When public safety is not immediately~~



threatened, the Oneida Police Department may order the owner to dispose of the dog within ten days of a written order to do so.

(2) Animals which are running game animals or that create an immediate threat to public safety or to tribal personnel may be dealt with by using reasonable force to contain such animals. Only the Oneida Police Department and Conservation officials may perform this function.

(c) All dogs subject to this ordinance shall be restrained within a cage or fence or be tied up to an object that restrains the animals from roaming freely outside of the owner's premises. Said restraints shall apply only to owners whose residences are closer in proximity than a 1.5-acre radius to another residence. 304.6

~~304.5-4.~~ Dogs running and Cats Running at large.

(a) Large. It shall be unlawful for any person owning or possessing any dog or cat owner to permit the same to run at large. For the purpose of this paragraph, "running at large" shall be defined to be the presence of a dog animal to be at any place except upon the premises of the owner:

(1) A dog shall not be considered to be running at large if it is, unless it is crated, penned, or on a leash and under the control of a person physically able to control it the animal. In addition, a nuisance dog or cat may be picked up by Oneida Police Officers or Oneida Conservation Wardens. For the purposes of this law, a nuisance dog or cat is one whose actions result in two (2) or more verified disturbances due to excessive barking and/or running loose or one (1) or more verified disturbance due to threatening behavior by a loose dog or cat.

(b) Impounding dogs

(1) (a) Stray dogs and cats shall be referred to the Oneida Police Department or Oneida Conservation Department.

(b) Whenever any Oneida Police Officer, Oneida Conservation Warden, or other person designated by the Chief of Police shall find finds any dog or cat running at large as defined in this ordinance, the officer/warden shall, if possible, pick up, and impound such animal in such a place as the Oneida Chief of Police may direct.

(2) (c) Whenever any impounded dog shall bear animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified forthwith. Any dog impounded shall be held for a period of seven days. At the end of the seven days the impounded dog shall be disposed of unless the owner thereof shall reclaim such dog and pay at the Police Department the reasonable cost of keeping such dog and an impounding fee of \$10 for the first impounding and of \$25 for the second impounding as soon as reasonably possible.

~~304.5-5.~~ Number of dogs limited in residential areas.

(a) No 304.6-5. Limit on Number of Dogs and Cats. Except as provided in (a), no more than three (3) dogs or three (3) cats; and a total of no more than five (5) dogs and cats combined; may be kept or possessed by a single residential household. For the purposes of this law, each residential lot, excluding residential lots designed as multi-family lots, constitutes a separate residential household. In cases of multi-family lots, each family unit within the lot constitutes a separate household.

(a) Exception. The limit on the number of dogs and cats a person shall own, harbor,



~~may keep~~ or possess ~~more than five dogs within any lot of Oneida tribal land zoned as residential, except a person who:~~

~~(1) owned, harbored or possessed more than five dogs on the date he or she became subject to this law. This exclusion shall continue as long as the owner keeps such animals, but does not permit additional dogs which exceed the limit; or~~ apply to those persons who:

(1) are eligible for any grandfather provisions included this law's adopting resolution(s);

(2) keeps keep or possess a litter of pups or a portion of a litter for a period not exceeding five months from birth; or

(3) receives a permit from the Oneida Land Commission to operate a kennel.

~~(b) If more than one family resides on any lot, the party exceeding the limitation imposed by this section is in violation thereof.~~

#### **304.6. — Licensing and Immunization Requirement for Cats**

##### **304.6-1. License required.**

~~(a) A cat license is required for the keeping of any cat over five months of age.~~

~~(1) Upon payment of the required cat license fee and upon presentation of evidence that the cat is currently immunized against rabies, the conservation official shall complete and issue to the owner a license for the cat bearing a serial number and in the form prescribed by the Conservation Department stating the date of its expiration, the owner's name and address, and the name, sex, spay or unsayed, neutered or unneutered, breed and color of the cat.~~

~~(2) The conservation official shall keep a duplicate copy of the license.~~

~~(3) After issuing the license, the conservation official shall deliver to the owner a tag of durable material bearing the same serial number as the license, the Oneida Tribe of Indians of Wisconsin as issuer, and the license year.~~

~~(4) The owner shall securely attach the tag to a collar and a collar with the tag attached shall be kept on the cat for which the license is issued at all times.~~

~~(5) A new tag with a new number shall be furnished to the owner by a Conservation Official in place of the original tag upon presentation of the license. The Conservation Official shall then endorse the new tag number on the license and shall keep a record on file.~~

~~(6) The license year commences on January 1 and ends December 31.~~

~~(7) The owner of a cat more than five months of age on January 1 of any year, or five months of age within the license year shall annually, on or before the date the cat becomes five months of age, pay the cat license fee and obtain a license.~~

~~(8) The license fee shall be \$5 for a neutered male cat or spayed female cat, and \$10 for an unneutered male cat or unsayed female cat, or one half these amounts of the cat fee if the cat became five months of age after July 1.~~

~~(b) Anyone found in violation of section 304.6-1, shall be subject to the following penalties:~~

~~(1) A fine of not less than \$5 nor more than \$100 for failing to obtain a license for~~



a cat that requires such license to be paid to the Conservation Department.

(2) A fine of not less than \$1 nor more than \$10 for obtaining a license for a cat after the required deadline for obtaining such license has passed to be paid to the Conservation Department.

#### ~~304.6 2. Rabies vaccinations required.~~

~~(a) Rabies vaccination is required for any cat five months or older.~~

~~(1) The owner of a cat shall have the cat vaccinated against rabies by a veterinarian within 30 days after the cat reaches four months of age and revaccinated within one year after the initial vaccinations.~~

~~(2) If the owner obtains the cat or brings the cat onto Oneida tribal land after the cat has reached four months of age, the owner shall have the cat vaccinated against rabies within 30 days after the cat is obtained or brought on to the Oneida tribal land unless the cat had been vaccinated from the state of Wisconsin or another state.~~

~~(3) The owner of a cat shall have the cat vaccinated against rabies after the first two specified vaccinations by a veterinarian before the date that the immunization expires as stated on the certificate of vaccinations. Beginning with the second vaccination, the next vaccinations expire within either one year, two years, or three years, as specified on the certificate of vaccination.~~

~~(b) District Quarantine.~~

~~(1) Cats confined. If a district is quarantined for rabies, all cats within the district shall be kept securely confined, tied, leashed, or muzzled. Any cat not confined, tied, leashed, or muzzled is declared a public nuisance and may be impounded. All Oneida Police and Conservation Department officers shall cooperate in the enforcement of the quarantine.~~

~~(2) Exemption of vaccinated cat from district quarantine. A cat that is immunized currently against rabies as evidence is exempt from the district quarantine provisions of section 304.6 2(b)(1).~~

~~(c) Anyone found in violations of section 304.5 2 shall be subject to the following penalties:~~

~~(1) Failure to obtain rabies vaccinations. An owner who fails to have a cat vaccinated against rabies as required under section 304.5 2(a) shall be subject to a fine of not less than \$50 nor more than \$1,000 to be paid to the Conservation Department.~~

~~(2) Refusal to comply with order or quarantine. An owner who refuses to comply with an order issued under this section to deliver an animal to an officer, isolation facility or veterinarian shall be fined not less than \$50 nor more than \$1,000.~~

#### ~~304.6 3. Cats running at large.~~

~~(a) It shall be unlawful for any person owning or possessing any cat to permit the same to run at large. For the purpose of this paragraph, "running at large" shall be defined to be the presence of a cat at any place except upon the premises of the owner.~~

~~(1) A cat shall not be considered to be running at large if it is on a leash and under control of a person physically able to control it.~~



~~(b) Impounding cats.~~

~~(1) Whenever any Oneida Police Officer or other person designates by the Chief of Police shall find any cat running at large as defined in this ordinance, the office shall, if possible, pick up, and impound such animal in such place as the Oneida Chief of Police may direct.~~

~~(2) Whenever any impounded cat shall bear an identification mark such as a collar or license tag, the owner shall be notified forthwith. Any cat impounded shall be held for a period of seven days. At the end of the seven days the impounded cat shall be disposed of unless the owner thereof shall reclaim such cat and pay at the Police Department the reasonable cost of keeping such cat and an impounding fee of \$10 for the first impounding and of \$25 for the second impounding.~~

~~304.6 4. Number of cats limited in residential areas.~~

~~(a) No person shall own, harbor, or possess more than five cats within any lot of Oneida tribal land zoned as residential, except a person who:~~

~~(1) owned, harbored or possessed more than five cats on the date he or she became subject to this law. This exclusion shall continue as long as the owner keeps such animals, but does not permit additional cats which exceed the limit; or~~

~~(2) keeps a litter of kittens or a portion of a litter for a period not exceeding five~~  
~~(5) months from birth; and/or~~

~~(3) receives a permit from the Oneida Land Commission to operate a kennel.~~

~~(b) If more than one family resides on any lot, the party exceeding the limitation imposed by this section is in violation thereof.~~

(3) reside on a farm.~~304.7. Immunization **Treatment** of other Domestic Animals and Livestock~~

~~304.7-1. Rabies inoculation recommended. All warm blooded animals, domestic **Food** and wild, are susceptible **Water**. No owner may refuse or neglect to rabies. Once affected by rabies, provide an animal with a daily supply of food and water sufficient to maintain the disease is fatal to uninoculated animals and untreated humans. The inoculation of dogs and cats as required animal in good health.~~

~~304.57-2. Shelter.~~(a) Minimum indoor standards of shelter:

(1) The ambient temperature shall be compatible with the health of the animal.

(2) Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(b) Minimum outdoor standards of shelter:

(1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. "Caged" does not include farm fencing used to confine farm animals.

(2) Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.



(3) If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a weather appropriate shelter of suitable size to accommodate the dog shall be provided.

(c) *Space Standards.* Minimum space requirements for both indoor and outdoor enclosures:

(1) The housing facilities shall be structurally sound and ~~304.6 is recommended for other domestic~~ maintained in good repair to protect the animals from injury and livestock. to contain the animals.

(2) Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns. Specifically, dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

<u>DOG SIZE (LBS)</u>	<u>REQUIRED BASE KENNEL SPACE</u>	<u>REQUIRED ADDITIONAL KENNEL SPACE PER ADDITIONAL DOG</u>
<u>1-35 lbs</u>	<u>80 Sq. Ft.</u>	<u>12 Sq. Ft.</u>
<u>36-75 lbs</u>	<u>100 Sq. Ft.</u>	<u>18 Sq. Ft.</u>
<u>76 lbs or more</u>	<u>120 Sq. Ft.</u>	<u>24 Sq. Ft.</u>

(d) *Sanitation Standards.* Minimum standards of sanitation for both indoor and outdoor enclosures require excreta to be removed within twenty-four (24) hours of its deposit. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.7-3. *Mistreatment of Animals.* No person may treat any animal in a manner which causes harm, injury or death. This section does not apply to:

(a) normal and accepted veterinary and/or care practices; or

(b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.7-4. *Criminal Reporting.* In addition to taking civil action under this law, any employee of the Nation shall report animal mistreatment to the Oneida Police Department.

304.8.

#### ~~304.8.~~ Prohibited Animals

304.8-1. *Prohibited Animals.* No person ~~shall~~ may bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on ~~Oneida Tribal land;~~ the Reservation an exotic animal.

304.8-2. *Exotic Animals.* The following orders and families, whether bred in the wild or in captivity, and any or all hybrids are defined as "Exotic Animals". The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:



(a) Class Mammalia.~~(1) Order Chiroptera (Any poisonous or venomous biting or injecting bat species of amphibian, arachnid or reptile, including)~~~~(2) Order Artiodactyla. (Hippopotamuses, giraffes, camels, deer) Excluding domestic cattle, swine, sheep, goats, alpaca, and llama.~~~~(3) Order Carnivora.~~~~(A) Family Felidae. (Lions, tigers, cougars, leopards, ocelots, servals) Excluding domestic cats.~~~~(B) Family Canidae (Wolves, wolf hybrids, coyotes, coyote hybrids, foxes, jackals) Excluding domestic dogs.~~~~(C) Family Ursidae. (All bears)~~~~(D) Family Mustelidae. (Weasels, skunks, martins, minks) Excluding ferrets.~~~~(E) Family Procyonidae. (Raccoons, coatis)~~~~(F) Family Hyaenidae. (Hyenas)~~~~(G) Family Viverridae (Civets, genets, mongooses)~~~~(4) Order Edentata. (Anteaters, armadillos, sloths)~~~~(5) Order Marsupialia. (Opossums, kangaroos, wallabies, sugar gliders)~~~~(6) Order Perissodactyla. (Rhinoceroses, tapirs) Excluding horses, goats, and mules.~~~~(7) Order Primates. (Lemurs, monkeys, chimpanzees, gorillas)~~~~(8) Order Proboscidea. (Elephants)~~~~(9) Order Rodentia. (Squirrels, beavers, porcupines, prairie dogs) Excluding guinea pigs, rats, mice, gerbils, and hamsters.~~(b) Class Reptilia.~~(1) Order Squamata.~~~~(A) Family Helodermatidae. (Gila Monsters and Mexican beaded lizards)~~~~(B) Family Varanidae. (Any monitor which will normally grow over two feet in length)~~~~(C) Family Iguanidae. (Only green iguanas and rock iguanas, all others allowed)~~~~(D) Family Boidae. (All species whose adult length may exceed eight (8) feet)~~~~(E) Family Colubridae. (Boomsnakes and African twig snakes-)~~~~(b) Any snake not indigenous to Wisconsin.~~~~(c) Any snake indigenous to Wisconsin of the following species, which has attained a length of five feet (5') or greater:~~~~(F) Family Elapidae. (Coral snakes, cobras, mambas)~~~~(G) Family Natrixidae. (Only keelback snakes, all others allowed)~~~~(H) Family Viperidae. (Copperheads, cottonmouths, rattlesnakes)~~~~(2) Order Crocodilia. (Crocodiles, alligators, caimans, gavials)~~(c) Class Aves.~~(1) Pilot Order Falconiformes. (Eagles, hawks, vultures)~~



(2) Order Rheiformes. (Rheas)

(3) Order Struthioniformes. (Ostriches)

(4) Order Casuariiformes. (Cassowaries and emus)

(5) Order Strigiformes. (Owls)

(d) Class Arachnida.

(1) Order Scorpiones, Family Buthidae.

(A) Arabian fat-tailed scorpion – Androctonus crassicauda

(B) Arizona centruiroides scorpion – Centruroides exilicauda

(C) Death stalker – Leiurus quinquestriatus

(D) Egyptian yellow scorpion – Androctonus Amoreuxi

(E) Israeli black snake (Elaphe Obsoleta).scorpion – Hottentotta judaicus

(F) S.A. giant fat-tailed scorpion – Parabuthus transvaalicus

(G) Sinai desert scorpion – Androctonus bicolor

(H) Yellow desert scorpion – Androctonus Australia

(2) Order Araneae, Family Therididae.

(A) Argentina red widow spider – Latrodectus coralinus

(B) Brown widow spider – Latrodectus geometricus

(C) Red-black widow – Lactrodectus hasselti

(D) Red widow spider – Lactrodectus bishop

(E) Southern black widow spider – Lactrodectus mactans

(F) Western widow – Lactrodectus Hesperus

(3) Order Araneae, Family Loxoscelidae, Brown recluse spider – Loxosceles reclusa

(e) Class Chilopoda.

(1) Order Scolopendromorpha, Family Scolopendridae.

(A) Amazon giant banded centipede – Scolopendra gigantea

(B) Arizona tiger centipede – Scolopendra viridis

(C) Florida keys centipede – Solopendra alternans

(f) Any Federal or State endangered or threatened species.

304.8-3. (2) Bull snake (Pituophis melanoleucas sayi).

(3) Fox snake (Elaphe eupina culpina).

~~304.8-2.~~ This section ~~shall~~ does not ~~prohibit~~ apply to:

(a) Individuals who are eligible for any grandfather provisions included this law's adopting resolution(s). (b) Zoological parks and/or sanctuary, educational or medical institution, and specially trained entertainment organizations, educational or medical institutions, or who receive a person designated by permit from the Oneida Conservation Department from keeping such to own, harbor or possess the animals.

(1) The Environmental Health and Safety Division may issue a permit under this section if:

(A) the animals and animal where the same is securely and humanely confined; quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

~~304.8-3. Any Oneida Police or Conservation officer shall have the authority to enforce the~~



~~provisions of this section, including, but not limited to, seizing any animal which the officer reasonably believes has been taken, employed, used, or possessed in violation of this section.~~

(B) the animals are maintained in quarters so constructed as to prevent their escape.

(2) If approved by the Oneida Conservation Department, wildlife refuges/sanctuaries may release animals within the Reservation without applying for and receiving a permit as otherwise required under this Section.

304.8-4. Seized Animals. Any animal seized ~~under section 304.8-3 as a prohibited animal~~ shall be held by the Oneida Conservation ~~Officer or turned over to the Brown County or Outagamie County Health Department or its designee~~ until that animal is identified ~~as to genus and species~~ to ascertain whether the animal is an “endangered or threatened species ~~under sec. 29.415, Wis. Stats.” pursuant applicable laws.~~ At any time after such identification, the Oneida Conservation Department may seek an order from a court for order hearing body as to the care, custody and control of the animal. The Oneida Conservation Department may also request the defendant to post a bond in an amount sufficient to satisfy the costs of holding, housing and/or caring for the animal. If the courts hearing body finds the animal has been taken, employed, used or possessed in violation of this section, the cost of holding the animal and any costs incurred in identifying the ~~animal~~ animals shall be assessed against the defendant.

304.8-5. Notice of Release or Escape. If an animal identified as prohibited under this section is released or escapes, the owner of the animal shall immediately notify the Oneida Conservation Department and/or the Oneida Police Department and shall be liable for any cost of recapture.

304.8-6. Forfeiture of the Prohibited Animal. Anyone found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida ~~Tribe for destruction or disposition as the Conservation Department deems proper. Prior to such forfeiture, the~~ Conservation Department or designee. Upon such forfeiture or surrender, the Judiciary Trial Court may direct a destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the defendant.

~~304.8-6. —Penalty. Any person who shall violate any provision of this section shall forfeit not less than \$5 nor more than \$300. Each violation and each day a violation continues or occurs shall constitute a separate offense. This section shall not preclude the Conservation Department from maintaining any appropriate action to prevent or remove a violation of this chapter.~~

### 304.9.— Regulation of Livestock

304.9-1. ~~Restricted to owner's property.~~ Livestock may only be kept on ~~Tribal~~ land zoned residential if a conditional use permit is received from the Oneida Land Commission, however, not in excess of the following limitations:

(a) ~~One (1) large animal, such as horse, a cow, or pig~~ per one (1) acre. Examples of large animals include, but are not limited to horses, cows and pigs.

(b) ~~One (1) small animal, such as a goat or sheep~~ per one-half (1/2) acre. Examples of small animals include, but are not limited to goats and sheep.

(c) ~~One (1) goat or sheep~~ per recorded lot under one-half (1/2) acre when ~~set back~~ setback requirements can be met.

~~(d) Ten fowl or rabbits per one-half acre.~~



(e) Five fowl or rabbits per recorded lot under one-half acre.

304.9-2. ~~Setback requirements.~~

(a) ~~The primary dwelling for horses, ponies, cows, or pigs, must be at least 75 feet from the lot line and 100 feet from any neighboring house.~~

(b) ~~Primary dwelling for sheep or goats must be at least 50 feet away from any neighboring house.~~

(c) ~~Primary dwelling for fowl and rabbits must be at least 35 feet away from any neighboring house.~~

(d) ~~Fencing for the keeping of livestock shall not be closer than 75 feet from the front lot line.~~

(e) ~~Fencing for any livestock must be constructed in such a manner that animals may not reach legs, neck, wing, or any body part into neighbor's property, or to any shrub, or plant growing on the neighbor's property.~~

~~304.9-3. Manure. Manure shall not be allowed to accumulate and must be cleaned up on a regular basis.~~

~~304.9-4. Penalty. Any persons violating any provisions of 304.9 shall be fined not less than \$5 nor more than \$500 for each offense, and a separate offense shall be deemed committed on each day during or on which violation occurs or continues.~~

~~304.9-5. Liability for damage caused~~Damage Caused by ~~livestock.~~Livestock. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

304.9-3. Hens. A permit from the Oneida Conservation Department, based on the rules it shall develop, is required in order to keep an excess of four (4) hens. Roosters may not be kept.

(a) Persons keeping hens shall keep them in the following manner:

(1) No person may keep a hen over eight (8) weeks of age in a principal structure.

(2) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet per chicken.

(3) No accessory structure used to keep hens may be located within twenty-five feet (25') of any principal structure which is not owned by the person licensed to possess the hens.

(4) No accessory structure used to keep hens may be located in a front or side yard.

(b) In addition to compliance with the requirements of this section, no person may keep hens that cause any other nuisance associated with unhealthy condition, create a public health threat or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

**304.10. — Damages Caused by Domestic Dangerous Animals.**

~~304.10-1. Damages caused by domestic animals.~~

(a) Liability for 304.10-1. Classifying Dangerous Animals. Owners of animals meeting the definition of a dangerous animal shall comply with the requirements contained in section 304.10-



2 for harboring dangerous animals.

(a) For the purposes of this law, an animal is presumed to be dangerous if it:

(1) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack, without provocation; or

(2) bites, inflicts injury-

(1) First offense. The owner of a, attacks, or otherwise endangers the safety of a human being or domestic animal without provocation.

(b) An animal may not be deemed a dangerous animal if it bites, attacked or menaces any person or animal to:

(1) defend its owner or another person from an attack by a person or animal;

(2) protect its young or another animal;

(3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or

(4) defend its owner's property against trespassers.

(c) An Oneida Police Officer or Oneida Conservation Warden may, in his or her discretion, declare an animal dangerous, provided that, a citation for a violation of this section may be issued without having previously received such a declaration.

(d) An owner of an animal declared to be dangerous may appeal such declaration in accordance with section 304.12-2. All requirements for harboring dangerous animals in section 304.10-2 except subsections (d)-(f) apply to the animal pending the outcome of the hearing unless specifically stayed by the Judiciary.

304.10-2. Harboring Dangerous Animals. No person may harbor or keep a dangerous animal within the Reservation unless all provisions of this section are complied with. Any animal that is determined to be a vicious animal in accordance with section 304.10-3 may not, under any circumstances, be kept or harbored within the Reservation.

(a) Leash and Muzzle. No person keeping or possessing a dangerous animal may permit such animal to go outside its kennel or pen unless the animal is securely leashed with a leash no longer than four feet (4') in length.

(1) No person may permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person who is sixteen (16) years of age or older, competent to govern the animal and capable of physically controlling and restraining the animal is in physical control of the leash.

(2) The animal may not be leashed to inanimate objects such as trees, posts and buildings.

(3) A dangerous animal on a leash outside the animal's kennel must be muzzled in a humane way by a muzzling device sufficient to prevent the animal from biting persons or other animals. The Environmental Health and Safety Division, with approval of the Environmental Resource Board, may provide a written exception excusing an otherwise dangerous animal from being muzzled. If such a written exception is issued, it shall be carried by the animal's owner at all times.

(b) Confinement. Except when leashed and muzzled as provided in subsection (a) above, all dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a



manner that does not allow the animal to exit the pen or kennel on its own volition.

(1) Confinement Outdoors. When constructed in an open yard, the pen or kennel shall, at a minimum, be constructed to conform to the requirements of this subsection.

(A) The pen or kennel shall be child-proof from the outside and animal-proof from the inside.

(B) A strong metal double fence with adequate space between fences (at least two feet (2')) shall be provided so that a child cannot reach into the animal enclosure.

(C) The pen, kennel or structure shall have secure sides and a secure top attached to all sides.

(D) A structure used to confine a dangerous animal shall be locked with a key or combination lock when the animal is within the structure.

(E) The structure shall either have a secure bottom or floor attached to the sides of the pen or the sides of the pen shall be embedded in the ground no less than two feet (2')

(F) All structures erected to house dangerous animals shall comply with the requirements of all applicable laws and rules of the Nation.

(G) All structures shall be adequately lighted and ventilated and kept in a clean and sanitary condition.

(2) Confinement Indoors. No dangerous animal may be kept on a porch, patio or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. No dangerous animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(c) Signs. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign is required to be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(d) Spay and Neuter Requirement. If declared dangerous by an Oneida Police Officer or Oneida Conservation Officer, the owner shall within thirty (30) days after the declaration shall provide the Environmental Resource Board with written proof from a licensed veterinarian that the animal has been spayed or neutered.

(e) Liability Insurance. If declared dangerous by an Oneida Police Officer or Oneida Conservation Officer, the owner of the dangerous animal shall present proof to the Environmental Resource Board that the owner has procured liability insurance in an amount not less than \$1,000,000 for any personal injuries inflicted by the dangerous animal. Whenever such a policy is cancelled or not renewed, the insurer shall so notify the Environmental Resource Board.

(f) Microchipping. If declared dangerous by an Oneida Police Officer or Oneida



Conservation Officer, the owner of the dangerous animal shall provide proof to the Environmental Resource Board that the dangerous animal has had a microchip inserted for identification purposes within ten (10) calendars from the date the animal is declared dangerous.

(g) Ongoing Notification Requirements. After an animal has been declared dangerous, the owner shall have an ongoing duty to notify the Oneida Police Department:

(1) immediately if the dangerous animal is at large, is unconfined, has attacked another animal or has attacked a human being; and

(2) within twenty-four (24) hours if a dangerous animal has died, been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental Resource Board within a reasonable amount of time.

(h) Waiver by the Environmental Resource Board. Upon request of an owner, the Environmental Resource Board may waive any requirement specified in subsections (a)-(f) that the Environmental Resource Board deems to be unnecessary for a particular dangerous animal. The Environmental Resource Board may waive the provisions of subsections (a)-(f) for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

(i) Euthanasia. If the owner of an animal that has been designated a dangerous animal is unwilling or unable to comply with the regulations for keeping the animal in accordance with this section, he or she may have the animal humanely euthanized by an animal shelter, the humane society or a licensed veterinarian.

304.10-3. Vicious Animals. No person may bring or keep within the Reservation any animal that is a vicious animal under this section.

(a) Declaration of Vicious Animal. An Oneida Police Officer, Oneida Conservation Warden and/or the Judiciary Trial Court may declare an animal to be a vicious animal if the animal:

(1) Is a dangerous animal in noncompliance with the requirements under Section 304.10-2;

(2) Has killed a domestic animal or pet without provocation on public or private property;

(3) Without provocation, has inflicted substantial bodily harm on a person on public or private property where substantial bodily harm means bodily injury that causes a laceration that requires stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing;



(4) Is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(5) Has been declared to be a vicious animal and/or ordered to be destroyed in any other jurisdiction.

(b) Mandatory Hearing. The owner of an animal declared to be a vicious animal shall attend a mandatory pre-hearing with the Judiciary Trial Court, the date for which shall be included on the declaration of vicious animal. At the pre-hearing it may be determined that mandatory attendance at Judiciary Trial Court hearing is also required if restitution is appropriate. The pre-hearing and any hearings are subject to the requirements contained in section 304.12-2.

(1) All requirements for harboring dangerous animals in section 304.10-2 except subsections (d)-(f) apply to the said animal pending the outcome of the Judiciary Trial Court's pre-hearing and/or hearing.

(2) At the pre-hearing, the Judiciary Trial Court may require the animal to be impounded pending the result of the hearing.

(3) The Judiciary Trial Court may order a vicious animal to be destroyed if it finds it was so declared based on section 304.10-3(a)(3). If such an order is issued, the Judiciary Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(4) If the declaration of vicious animal is upheld upon appeal, the Judiciary Trial Court shall order the animal to be removed from the Reservation. Such order shall include the notification requirements contained in section 304.10-2(g) and provide the owner with a reasonable timeframe for removing the animal from the Reservation, provided that the timeframe may not exceed thirty (30) days after the date of the Judiciary Trial Court's decision.

(5) If the owner further appeals the determination of the Judiciary Trial Court to the Judiciary Court of Appeals, he or she shall submit the appeal within five (5) business days from the date of the Judiciary Trial Court's decisions, which is a shorter timeframe than required for all other appeals under this law. Upon an appeal to the Judiciary Court of Appeals, the requirement to order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

(c) Enforcement. An Oneida Police Officer or Oneida Conservation Warden may make any inquiries deemed necessary to ensure compliance with this section and may seize an animal based on the owner's failure to comply.

(d) Waiver. The Judiciary may waive the provisions of this section for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.10-4. Investigations for Suspected Domestic Animal Bites. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic



animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

(2) Ensure all information provided is correct.

(3) Contact the Environmental, Health and Safety Division to notify them of the domestic animal bite.

(4) If the cat or dog has current rabies vaccinations, order the owner to:

(A) Quarantine the animal for ten (10) days; and

(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

(5) If the cat or dog does not have current rabies vaccination, order the owner to:

(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or

(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.

(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

### **304.11. Owner Liability for Domestic Animals**

304.11-1. Owners are liable for damages caused by their domestic animal(s).

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal ~~to a person, livestock, or property.~~

~~(2) Second offense.~~ *(b) Subsequent Offenses.* The owner ~~of a domestic animal~~ ~~is shall be~~ liable for two (2) times the full amount of damages caused by the domestic animal ~~injuring or causing injury to a person, livestock or property~~ if the owner ~~was notified or~~ knew ~~that the domestic animal previously injured or caused injury to person, livestock, or property.~~

~~(b) Penalties imposed on owner of domestic animal causing damage in addition to~~



liability for damages.

- (1) First offense. The owner of domestic animal shall forfeit not less than \$25 nor more than \$100 if the domestic animal injures or causes injury to a person, livestock, property, deer, game birds, or the nest or eggs of game birds.
- (2) Second offense. The owner of a domestic animal shall forfeit not less than \$75 nor more than \$500 if the domestic animal injures or causes injury to a person, livestock, property, game bird, or the nests or eggs of game birds, if the owner was notified or know or should have known that the domestic animal previously injured or caused injury to a person, livestock, property, deer, game bird, or the nests or eggs of game birds caused damages.

### **304.10-2. Investigations****12. Violations, Enforcement and Appeals**

**304.12-1. Citations.** Citations for suspected dog bites the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the schedule developed under section 304.5-2. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) The dog owner shall notify the Oneida Police Department of a dog bite and provide

- (1) Name, address, and phone number of the victim(s).
- (2) Name, address, and phone number of the owner.
- (3) Date, time, and location of the incident.
- (4) Details of the incident including whether it was provoked attack.

(b) The Oneida Police Department shall in all cases:

- (1) Contract the owner of the dog.
- (2) Ascertain whether the dog has proper license and current vaccinations.
- (3) Ensure all information provided is correct and contact the Conservation Department and order that the dog be observed. If the dog cannot be located, an appropriate non-tribal law enforcement department may be contacted for assistance.

(c) Subsequent to the owner being contracted and the dog having been observed by the Conservation Department, the Conservation Department shall request the Oneida Police Department to do the following:

- (1) If the dog has current rabies vaccination, order the owner to chain the dog for ten days and allow two observations by the conservation Department. At the end of the ten days, the Conservation Department may:

(A) End observation

(B) Order the dog to be sacrificed and send the specimen to the State Laboratory of Hygiene for analysis to be paid for from the licensing fund. This may be done before the ten day observation period ends.

- (2) If the dog had not had a rabies vaccination, the Conservation Department may order:

(A) The dog to be sacrificed and the specimen sent to the State Laboratory of Hygiene for analysis at the owner's expense. The Conservation Department will prepare and obtain a veterinarian's authorization.



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~~(B) A twenty one day period of direct observation by a licensed veterinarian under the control of the veterinarian at the owner's expense.~~

~~At the end of the observation period the Conservation Department may:~~

~~(i) End observation and release the dog to owner; or~~

~~(ii) Order the dog to be sacrificed and send the specimen to the State Laboratory of Hygiene for analysis at the owner's expense. This may be ordered to the end of the twenty one day period if danger to humans or other animal is apparent.~~

~~(C) Stray dogs shall be referred to the Oneida Police Department.~~

~~304.10-3. Investigation of other animals. A conservation Officer may order killed or may kill an animal other than a dog if the officer has reason to believe that the animal is infected with rabies and has or may have bitten a person.~~

~~304.10-4. Penalties. An owner who refuses to comply with an order issued under this section to deliver an animal to an officer, isolation facility or veterinarian or who does not comply with conditions of an order that an animal be quarantined shall be fined not less than \$50 nor more than \$1000.~~

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(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

304.12-2. Hearing and Appeals of Contested Actions. All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) Allocation of Citation Revenue. All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue

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936 payment from parties who have failed to make the required payments through the  
937 garnishment process contained in the Garnishment law and/or by attaching the judgment  
938 to Tribal member's per capita payment pursuant to the Per Capita law.  
939

940 End.  
941

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942 Adopted - BC-3-13-96-B

943 Amended – BC-06-22-11-G  
944

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



## MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

### I. Estimated Fiscal Impact Summary

<b>Law:</b> Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
<b>Implementing Agency</b>		
Oneida Police Department (OPD)		
Conservation		
Environmental Resource Board (ERB)		
Emergency Management		
Environmental Health and Safety Division		
Comprehensive Health Division		
Oneida Judiciary		
<b>Estimated time to comply</b>		January 1, 2018
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
ERB stipend savings	\$830	\$8,300
<b>Total Estimated Savings</b>	<b>\$830</b>	<b>\$8,300</b>
<b>Revenue and cost considerations</b>		
Fee Schedules should be removed from the various Laws		
<b>Uncertainties and Unknowns</b>		
None		

## **II. Background**

### **A. Legislative History**

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

### **B. Summary of Content**

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

### **C. Methodology and Assumptions**

1. A “Fiscal Impact Statement” means an estimate of the total identifiable 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.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

## **III. Agency**

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018



**IV. Financial Impact**

Approximately \$830 savings annually.

**V. Recommendation**

Finance 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 the information with which to render a decision.



Legislative Operating Committee  
June 21, 2017

# Vehicle Driver Certification and Fleet Management

<b>Submission Date:</b> 9/17/14	<b>Public Meetings:</b> 2/19/15 and 6/5/17
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was originally submitted to the LOC on June 15, 2012 from Bob Keck, Risk Management Director. The item was carried over into the current term by the LOC. The proposal seeks the development of a new law, which would replace the current Vehicle Driver Certification and Fleet Management Policies; updating the requirements of both. The law would govern the use of Tribal vehicles, and the use of personal vehicles while on Tribal business, for Tribal employees, officials and volunteers.*

**9/17/14 LOC:** Motion by Jennifer Webster to add Vehicle Driver Certification and Fleet Management to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

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

**1/21/15 LOC:** Motion by Jennifer Webster to forward the Vehicle Driver Certification and Fleet Management to a February 19, 2015 public meeting; seconded by Tehassi Hill. Motion carried unanimously.

**2/19/15:** *Public Meeting held.*

**3/18/15 LOC:** Motion by Jennifer Webster to accept the Vehicle Driver Certification and Fleet Management public meeting comments and defer those comments to an LOC work meeting to be held immediately following the completion of this LOC meeting; seconded by Fawn Billie. Motion carried unanimously.

**3/18/15:** *Work meeting held.* Attendees include: Brandon Stevens, Fawn Billie, Tani Thurner, Jennifer Webster, Tehassi Hill, Jo Anne House, Candice Skenandore, RC Metoxen, Bob Keck, Shannon Stone.

**4/20/15:** *Work meeting held.* Attendees include: Brandon Stevens, Fawn Billie, Tani Thurner, Jennifer Webster, Tehassi Hill, Jo Anne House, Candice Skenandore, Bob Keck, Shannon Stone, Jeff Mears.

**6/2/15:** *Work meeting held.* Attendees include: Shannon Stone, Jeff Mears, Fawn Billie, Brandon Stevens, David P. Jordan, Tani Thurner, Jenny Webster, Leyne Orosco, Tehassi Hill, Candice Skenandore, Robert Keck, Lisa Summers, Dana Thyssen.

**7/17/15:** *Work meeting held.* Attendees include: Fawn Billie, David P. Jordan, Tehassi Hill, Shannon Stone, Jeff Mears, Robert Keck, Wendy Alvarez, Jennifer Webster, Douglass McIntyre, Candice Skenandore, Tani Thurner.

**10/7/15 LOC:** Motion by Jennifer Webster to defer the Vehicle Driver and Fleet Management Policy back to the Legislative Reference Office for an updated legislative analysis and to

prepare this item for a second public meeting; seconded by David P. Jordan. Motion carried unanimously.

**8/2/16:** Update meeting held. Analyst will send current draft to attorney assigned.

**3/23/17:** *Work meeting held.* Attendees include: Jen Falck, Bob Keck, Mary Cornelissen, Danelle Wilson, Tani Thurner, Candice Skenandore, Jeff Mears

**4/3/17:** *Work meeting held.* Attendees include: Jennifer Webster, Tani Thurner, Jen Falck, Candice Skenandore

**4/17/17:** *Work meeting held.* Attendees include: Jeff Mears, Tani Thurner, Candice Skenandore, Cathy Bachhuber, Jennifer Webster, Tehassi Hill, Bob Keck, David P. Jordan

**5/3/17 LOC:** Motion by Fawn Billie to approve the public meeting packet and forward the Vehicle Driver and Fleet Management law to a public meeting to be held on June 5, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie Motion carried unanimously.

#### Next Steps:

- Approve the public meeting comment memorandum.
- Approve the adoption packet and forward to the OBC for consideration of adoption.



TO: Legislative Operating Committee (LOC)  
FROM: Taniquelle Thurner, Legislative Reference Office Staff Attorney  
DATE: June 21, 2017  
RE: Vehicle Driver Certification and Fleet Management: Public Meeting Comment Review

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On June 5, a public meeting was held regarding the Vehicle Driver Certification and Fleet Management law. This proposal merges two existing policies into one new law. Various additional changes update the law, including:

- Instead of listing specific driving violations that could disqualify a person from being vehicle driver certified; the law permits persons to be eligible for certification as long as they have a valid driver's license (with one exception—drug and alcohol driving violations still carry a three-year suspension of driving privileges)
- Deleting a minimum mileage requirement, instead allowing the Fleet Management department to establish the minimum number of miles a business unit must drive a vehicle each year in order to qualify for a permanently-assigned vehicle.
- Adding new driver training requirements—all persons certified to drive Tribal vehicles must attend driver safety training every three years.
- Throughout the law, notification requirements are updated/added.

There were no oral or written comments received during the public meeting on June 5, 2017, or during the public meeting comment period ending on June 12, 2017.



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Vehicle Driver and Fleet Management**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
June 5, 2017, 12:15 p.m.

**Present:** Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candace Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

**Name of LOC Member Chairing Meeting:** Brandon Yellowbird-Stevens

Greetings. The time is 12:15 p.m. and today's date is **Monday, June 5, 2017**.

The Legislative Operating Committee is hosting five public meetings today, five topics, to gather feedback from the community regarding the five legislative proposals:

- Vehicle Driver Certification and Fleet Management Policies Amendments
- Audit Law Amendments
- Conflict of Interest Amendments
- Domestic Animals Amendments
- Landlord-Tenant Amendments

This public meeting is not a question and answer period.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room.

At the back of the room there will be a new public meeting comment form the LOC is testing out. The form is not required to be used, but is there to be used as a tool when formulating public comments.

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 Monday, June 12, 2017.

In attendance today from the LOC is: Councilman David Jordan and Councilwoman Jennifer Webster.

We're going to put the time limit for five (5) minutes for maximum time that is pursuant to section 16.8-3(c) of the Legislative Procedures Act.

We have anyone, Ed do you wish to speak on any of the amendments or any of the proposed laws today?

Edward Delgado: Just the last one.

Brandon Yellowbird-Stevens: Just the last one, okay. All right, so we'll proceed through the list here.

Vehicle Driver and Fleet Management Policy Amendments. This is a proposal, I have to open, we have five (5) public meetings and so five separate, this is kind of weird. Is that how we would do that or is it just one public meeting with five items? Okay, five (5) public meetings today, all right.


So I'll call this public meeting to order, the Vehicle Driver and Fleet Management Policy Amendments. This is a proposal to combine two existing policies into one law. Various additional changes update the law, including:

- Instead of listing specific driving violations that could disqualify a person from being vehicle driver certified; the law permits persons to be eligible for certification as long as they have a valid driver's license (with one exception—drug and alcohol driving violations will carry a three-year suspension of driving privileges)
- Deleting a minimum mileage requirement, instead allowing the Fleet Management department to establish the minimum number of miles a business unit must drive a vehicle each year in order to qualify for a permanently-assigned vehicle.
- Adding new driver training requirements—all persons certified to drive Tribal vehicles must attend driver safety training every three years and lastly;
- Throughout the law, notification requirements are updated and added.

So, opening up the comment period, I don't see anyone on the list and just a reminder that anyone may choose to provide written comments due by Monday, June 12, 2017, close of business. So let's do last call for anyone who wishes to comment orally today. Seeing none, we'll move on to the next one.

**-End of Meeting-**



TO: Oneida Business Committee  
FROM: Brandon Stevens, LOC Chairperson   
DATE: June 28, 2017  
RE: Vehicle Driver Certification and Fleet Management law

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Please find the following attached backup documentation for your consideration of the Vehicle Driver Certification and Fleet Management law:

1. Resolution: Vehicle Driver Certification and Fleet Management
2. Statement of Effect: Vehicle Driver Certification and Fleet Management
3. Vehicle Driver Certification and Fleet Management Legislative Analysis
4. Vehicle Driver Certification and Fleet Management (Clean)
5. Vehicle Driver Certification and Fleet Management Fiscal Impact Statement

#### *Overview*

This proposal merges two existing policies (Vehicle Driver Certification Policy and Fleet Management Policy) into one new law. Various additional changes update the current requirements found in those policies, including:

- Instead of listing specific driving violations that could disqualify a person from being vehicle driver certified; the law permits persons to be eligible for certification as long as they have a valid driver's license (with one exception—drug and alcohol driving violations still carry a three-year suspension of driving privileges)
- Deleting a minimum mileage requirement, instead allowing the Fleet Management department to establish the minimum number of miles a business unit must drive a vehicle each year in order to qualify for a permanently-assigned vehicle.
- Adding new driver training requirements—all persons certified to drive Tribal vehicles must attend driver safety training every three years.
- Throughout the law, notification requirements are updated/added.

In accordance with the Legislative Procedures Act, public meetings on the proposed law were held on February 19, 2015 and June 5, 2017.

#### **Requested Action**

Approve the Resolution: Adoption of Vehicle Driver Certification and Fleet Management law.

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_

### Adoption of the Vehicle Driver Certification and Fleet Management Law

- 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 Oneida Business Committee adopted the Vehicle Driver Certification Policy by motion on October 21, 1992 and amended that policy by resolution BC-09-09-98-A; and
- WHEREAS,** the Oneida Business Committee adopted the Oneida Fleet Management Policy by resolution BC-09-24-97-E; and
- WHEREAS,** this proposed law would merge those two policies into a single Vehicle Driver Certification and Fleet Management Law; and
- WHEREAS,** instead of listing specific driving violations that could disqualify a person from being vehicle driver certified; the law permits persons to be eligible for certification as long as they have a valid driver's license; with one exception: drug and alcohol driving violations still carry a three-year suspension of driving privileges; and
- WHEREAS,** a minimum mileage requirement is deleted and the Fleet Management department is authorized to establish the minimum number of miles a business unit must drive a vehicle each year in order to qualify for a permanently-assigned vehicle; and
- WHEREAS,** new driver training requirements are added, whereby all persons certified to drive Tribal vehicles must attend driver safety training every three years; and
- WHEREAS,** throughout the law, additional changes are made to update the existing requirements, and notification requirements are added; and
- WHEREAS,** public meetings regarding this law were held on February 19, 2015 and June 5, 2017, in accordance with the Legislative Procedures Act.

**NOW THEREFORE BE IT RESOLVED,** that the Vehicle Driver Certification and Fleet Management law is hereby adopted.





## **Statement of Effect**

### *Adoption of the Vehicle Driver Certification and Fleet Management law*

#### **Summary**

This resolution adopts one new law which combines and replaces the existing Vehicle Driver Certification policy and the Oneida Fleet Management policy. Various additional changes update the current requirements found in those policies; including:

- Instead of listing specific driving violations that could disqualify a person from being vehicle driver certified; the law permits persons to be eligible for certification as long as they have a valid driver's license (with one exception—drug and alcohol driving violations still carry a three-year suspension of driving privileges)
- Deleting a minimum mileage requirement, instead allowing the Fleet Management department to establish the minimum number of miles a business unit must drive a vehicle each year in order to qualify for a permanently-assigned vehicle.
- Adding new driver training requirements—all persons certified to drive Tribal vehicles must attend driver safety training every three years.
- Throughout the law, notification requirements are updated/added.

*By: Taniquelle Thurner, Staff Attorney*

#### **Analysis by the Legislative Reference Office**

This resolution adopts a new Vehicle Driver Certification and Fleet Management law, which replaces two existing policies:

1. The Fleet Management Policy that was adopted by resolution BC-09-24-97-E; and
2. The Vehicle Driver Certification Policy that was adopted by motion on October 21, 1992 and amended by resolution BC-09-09-98-A.

Public meetings were held on February 19, 2015 and June 5, 2017 in accordance with the Legislative Procedures Act.

In accordance with the Legislative Procedures Act, the effective date of these amendments would be July 13, 2017, which would be ten (10) business days after the date the resolution is adopted.

#### **Conclusion**

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



## Vehicle Driver Certification and Fleet Management Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Risk Management	SPONSOR: Jennifer Webster	DRAFTER: Taniquele Thurner	ANALYST: Candice E. Skenandore
<b>Intent of the Amendments</b>	To develop a new law which would replace the current Vehicle Driver Certification and Fleet Management Policies, updating the requirements for both. The proposed Vehicle Driver Certification and Fleet Management (Law) will govern the use of Tribal vehicles and the use of personal vehicles while on Tribal business.		
<b>Purpose</b>	To establish standards that certify employees, officials and volunteers to drive a Tribal vehicle or drive a personal vehicle on Tribal business and regulate the use of all vehicles owned and leased by the Nation [ <i>See Vehicle Driver Certification &amp; Fleet Management, 2 O.C. 210.1-1 (a) &amp; (b)</i> ].		
<b>Affected Entities</b>	Department of Public Works (DPW) including Fleet Management and Automotive Department, Risk Management, Human Resources Department (HRD), Central Accounting Department, Environmental Health & Safety Division, Supervisors, Employees, Officials including the Judiciary, Volunteers, Oneida Business Committee (OBC), Individuals who are transported as part of a program or service of the Nation as well as those authorized by OBC motion to travel, Employee Assistance Program (EAP), local law enforcement.		
<b>Affected Legislation</b>	Business Committee Vehicle Policy, Travel and Expense Policy, Vehicle Driver Certification Policy, Vehicle Fleet Management Policy.		
<b>Enforcement/Due Process</b>	Any driver that violates this Law can have his/her driver certification suspended and/or driving privileges. Suspension of a vehicle driver certification and/or driving privileges can only be appealed if an employee receives an adverse employment action and/or if any official, volunteer or employee seeks a review of a decision to not reinstate certification by filing an appeal with the Judiciary [ <i>See Vehicle Driver Certification &amp; Fleet Management, 2 O.C. 210.10-1, 210.10-2, 210.10-7 (b), &amp; 210.11-2 (d)</i> ]. Supervisors that fail to uphold this Law can face disciplinary action pursuant to the laws governing the Nation's employment [ <i>See Vehicle Driver Certification &amp; Fleet Management, 2 O.C. 210.10-1 (c)</i> ].		
<b>Public Meeting</b>	A public meeting was held on February 19, 2015 and June 5, 2017.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Risk Management Director requested this Law to incorporate both the Oneida Fleet Management Policy and Driver Certification Policy and to update requirements found in both policies. These policies will be repealed when this Law is adopted.

### SECTION 3. CONSULTATION

- 7 A. The Oneida Law Office, Records Management, HRD, Risk Management and Fleet  
8 Management were consulted during the development of this legislative analysis.
- 9 B. Representatives from Risk Management, Fleet Management, HRD, Oneida Law Office,  
10 Environmental Health and Safety Division and Purchasing were involved in the development  
11 of this legislation.
- 12 C. A review of other Tribal laws has been conducted and Section 6 of this analysis explains  
13 possible impacts with those laws and this proposed Law. Research was also conducted on  
14 the State of Wisconsin Department of Transportation regarding instruction permits,  
15 probationary licenses and regular licenses. Lastly, prior OBC meeting transcripts and  
16 legislative histories were reviewed when developing this legislative analysis.

#### 17 18 **SECTION 4. PROCESS**

- 19 A. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except  
20 that the public meeting was not properly noticed to all managers or directors. The LPA  
21 requires the public meeting notice, legislation, legislative analysis and fiscal impact  
22 statement, if fiscal impact statement is available, to be electronically provided to all  
23 managers or directors [*See Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and  
24 backup documents were never provided electronically to all managers or directors; however,  
25 the public meeting was properly noticed in the Kalihwisaks and was made public on the  
26 Oneida Register as required by the LPA [*See Legislative Procedures Act, 1 O.C. 8-2 (a &*  
27 *b)*].
- 28 B. The Law was first added to the Legislative Operating Committee (LOC)'s active files list on  
29 June 15, 2012 and was carried over into this LOC's current term. Public meetings were held  
30 on February 19, 2015 and June 5, 2017. Work meetings were held between March of 2015  
31 and August of 2016 and again in March and April of 2017.

#### 32 33 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 34 A. This Law identifies the roles and responsibilities of the Fleet Management  
35 Department, Automotive Department, Risk Management, HRD, Environmental  
36 Health & Safety Division, supervisors and drivers [*See Vehicle Driver Certification*  
37 *and Fleet Management, 2 O.C. 210.4 & 210.5*]. The Law also includes information  
38 on how to 1) acquire the use of a Tribal vehicle, 2) how a Tribal vehicle is to be used,  
39 3) what the vehicle can be used for and 4) who is allowed to operate and ride in a  
40 Tribal vehicle [*See Vehicle Driver Certification and Fleet Management, 2 O.C.*  
41 *210.6*]. Rental vehicles are considered Tribal vehicles for the purpose of this Law  
42 and usage of rental vehicles must comply with this Law [*See Vehicle Driver*  
43 *Certification and Fleet Management, 2 O.C. 210.7*].  
44 Furthermore, the Law requires anyone that operates a Tribal vehicle or a personal  
45 vehicle on Tribal business to be certified. The requirements for certification are  
46 specified in section 210.8 of this Law and include



- being at least 18 years of age,
- completing and satisfying experience requirements,
- holding a valid non-probationary Wisconsin driver's license,
- passing a driving record check by HRD,
- complying with additional requirements for personal vehicle usage which includes having the proper insurance coverage and following the provisions for mileage reimbursement.

The Law sets out requirements for certification which include satisfying stricter requirements by an entity and abiding by specialized requirements imposed by state or federal regulatory agencies. Drivers are required to notify their supervisor of a motor vehicle operation violation including drugs or alcohol and a criminal offense related to a traffic incident as well as any restrictions, suspensions, revocations, cancellations or reinstatement privileges to their supervisor. Drivers must immediately notify their supervisor of any impairment that affects operating a motor vehicle [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.8].

The Law explains what needs to be completed when a driver is involved in a motor vehicle crash including

- who must be notified,
- what paperwork must be filled out,
- who has investigative authority
- possible outcomes a driver can face if he/she is at fault [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.9].

This Law addresses suspension and revocation of driver certification as well as disciplinary action. A driver can have his/her certification suspended for violating this Law and a supervisor can face adverse employment action for failing to uphold this Law. Reasons for suspending certification can be found in section 210.10-1 of this Law. The Law also addresses what is to be done when certification suspensions affect the employment status as well as the length of the suspension [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.10-3 & 210.10-4]. Lastly, the Law explains the process a driver must follow in order to have his/her certification reinstated [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.11].

## **SECTION 6. EFFECT ON EXISTING LEGISLATION**

**A.** This Law may have an affect on other laws of the Nation, these laws include:

- 1.** *Vehicle Driver Certification Policy.* A majority of the current Vehicle Driver Certification Policy is incorporated into this Law. If and when this Law is adopted, the current Vehicle Driver Certification Policy will be repealed [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.2-4 (a)]. The difference between this Law and the current Vehicle Driver Certification Policy is that this Law states that in

order to be certified to operate a Tribal vehicle or a personal vehicle on Tribal business, the individual must, among other things, pass a driving record check by HRD that verifies the driver has no citation or conviction related to a traffic incident [*See Vehicle Driver Certification and Fleet Management, 2 O.C. 210.8-1 (d)*]. The current Vehicle Driver Certification Policy lists specific violation convictions that if one occurred in the last three years, would prohibit Tribal vehicle certification. These convictions are not included in the proposed Law, they include but are not limited to [*See current Vehicle Driver Certification Policy, 2 O.C. 210.5 (a) (4) (A)*]:

- Attempting to elude an officer
- Violating an occupational license
- Causing great bodily harm with a vehicle
- Failure to stop after an accident
- Negligent homicide by use of motor vehicle
- Racing
- Illegal use of operating licenses

In addition, the current policy specifies that if three or more occurrences listed below occurred within the previous three-year period, Tribal vehicle certification is prohibited. Those occurrences include but are not limited to [*See current Vehicle Driver Certification Policy, 2 O.C. 210.5 (a) (4) (B)*]:

- Deviating from traffic lanes
- Failure to stop for a school bus
- Inattentive driving
- Imprudent speed
- Failure to keep control of vehicle
- Failure to yield right of way
- Driving too fast for conditions

Another difference between the current policy and this Law is that the current policy requires drivers to notify HRD within five working days of any convictions affecting their certifications [*See Vehicle Driver Certification Policy, 2 O.C. 210.6-2*]. The proposed Law requires drivers to immediately notify their supervisor and the supervisor must immediately notify HRD in writing of an arrest, charge or conviction of 1) any motor vehicle operation violation involving drugs or alcohol or 2) any criminal offense related to a traffic incident as well as any restrictions, suspensions, revocations, cancellations or if applicable, reinstatements of driving privileges related to his/her driver's license [*See Vehicle Driver Certification and Fleet Management, 2 O.C. 210.8-4*].

2. *Oneida Fleet Management Policy.* The Oneida Fleet Management Policy has been incorporated within this Law. There are some changes that should be noted:

- The Oneida Fleet Management Policy allows for Business Units and/or the Fleet Manager to impose stricter requirements on the type of vehicles being driven,

number of passengers in the vehicle, special training requirements etc., but the proposed Law allows entities, not Fleet Management, to develop stricter certification procedures and standards. These procedures and standards must be reviewed and approved by HRD, Risk Management and Fleet Management [*See Oneida Fleet Management, 2 O.C. 212.5-2 and Vehicle Driver Certification and Fleet Management, 2 O.C. 210.8-3 (a)*].

- The Oneida Fleet Management Policy sets specific requirements for operating vehicles such as shuttle buses in which a driver must be 25 years of age with two years' experience; the proposed Law does not include this requirement but does state that any one that is certified to operate a Tribal vehicle or a personal vehicle on Tribal business must, among other things, satisfy any additional experience requirements established by law or by rules created by HRD that apply to the vehicle being assigned or used [*See Oneida Fleet Management Policy, 2 O.C. 212.6-1 and Vehicle Driver and Fleet Management, 2 O.C. 210.8-1 (b)*].
- The current Law does not specify what vehicles require a commercial driver's license (CDL); the Oneida Fleet Management Policy specifies that if a vehicle is 26,000 lbs or more; the vehicle transports hazardous materials requiring placarding; the vehicle is designed or used to transport 16 or more passengers; or any vehicle that Fleet Management determines requires a CDL to operate [*See Oneida Fleet Management Policy, 2 O.C. 212.6-3 (a-d)*].
- The Oneida Fleet Management Policy sets a minimum of 14,000 miles per year for a Business Unit to maintain its own vehicle; the proposed Law does not set the minimum number of miles that must be driven to maintain a vehicle, it instead allows Fleet Management to determine what minimum mileage is needed for an entity to maintain its own vehicle [*See Oneida Fleet Management Policy, 2 O.C. 212.7-3 and Vehicle Driver Certification and Fleet Management, 2 O.C. 210.6-2*].
- Both the Oneida Fleet Management Policy and this Law prohibit drivers from using Tribal vehicles for personal use; however, the Oneida Fleet Management Policy allows for a temporary exemption when an emergency occurs and is reported to the driver's supervisor within 24 hours of the emergency. An emergency is when an unexpected medical emergency involves the driver or the driver's immediate family [*See Oneida Fleet Management Policy 2 O.C. 212.8-5*]. The proposed Law does not include this exemption.
- The Oneida Fleet Management Policy allows for employees to bring Tribal vehicles home if an employee needs the vehicle for an assignment that occurs on the weekend or when the Central Fleet or Business Unit fleet is not open for business [*See Oneida Fleet Management Policy, 2 O.C. 212.8-7*]. This Law does not address if a driver can bring the Tribal vehicle home when that vehicle is used if Fleet Management or the entity is closed.



- 167       ▪ This Law requires the driver to notify Fleet Management immediately of any  
168       problems with a Tribal vehicle that may have a safety or mechanical hazard. The  
169       Oneida Fleet Management Policy requires the driver to immediately notify both  
170       Fleet Management and DPW Automotive Department [*See Vehicle Driver*  
171       *Certification and Fleet Management Policy, 2 O.C. 210.6-4 (b) and Oneida Fleet*  
172       *Management Policy, 2 O.C. 212.8-22*].
- 173       ▪ The Oneida Fleet Management Policy requires supervisors to submit the monthly  
174       mileage logs to Fleet Management by the third working day of the following  
175       month; the proposed Law does not specify when the mileage logs must be turned  
176       in but the Law does authorize Fleet Management to establish requirements  
177       supervisors must follow when submitting the recorded mileage logs [*See Oneida*  
178       *Fleet Management Policy, 2 O.C. 212.8-23 and Vehicle Driver Certification and*  
179       *Fleet Management, 2 O.C. 210.4-7 (d)*].
- 180       ▪ The Oneida Fleet Management Policy requires all vehicles to receive a complete  
181       safety check each year; the proposed Law specifies that the Automotive  
182       Department will service and maintain Tribal vehicles according to factory  
183       recommendations or a maintenance schedule established by the Automotive  
184       Department [*See Oneida Fleet Management Policy, 2 O.C. 212.8-26 (d) and*  
185       *Vehicle Driver Certification and Fleet Management, 2 O.C. 210.4-3*].
- 186       ▪ This Law requires all Tribal vehicles to have a Tribal logo; the Oneida Fleet  
187       Management Policy allows for an exception if the Tribal logo will be a detriment  
188       to the services of a Business Unit [*See Vehicle Driver Certification and Fleet*  
189       *Management, 2 O.C. 210.6-6 and Oneida Fleet Management Policy, 2 O.C.*  
190       *212.8-26 (h)*]. This exception may be necessary if a vehicle such as an unmarked  
191       police vehicle is used.
- 192       ▪ The Oneida Fleet Management Policy requires drivers to immediately report,  
193       among other things, any theft from a vehicle. The proposed Law does not require  
194       drivers to report a theft [*See Oneida Fleet Management Policy, 2 O.C. 212.10-1*  
195       *and Vehicle Driver Certification and Fleet Management, 2 O.C. 210.9*].
- 196       ▪ This Law does not require drivers to sign a Vehicle Use Agreement form every  
197       time they pick up a vehicle [*See Oneida Fleet Management Policy, 2 O.C. 212.9-*  
198       *1 (d)*].
- 199    3. *Business Committee Vehicle Policy.* This Law does not allow Tribal vehicles to be used  
200    for personal use or non-business miles except authorized under the Business Committee  
201    Vehicle Policy [*See Vehicle Driver Certification and Fleet Management, 2 O.C. 210.6-*  
202    *5*]. The Business Committee Vehicle Policy outlines the authorities in which the OBC  
203    Tribal Vehicle will be used and identifies procedures that must be followed in order to  
204    use it. The Policy says that both the Business Committee Vehicle Policy and Oneida  
205    Vehicle Driver Policy provide the basis for which the Tribal vehicle can be used [*See*  
206    *August 17, 1990 OBC Regular Meeting Transcript, pg. 6, B.II*]. In accordance with this

Policy, the Nation's Chairperson or a designee of the OBC shall have custody of the vehicle and that the Chairperson shall have an executive privilege which allows him/her to use the vehicle for commuting to and from the Nation's headquarters on a daily basis. However, the OBC vehicle can only be used for official business only which is defined as "business being conducted on behalf of the Oneida Tribe of Indians of Wisconsin" [See August 17, 1990 OBC Regular Meeting Transcript, pg. 7, B.III.D-F].

4. *Oneida Travel and Expense Policy*. This Law states that vehicles must be rented in accordance with the Oneida Travel and Expense Policy and that drivers must be certified pursuant to this Law [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.7-1]. The Oneida Travel and Expense Policy identifies when a driver can rent a vehicle, and actions the driver must take when renting a vehicle. These actions include, among other things:

- that alternate transportation must be used when it is less expensive, -
- insurance on all car rentals is covered by the Nation's insurance policy, -
- drivers must be on the approved Tribal vehicle drivers list with HRD before departure,
- car rentals can only be used when the event is 15 miles farther than the hotel,
- car rental advances must be submitted on the Travel Authorization before travel is taken,
- driver must rent compact or mid-size vehicles unless three or more employees are utilizing the vehicle,
- fuel charges are the employee's responsibility and insurance coverage or charges beyond one driver is the employee's responsibility [See *Travel and Expense Policy*, 2 O.C. 219.8].

- a. In addition, this Law identifies what happens when a driver is involved in a motor vehicle crash while driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal vehicle is damaged during use. The Law states that if the Oneida Travel and Expense Policy has more restrictive requirements regarding incident reporting, the provisions of that policy shall apply [See *Vehicle Driver Certification and Fleet Management*, 2 O.C. 210.9-1]. The Travel and Expense Policy simply states that if an employee is involved in an incident with a rental vehicle, the employee must report the incident to the following persons [See *Travel and Expense Policy*, 2 O.C. 219.8-11]:

- Local law enforcement agencies
- Rental company
- All Nations Travel
- Human Resources Department upon return
- Risk Management upon return, with copies of all paperwork.

- B. The following are potential conflicts between this Law and other laws that the LOC may want to consider:

- 247 **1. Oneida Travel and Expense Policy.** This Law refers to the Oneida Travel and Expense  
248 Policy when discussing how rental vehicles are handled and what happens when there is a  
249 crash involving a rental vehicle [*See Vehicle Driver Certification and Fleet Management*  
250 *2 O.C. 210.7-1 & 210.9-1*]. This Law pertains to employees, officials and volunteers, but  
251 the Oneida Travel and Expense Policy relates only to employees [*See Vehicle Driver*  
252 *Certification and Fleet Management 2 O.C. 210.3-1 (b) and Oneida Travel and Expense*  
253 *Policy 2 O.C. 219.3-1 (d) & 219.8*]. This can be interrupted that officials or volunteers  
254 cannot use rental vehicles.

255 The LOC may want to

- 256 1) clarify if officials are considered employees in regards to the Oneida  
257 Travel and Expense Policy and  
258 2) determine if volunteers and officials should be allowed utilize rental  
259 vehicles and if the Travel and Expense Policy needs to be amended.
- 260 **2. Business Committee Vehicle Policy.** The BC Vehicle Policy states that the BC Vehicle  
261 Policy is used in conjunction with the Oneida Tribal Vehicle Policy [*See BC Vehicle*  
262 *Policy, August 17, 1990 OBC Regular Meeting Transcript, pg. 6, B.II*]. At the time this  
263 analysis was completed, the Oneida Tribal Vehicle Policy referenced in the BC Vehicle  
264 Policy could not be located but may have been incorporated into the Vehicle Driver  
265 Certification Policy which will be repealed by adoption of this Law. This proposed Law  
266 will supersede the Vehicle Driver Certification Policy mentioned in the BC Vehicle  
267 Policy. The LOC may want to consider amending the BC Vehicle Policy to remove  
268 references to the Oneida Tribal Vehicle Policy and decide whether the BC Vehicle Policy  
269 should be used in conjunction with this Law.

## 271 **SECTION 7. ENFORCEMENT**

- 272 **A.** A driver who violates this Law may be subject to suspension of his/her vehicle driver  
273 certification and/or work related driving privileges. Supervisors that fail to uphold this Law  
274 can face disciplinary action. Suspension of a vehicle driver certification is not appealable  
275 except if an employee receives an adverse employment action or if any official, volunteer or  
276 employee that seeks a review of a decision not to reinstate certification by filing an appeal to  
277 the Judiciary [*See Vehicle Driver Certification and Fleet Management, 2 O.C. 210.10-2,*  
278 *210.10-7 (b) and 210.11-2 (d)*].
- 279 **B.** The supervisor is responsible for ensuring that the driver is certified to drive a Tribal vehicle  
280 and abides by this Law. If the driver does not have a supervisor, then HRD assumes the  
281 supervisor's responsibilities [*See Vehicle Driver Certification and Fleet Management, 2 O.C.*  
282 *210.4-7 & 210.4-7 (g)*].

## 284 **SECTION 8. ACCOUNTABILITY**

- 285 **A.** Fleet Management, Automotive Department, Risk Management, HRD, Environmental Health  
286 & Safety, supervisors and drivers all have responsibilities identified in this Law.



- B.** Drivers must complete driver safety training every three years for Tribal vehicle certification; however if there is a break in service longer than 180 days, retraining is required [*See Vehicle Driver Certification and Fleet Management, 2 O.C. 210.8-1 (e) (1)*].

## SECTION 9. OTHER CONSIDERATIONS

**A.** Below are statistics and policy considerations the LOC may want to be aware of:

1. *Number of Tribal Vehicles.* According Fleet Management, the Nation owns 191 Tribal vehicles and 49 departments use these vehicles.
2. *Number of Employees Affected.* According to HRD, there are 1092 employee positions that have driving requirements and 1386 employees who have driving requirements which is approximately 50% of the total workforce.
3. *Motor Vehicle Crashes Involving Tribal Vehicles.* According to Risk Management, there have been 121 motor vehicle crashes that have occurred since 2009. The following table shows the motor vehicle crash trends for the last five years. In addition, the table identifies the costs regarding motor vehicle crashes in involving Tribal vehicles. Please note that there have no claims paid involving personal vehicles used for Tribal business in the last 8.5 years. From FY 2009- FY 2016 there has been a total of \$9,946 paid on worker's compensation claims for injured employees [*Information received from Risk Management*].

Year (FY)	Vehicle Crash Cost	# of Crashes	Tribal Driver's at Fault
2009	\$35,958	10	7
2010	\$44,796	21	13
2011	\$31,862	22	15
2012	\$4,709	6	4
2013	\$41,327	17	13
2014	\$42,984	19	13
2015	\$111,643	11	7
2016	\$46,500	15	13
TOTAL	\$359,779	121	85

4. This following table illustrates the minimum insurance requirements pursuant to the Law and State of Wisconsin. In addition, a seven auto insurance providers were contacted and three provided information regarding their standard insurance coverage, that information is also incorporated in the table (below):

Entity	Per Person	Per Crash	Property Damage
Nation	\$100	\$300	\$25
Wisconsin	\$25	\$50	\$10
Progressive	\$25	\$50	\$10
Allstate	\$50	\$100	\$200
American Family	\$100	\$300	\$100

[See Driver Certification and Fleet Management, 2 O.C. 210.8-2 (a) (1) and See State of Wisconsin, Department of Transportation, <http://wisconsindot.gov/Pages/dmv/license-drvs/rcd-crsh-rpt/Auto-insurance.aspx>].

5. Section 210.10-7 (b) states a supervisor can suspend an employee's certification or extend an existing suspension when the supervisor determines it is appropriate. The employee can appeal this adverse employment action. Having a driver certification suspended may not always lead to an adverse employment action, especially in cases where driving is not an essential duty for the employee. The LOC may want to consider revising this section. An example of a possible revision:

*210.10-7. Notwithstanding any other provision of this law, the Nation reserves the right to suspend an individual's certification or extend a certification suspension. Certification may be suspended; or an existing suspension may be extended, based on the best interests of the Nation and in accordance with the following:*

*(a) For officials and volunteers: upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management.*

*(b) For employees: A supervisor may suspend an employee's certification or extend an existing suspension, when the supervisor determines it is appropriate to do so. The employee may appeal ~~this an~~ adverse employment action that results from a suspension of the employee's driver certification in accordance with the employment laws of the Nation.*

- B. Please refer to the fiscal impact statement for the financial impacts.

**Title 2. Employment - Chapter 210**  
**VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT**

210.1.	Purpose and Policy	210.8.	Driver Certification
210.2.	Adoption, Amendment, Repeal	210.9.	Motor Vehicle Crashes, Damage Involving Tribal Vehicles
210.3.	Definitions	210.10.	Suspension and Revocation of Certification; Disciplinary Action
210.4.	Tribal Department Responsibilities	210.11.	Reinstatement of Certification
210.5.	Driver Responsibilities		
210.6.	Tribal Vehicle Usage		
210.7.	Rental Vehicles		

**210.1. Purpose and Policy**

210.1-1. *Purpose.* The purposes of this law are to:

- (a) establish standards that certify employees, officials and volunteers to drive a Tribal vehicle or drive a personal vehicle on Tribal business, and
- (b) regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to:

- (a) ensure the safety of the community and employees of the Oneida Nation;
- (b) minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and
- (c) improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

**210.2. Adoption, Amendment, Repeal**

210.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. 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.

210.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) BC-09-09-98-A (Amended Vehicle Driver Certification Policy)
- (b) BC-09-24-97-E (Oneida Vehicle Fleet Management Policy)

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**210.3. Definitions**

210.3-1. 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) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.
- (b) "Business miles" means miles driven in a vehicle by an individual in order to conduct Tribal business.
- (c) "Certification" or "certified" means that a driver meets the requirements established by this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal business.



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(d) “Driver” means any employee, official and/or volunteer who is certified to operate a Tribal vehicle, or to drive a personal vehicle on Tribal business.

(e) “Driver’s abstract” means a driver’s official driving record, which includes, but is not limited to, any restrictions or limitations that may be imposed on the driver’s driving privileges.

(f) “Employee” means an 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 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, an individual employed by any program or enterprise of the Nation, and political appointees.

(g) “Entity” means a department, enterprise, program, board, committee or commission of the Nation.

(h) “Nation” means the Oneida Nation.

(i) “Non-business miles” means miles driven in a Tribal vehicle that are not business-related, including commuting.

(j) “Official” means anyone who is serving on the Oneida Business Committee or the Oneida Judiciary, and any other person who is elected or appointed to a board, committee or commission created by the Oneida Business Committee or Oneida General Tribal Council.

(k) “Supervisor” means the direct supervisor of an employee. Provided that, for volunteers, officials and employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

(l) “Tribal” or “Tribe” means the Oneida Nation.

(m) “Tribal vehicle” means a vehicle owned or leased by the Nation.

(n) “Volunteer” means a person who provides a service to the Nation without receiving pay.

(o) “Workday” means a regularly scheduled workday or service day for a driver, regardless of whether the day falls on a weekday or weekend.

#### **210.4. Tribal Department Responsibilities**

210.4-1. *Department of Public Works.* The Department of Public Works shall maintain Fleet Management and Automotive Departments to assist with the implementation of this law.

210.4-2. *Fleet Management.* Fleet Management shall:

(a) Purchase, manage and monitor the use of Tribal vehicles, including the removal of unsafe vehicles from the fleet;

(b) Obtain estimates of and schedule Tribal vehicle repairs when necessary;

(c) Participate in motor vehicle crash investigations;

(d) Participate in situations requiring approval of driver certifications;

(e) Install or remove global positioning system monitors on Tribal vehicles;

(f) Ensure that all Tribal vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident; and

(g) Maintain a list of all fleet vehicles that are available for use by drivers; including vehicles permanently assigned to specific departments.

210.4-3. *Automotive Department.* The Automotive Department shall service and maintain Tribal vehicles according to factory recommendations, or the maintenance schedule established by the

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Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to Fleet Management.

210.4-4. *Risk Management*. Risk Management shall:

- (a) Secure and maintain insurance coverage for all Tribal vehicles, or may designate another party to do so;
- (b) Provide auto insurance identification cards in every Tribal vehicle;
- (c) Process all submitted vehicle claims and related information;
- (d) Submit claims to the insurance company;
- (e) Participate in motor vehicle crash investigations; and
- (f) Participate in situations requiring approval of certifications.

210.4-5. *Human Resources Department*. The Human Resources Department shall:

- (a) Maintain a current list of drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;
- (b) Perform driving record checks and approve or deny certification based on the review of an individual's driving record; and notify the appropriate parties immediately of ineligibility in writing;
- (c) Notify supervisors immediately of
  - (1) the certification status of his or her employees or volunteers; and
  - (2) of any cancelation or lapse in a personal vehicle driver's insurance coverage.
- (d) Assist supervisors with the administration of suspensions and/or revocations of certification;
- (e) Request and maintain records of proof of insurance on personal vehicles driven on Tribal business;
- (f) Participate in motor vehicle crash investigations;
- (g) Maintain documentation of all required driver training and regulatory compliance;
- (h) Perform, or delegate to another person to perform, the supervisory responsibilities identified in this law, for drivers who do not have a supervisor.

210.4-6. *Environmental Health & Safety Division*. The Environmental Health & Safety Division shall provide driver safety training as included herein, and provide the Human Resources Department with the names of drivers who have completed training after each training session.

210.4-7. *Supervisors*. For drivers who do not have a supervisor, the Human Resources Department shall either assume the supervisor's responsibilities, or shall delegate those responsibilities to another person/entity. Supervisors of drivers shall:

- (a) Ensure those drivers who report to them are certified before allowing those employees to drive a Tribal vehicle or a personal vehicle on Tribal business.
- (b) Ensure drivers have the appropriate license, training certification(s), and insurance information on file with the Human Resources Department.
- (c) Ensure all motor vehicle crashes and damages are reported in accordance with this law.
- (d) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management in accordance with requirements established by Fleet Management.
- (e) Approve expense reports submitted for personal vehicle mileage reimbursement.
- (f) Promptly take appropriate action to investigate:
  - (1) all infractions of this law of which they become aware, including but not limited to, allegations of alcohol or drug use while using a Tribal vehicle or personal vehicle for Tribal business.

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- (2) allegations of a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense.
- (g) Ensure that all employees who directly report to them abide by this law.
- (h) Implement disciplinary action against employee drivers who violate this law, in accordance with the Nation's laws governing employment.
- (i) When necessary, refer drivers to:
- (1) the Environmental Health & Safety Division or an appropriate agency or training source for additional driver training; and/or
  - (2) the Employee Assistance Program, in accordance with applicable policies and procedures of the Nation.

## **210.5. Driver Responsibilities**

210.5-1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:

- (a) Abide by all provisions of this law.
- (b) Follow all traffic laws, respect property, be courteous and use good judgment.
- (c) Wear seat belts and require passengers to wear seat belts at all times.
- (d) Not drive while:
  - (1) under the influence of controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken, or
  - (2) impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time or concentration.
- (e) Not transport controlled substances, intoxicating beverages, or any passenger that is in possession of controlled substance or intoxicating beverages; without prior written approval from his or her supervisor to do so.
  - (1) *Exemptions.* Employees of the Nation who are transporting such substances, beverages or passengers in the course of performing their job duties are exempt from this requirement.
- (f) Not transport unauthorized passengers.
- (g) Not use devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios unless the vehicle is safely stopped.
  - (1) *Exemptions.* The following are exempt from this requirement:
    - (A) Authorized emergency vehicle communication equipment
    - (B) Navigation devices
    - (C) Communication equipment used while performing services for the Nation.

## **210.6. Tribal Vehicle Usage**

210.6-1. Drivers who do not have access to a permanently assigned Tribal vehicle and who are unable to use a vehicle assigned to another department, may request to use a Tribal vehicle to conduct Tribal business by submitting a request to Fleet Management. Whenever possible, such requests shall be made at least one (1) week in advance.

- (a) Fleet Management may cancel reservations that are not fulfilled in a timely manner and may combine vehicle use for travel to the same destination.
- (b) Before determining whether a Tribal vehicle is available or approving the use of a Tribal vehicle, Fleet Management shall confirm that:

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- 177 (1) the driver is certified.
- 178 (2) the driver has written consent to use a Tribal vehicle; provided by the driver's
- 179 supervisor, if the driver is an employee; or by the driver's entity, if the driver is an
- 180 official or volunteer.
- 181 (3) any passengers are authorized to travel in a Tribal vehicle, in accordance with
- 182 210.6-3.
- 183 (c) Before approving the use of a permanently assigned Tribal vehicle by any driver; the
- 184 department shall be responsible for confirming that the requirements of (b) are met.
- 185 210.6-2. In order to have a Tribal vehicle permanently assigned to an entity, the entity shall drive
- 186 a minimum number of miles annually, as determined by Fleet Management. Exceptions to the
- 187 mileage criteria may be granted upon request by an entity and with written approval from Fleet
- 188 Management.
- 189 (a) Entities who have a permanently-assigned vehicle shall regularly schedule service
- 190 work, maintenance work and safety checks with the Automotive Department.
- 191 210.6-3. The following individuals may travel in a Tribal vehicle:
- 192 (a) Employees, officials or volunteers who are on Tribal business,
- 193 (b) Individuals being transported as part of a program or service of the Nation,
- 194 (c) Individuals being transported during the normal and ordinary course of representing
- 195 and/or conducting business on behalf of the Nation; and
- 196 (d) Individuals who are authorized, by Oneida Business Committee motion, to travel in a
- 197 Tribal vehicle. The Oneida Business Committee may request input from Fleet
- 198 Management before making a determination on these requests.
- 199 210.6-4. When a driver uses a Tribal vehicle, he or she shall:
- 200 (a) Complete a vehicle mileage log. Vehicle mileage logs shall be provided in each Tribal
- 201 vehicle.
- 202 (b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that
- 203 may be a safety or mechanical hazard, or of any incidents that result in the inability of a
- 204 Tribal vehicle to complete a trip.
- 205 (c) Be personally responsible for all traffic citation costs, parking ticket costs or any
- 206 similar expense related to vehicle use.
- 207 (d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel
- 208 before it can be taken to an Oneida One Stop.
- 209 (e) Not smoke, and not permit others to smoke, in the Tribal vehicle.
- 210 (f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.
- 211 210.6-5. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal
- 212 vehicle may also be used for incidental purposes, such as travel to and from lodging and meal
- 213 sites. Tribal vehicles shall not be used for any of the following:
- 214 (a) Personal use or non-business miles, except as authorized under the Business
- 215 Committee Vehicle Policy.
- 216 (b) Vacation.
- 217 (c) Towing cargo for personal reasons.
- 218 (d) Hauling loads that could structurally damage the vehicle.
- 219 (e) Delivering goods or services for personal gain, or operating private pools where the
- 220 riders pay the driver.
- 221 (f) Transporting hitchhikers.
- 222 (g) Jump starting vehicles, other than Tribal vehicles.
- 223 210.6-6. Tribal logos shall be placed on all Tribal vehicles.



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224 210.6-7. *Additional Equipment, Modifications.*

225 (a) Modifications to Tribal vehicles for personal reasons are not permitted. Modifications  
226 to Tribal vehicles for operating purposes may be allowed only with the approval of Fleet  
227 Management.

228 (1) Provided that, this shall not be construed to prohibit drivers from making  
229 temporary, non-permanent modifications, such as adjusting the positions of  
230 vehicle seats or mirrors.

231 (b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS)  
232 to monitor vehicle usage.

233 (c) Radar detection devices shall not be installed or used in Tribal vehicles.  
234

235 **210.7. Rental Vehicles**

236 210.7-1. Rental vehicles are considered Tribal vehicles for the purpose of this law. All provisions  
237 of this law apply to rental vehicle usage. Vehicles shall be rented in accordance with the Oneida  
238 Travel and Expense Policy and drivers of rental vehicles shall be certified in accordance with  
239 this law.

240 210.7-2. Every vehicle rental shall include the purchase of the maximum collision damage  
241 waiver offered by rental companies.  
242

243 **210.8. Driver Certification**

244 210.8-1. *Certification.* All persons shall be certified before operating a Tribal vehicle or personal  
245 vehicle on Tribal business. In order to be certified, an individual shall:

246 (a) Be eighteen (18) years of age or older.

247 (b) Satisfy any additional experience requirements established by law or by rules  
248 promulgated by the Human Resources Department, that apply for the vehicle being  
249 assigned or used.

250 (c) Hold a valid, non-probationary Wisconsin driver's license and provide proof of such  
251 license, including any commercial endorsement(s), to the Human Resources Department  
252 within thirty (30) days after his or her start of employment or time of election,  
253 appointment or volunteer service.

254 (1) Drivers with commercial driver's licenses may be restricted to only operating  
255 Tribal vehicles within the state of Wisconsin.

256 (2) An occupational license is a valid, non-probationary driver's license if the  
257 driver's abstract which accompanies the occupational license allows the driver to  
258 operate vehicles for his or her job with the Nation.

259 (3) Individuals with a driver's license from a state other than Wisconsin shall  
260 obtain a Wisconsin driver's license within thirty (30) days after their first day of  
261 actual employment or service and provide a copy to the Human Resources  
262 Department.

263 (d) Pass a driving record check by the Human Resources Department to verify the driver  
264 has a valid, non-probationary driver's license as identified in (c); and to verify the driver  
265 has no citation or conviction related to a traffic incident, and no driving citation or  
266 conviction involving drugs or alcohol, within the time period(s) that would make the  
267 driver ineligible for certification under this law.

268 (1) The individual shall have his or her driving record checked by the Human  
269 Resources Department prior to his or her hire date or start date.

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- 270 (A) State Department of Motor Vehicle reports shall be used to determine  
271 whether an individual passes the driving record check.
- 272 (B) An individual with a driver's license from a state other than Wisconsin  
273 shall have his or her driving record checked based on that state's license.
- 274 (2) The Nation reserves the right to check driving records of a driver at any time.  
275 All drivers shall authorize the Human Resources Department to check his or her  
276 driving record.
- 277 (3) The Nation reserves the right to allow insurance carriers or agents to check  
278 driving records at any time. This review shall be deemed to be a review by the  
279 Nation.
- 280 (e) Complete all driver training requirements imposed by the Nation, an individual entity,  
281 or by any federal or state agency regulations.
- 282 (1) Except as provided in (e)(2), drivers who are certified to operate a Tribal  
283 vehicle shall complete driver safety training every three (3) years.
- 284 (A) The training program shall be administered, scheduled, and  
285 documented by the Environmental Health & Safety Division.
- 286 (B) A break in employment or service of one hundred eighty (180) days or  
287 greater requires retraining.
- 288 (C) Drivers shall be paid their regular wage for all required training.
- 289 (2) Tribal vehicle drivers who are subject to specialized driver safety training  
290 requirements imposed by state or federal regulatory agencies are exempt from the  
291 driver safety training required in (e)(1), provided that, such drivers shall complete  
292 all required driver safety training according to the applicable regulations before  
293 operating a Tribal vehicle to which the regulations apply.
- 294 210.8-2. *Additional Requirements for Personal Vehicle Drivers.* In addition to the requirements  
295 listed in 210.8-1, the following also apply for drivers of personal vehicles on Tribal business.
- 296 (a) *Insurance.* Each driver shall provide the Human Resources Department with written  
297 proof that he or she carries at least the minimum insurance coverage required by this law.  
298 Drivers shall maintain updated proof of vehicle insurance and provide copies to the  
299 Human Resources Department. The Human Resources Department may request written  
300 proof of insurance from drivers at any time.
- 301 (1) The minimum insurance requirements on a personal vehicle are:
- 302 (A) one hundred thousand dollars (\$100,000) per person;
- 303 (B) three hundred thousand dollars (\$300,000) per accident for bodily  
304 injury; and
- 305 (C) twenty-five thousand dollars (\$25,000) property damage.
- 306 (2). A driver shall immediately notify the Human Resources Department of any  
307 cancelation or lapse in his or her insurance coverage. No driver may drive a  
308 personal vehicle on Tribal business during the time he or she does not have the  
309 required minimum personal auto insurance coverage.
- 310 (3) If a personal vehicle driver's required insurance lapses, the Human Resources  
311 Department shall immediately remove the driver from the list of certified drivers,  
312 and notify the driver's supervisor once this action has been taken.
- 313 (b) *Mileage Reimbursement.*
- 314 (1) A driver who operates a personal vehicle on Tribal business shall be  
315 reimbursed for any business miles driven if he or she:

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(A) was certified at the time and had written proof of required insurance on file with the Human Resources Department.

(B) had prior consent from his or her supervisor to travel those miles on Tribal business.

(2) While driving on Tribal business, drivers of personal vehicles shall not use their vehicle for personal gain of any kind.

(3) All provisions of this law apply to drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.

#### 210.8-3. *Additional Requirements*

(a) Individual entities may require stricter certification procedures and standards that do not conflict with these standards; including but not limited to, specialized requirements regarding age, experience, training, and licensing. Such procedures and standards shall be submitted to Fleet Management, Risk Management and the Human Resources Department for review and approval.

(b) Drivers are subject to all specialized requirements imposed by state or federal regulatory agencies; including but not limited to, regulatory requirements pertaining to the use of drugs and alcohol.

210.8-4. Drivers shall immediately notify their supervisor; and the supervisor shall immediately notify the Human Resources Department in writing, of any of the following:

(a) An arrest, charge or conviction for any:

(1) motor vehicle operation violation involving drugs or alcohol; or

(2) criminal offense related to a traffic incident.

(b) Any restriction, suspension, revocation, cancellation or, if applicable, reinstatement of driving privileges related to his or her driver's license.

210.8-5. Drivers shall immediately notify their supervisor of any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time or concentration. Supervisors shall notify the Human Resources Department, in writing, of such information when appropriate.

#### **210.9. Motor Vehicle Crashes; Damage Involving Tribal Vehicles**

210.9-1. This section shall apply in the event a driver is involved in a motor vehicle crash while driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that policy shall apply.

210.9-2. In the event of a motor vehicle crash or damage involving the vehicle, drivers shall be subject to the following reporting requirements; provided that, if a driver sustains injuries that make it impossible to meet the reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:

(a) immediately report the crash or damage to local law enforcement if it results in any of the following:

(1) an injury to the driver or another person that requires medical intervention by law enforcement or emergency personnel, or treatment at a medical facility; or

(2) death of a person; or

(3) damage to property that does not belong to the driver or the Nation; or

(4) a Tribal vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor.

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(c) provide Fleet Management and Risk Management with a completed incident report by the end of the next business day immediately following the motor vehicle crash or damage.

(d) comply with any applicable alcohol and drug testing requirements established in other laws of the Nation.

210.9-3. Drivers shall follow any additional, applicable motor vehicle crash reporting requirements for vehicles regulated by a state or federal agency.

210.9-4. *Internal Review.* Whenever necessary, Fleet Management and Risk Management shall coordinate and conduct internal reviews of motor vehicle crashes involving Tribal vehicles. Internal reviews may include other personnel as deemed appropriate by Fleet Management and Risk Management.

(a) Fleet Management and Risk Management shall have investigative authority to:

(1) determine fault, if not determined by law enforcement; and/or

(2) recommend whether a driver's certification should be suspended.

(b) Internal reviews shall be completed as soon as practicable after a motor vehicle crash has been reported; and shall be conducted in accordance with industry standards of practice.

(c) Following an internal review, Fleet Management and Risk Management shall issue an investigation report. Copies of the investigation report shall be:

(1) provided to the driver and the driver's supervisor; and

(2) retained by Fleet Management and Risk Management for a minimum of three

(3) years.

210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage or personal injury, the driver may have his or her certification suspended.

## **210.10. Suspension and Revocation of Certification; Disciplinary Action**

210.10-1. Any driver who violates this law may be subject to suspension of his or her vehicle driver certification, and/or driving privileges.

(a) *Driving Privilege Suspensions.*

(1) In certain situations, a supervisor may temporarily suspend a driver's driving privileges without suspending the driver's certification. When a driver's driving privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle or to drive a personal vehicle on Tribal business.

(A) A supervisor shall temporarily suspend a driver's driving privileges:

(1) When the driver is unable to provide proof that the driver carries any insurance required by this law, or

(2) When the driver has not satisfied any driver training requirements as required by this law; but has made arrangements to complete the required driver training within a reasonable period of time.

(3) Upon request from the Human Resources Department, in conjunction with the Risk Management Department, pending an investigation that appears likely to lead to a suspension of certification.



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- 408 (4) In any other situation where the supervisor is unable to  
409 determine whether the driver has valid certification and is eligible  
410 to drive a Tribal vehicle or a personal vehicle on Tribal business.  
411 (B) When a supervisor suspends a driver's driving privileges; the  
412 supervisor shall promptly notify both the driver and the Human Resources  
413 Department, in writing, of the suspension, including the effective date; as  
414 well as the conditions that the employee is required to meet before the  
415 suspension may be lifted. The supervisor shall also notify both the driver  
416 and the Human Resource Department, in writing, once the driver's driving  
417 privileges are reinstated.  
418 (C) A driver's driving privileges shall automatically be reinstated after the  
419 driver satisfactorily fulfills the conditions identified by the supervisor  
420 when the driving privileges are suspended.
- 421 (b) *Certification Suspensions.* A driver shall have his or her certification suspended for  
422 any of the following:
- 423 (1) Refusing to allow the Nation or an insurance carrier check his or her driving  
424 record.
  - 425 (2) Failing to immediately notify his or her supervisor of any information as  
426 required in 210.8-4 or elsewhere in this law.
  - 427 (3) Noncompliance with motor vehicle crash reporting requirements established  
428 by this law.
  - 429 (4) Failing to complete any applicable driver training requirements.
  - 430 (5) Being arrested, charged or convicted of a motor vehicle operation violation  
431 involving drugs, alcohol or criminal offense related to a traffic incident.
  - 432 (6) Having his or her driver's license restricted, suspended, revoked or cancelled  
433 by the state.
  - 434 (7) Knowingly driving a Tribal vehicle without being certified under the  
435 provisions of this law.
  - 436 (8) For a personal vehicle certification, not maintaining the minimum insurance  
437 requirements for a personal vehicle.
- 438 (c) Supervisors who fail to uphold this law may face disciplinary action, in accordance  
439 with the laws of the Nation governing employment.
- 440 (d) Regardless of whether a violation results in suspension of certification,
- 441 (1) employees who violate this law may also be subject to disciplinary action, in  
442 accordance with laws of the Nation governing employment;
  - 443 (2) officials who violate this law may also be subject to sanctions and penalties in  
444 accordance with applicable laws of the Nation; including but not limited to,  
445 removal from office for elected officials and termination of appointment for  
446 appointed officials.
- 447 210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver  
448 certification or of driving privileges, is not appealable.
- 449 210.10-3. *Suspensions Affecting Employment Status.* Suspension of certification is a suspension  
450 of driving privileges and is not leave from work. Individuals who have their driving privileges  
451 suspended in accordance with 210.10-1(a), or who have their certification suspended and their  
452 ability to perform their duties as an employee affected by that suspension may request, in  
453 writing, that their supervisor and a Human Resources Department representative determine what,  
454 if any, options may be available to them. Options may include, but are not limited to: non-

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driving accommodation within the home department; reassignment to a position which does not require driving; a leave of absence without pay; or termination of employment.

210.10-4. The minimum length of a suspension shall be based on the number of prior suspensions that have occurred within the past three (3) years from the date of the incident that resulted in the most recent suspension:

(a) The first time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than five (5) full-time workdays.

(b) The second time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than ten (10) full-time workdays.

(c) The third time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than fifteen (15) full-time workdays.

(d) Drivers who incur more than three (3) vehicle driver certification suspensions under this law within a three (3) year period shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.

210.10-5. Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation or upon three (3) years passing from the date of citation.

210.10-6. A break in employment or service of one hundred eighty (180) days or greater shall clear the driver's record of any vehicle driver certification suspensions, except for three (3)-year suspensions resulting from a violation that involved drugs or alcohol. However, all prior suspensions may be used in re-employment consideration.

210.10-7. Notwithstanding any other provision of this law, the Nation reserves the right to suspend an individual's certification or extend a certification suspension. Certification may be suspended; or an existing suspension may be extended, based on the best interests of the Nation and in accordance with the following:

(a) For officials and volunteers: upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management.

(b) For employees: A supervisor may suspend an employee's certification or extend an existing suspension, when the supervisor determines it is appropriate to do so. The employee may appeal this adverse employment action in accordance with the employment laws of the Nation.

## **210.11. Reinstatement of Certification**

210.11-1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be automatically reinstated upon expiration of the suspension.

210.11-2. A driver whose certification is suspended for thirty-one (31) days or more, may have his or her certification reinstated in accordance with the following:

(a) The driver may request reinstatement of his or her certification after:

(1) A certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and

(2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and

(3) The state removes a driver's license suspension; and

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- 501 (4) Written proof has been submitted to the Human Resources Department that  
502 the individual has any required insurance coverage.
- 503 (b) Upon receiving a request to reinstate an individual's certification, the Human  
504 Resources Department shall:
- 505 (1) check the individual's driving record to ensure the individual has no violations  
506 on his or her driving record preventing reinstatement; and  
507 (2) verify the written proof of insurance submitted by the individual, provided it  
508 meets the requirements of this law.
- 509 (c) If the individual passes the driving record check and his or her proof of insurance is  
510 verified, the individual's certification shall be reinstated upon approval of the Human  
511 Resources Department.
- 512 (1) *Exception.* For an individual's fourth (4<sup>th</sup>) suspension or a suspension due to a  
513 conviction of motor vehicle operation citation involving drugs or alcohol the  
514 individual's certification may only be reinstated if the following requirements are  
515 met:
- 516 (A) For officials and volunteers: certification may only be reinstated upon  
517 unanimous approval of the Human Resources Department, Fleet  
518 Management and Risk Management.
- 519 (B) For employees: The supervisor shall notify the Human Resources  
520 Department, Area Manager, and Risk Management of the request; and  
521 may reinstate the employee's certification if none of those entities object.
- 522 (d) Any official, volunteer or employee may seek review of a decision not to reinstate  
523 certification, by filing an appeal with the Judiciary.

524 *End.*

525 Adopted BC-\_\_\_\_\_

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

DATE: June 1, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of Vehicle Driver and Fleet Management Amendments**

## I. Estimated Fiscal Impact Summary

Law: Vehicle Driver and Fleet Management		Draft 20
Implementing Agency	Department of Public Works (DPW) - Fleet Management & Automotive Risk Management Human Resources Department (HRD) Environmental Health & Safety Division	
Estimated time to comply		
Estimated Impact	Current Fiscal Year	10 Year Estimate
Start up	\$0	
Personnel	\$0	
Office	\$0	
Documentation Costs	\$0	
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations	None	
Uncertainties and Unknowns	None	

## II. Background

### A. Legislative History

This Law is a combination of previously approved policies, BC-09-09-98-A Vehicle Driver Certification Policy, and BC-09-24-97-E Oneida Vehicle Fleet



Management Policy. A public meeting was previously held on February 19, 2015.

## **B. Summary of Content**

This Law includes the following:

1. Identifies the roles and responsibilities of the Fleet Management Department, Automotive Department, Risk Management, HRD, Environmental Health & Safety Division, supervisors and drivers;
2. Tribal vehicle usage;
3. Rental vehicle requirements;
4. Driver certification requisites;
5. Requirements for personal vehicle usage;
6. Motor vehicle accidents involving Tribal vehicles;
7. Addresses suspension and revocation of driver certification and disciplinary actions;
8. Process for driver certification reinstatement.

## **C. Methodology and Assumptions**

1. A “Fiscal Impact Statement” means an estimate of the total identifiable 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.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

## **II. Agency**

According to the agencies impacted, existing personnel will be utilized to implement the Law and no new expenses are anticipated. There are no additional costs for the training required to certify drivers. It is simply reflected as a change in the category of payroll, i.e. regular job to training. Therefore, there is no fiscal impact. Environmental Health and Safety stated that they can begin training within 30 days of the approval of the Law and complete the initial training of the workforce within 60 days depending on the scheduling of staff and meeting rooms.

## **III. Financial Impact**

No impact.

**IV. Recommendation**

Finance 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 the information with which to render a decision.



Legislative Operating Committee  
June 21, 2017

# Professional Conduct for Attorneys and Advocates

<b>Submission Date:</b> 4/5/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This law establishes professional standards of conduct for attorneys and advocates practicing before the Judiciary.*

**4/5/17 LOC:** Motion by David P. Jordan to add the Professional Conduct for Attorneys and Advocates to the active files list as a high priority, with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Approve the public meeting packet and forward the proposed Professional Conduct for Attorneys and Advocates law to a public meeting to be held on Thursday, July 20, 2017.

NOTICE OF  
**PUBLIC MEETING**  
TO BE HELD  
**Thursday, July 20th at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

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

**TOPIC: PROFESSIONAL CONDUCT FOR  
ATTORNEYS & ADVOCATES**

**This is a proposal to create a new law that governs the conduct of attorneys and advocates that are admitted to practice before the Judiciary**

This Law will require counsel to provide competent representation and identifies the scope of representation. Counsel is to act with reasonable diligence and promptness when representing a client. The Law also specifies how counsel is to communicate with his/her clients. Counsel cannot charge or collect unreasonable fees or expenses. In addition, the Law sets forth confidentiality requirements, identifies when a conflict of interest arises, and describes circumstances when counsel cannot represent a client. Furthermore, the Law sets the process for declining or termination representation as well as identify the roles and responsibilities of counsel. The Law identifies acts of professional misconduct and sets the process for civil actions regarding negligence or violation of duty of counsel. Lastly, the Law includes a process for handling complaints against counsel.

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

**PUBLIC COMMENT PERIOD**  
**OPEN UNTIL July 27, 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@oneidanation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**





# Professional Conduct for Lawyers and Advocates Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: GTC Directive	SPONSOR: Brandon Stevens	DRAFTER: Robert J. Collins	ANALYST: Maureen Perkins
Intent of the Law	The intent of this law is to establish rules governing the professional conduct of lawyers and advocates who appear before the Judiciary in order to protect the interests of all parties.		
Purpose	To govern the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.		
Affected Entities	Judiciary, Legal Resource Center, Attorneys and Advocates who are admitted to practice before the Judiciary		
Affected Legislation	Legal Resource Center (law), Oneida Judiciary Rules of Evidence, Cannons of Judicial Conduct, Anonymous Letters Policy, Oneida Judiciary Rules of Admission, Oneida Judiciary Rules of Professional Conduct		
Enforcement/Due Process	A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary's Trial Court [see 810.22-1]. Decisions of the Trial Court under this section may be appealed to the Court of Appeals [see 810.22-5]. The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law [see 810.23-1]. All decisions made by the Court of Appeals under this section are final [see 810.23-6].		
Public Meeting	A public meeting has not yet been held.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This law governs the conduct of attorneys and advocates who are admitted and practice before the Judiciary [see 810.1-1].
- B. This law benefits the interests of all parties that appear before the Judiciary by subjecting attorneys and advocates are subject to rules governing their professional conduct.

## SECTION 3. CONSULTATION

- A. The Oneida Business Committee and the Oneida Judiciary were consulted about the contents of the legislation.
- B. The laws and rules pertaining to the Judiciary were consulted in the drafting of this legislation.

## SECTION 4. PROCESS

- A. This law is following the correct legislative process.
- B. This law was directed by the GTC on 11/14/2016 and added to the Active Files List on 4/5/17.

## SECTION 5. CONTENTS OF THE LEGISLATION

- A. Competence

- Counsel (attorney or advocate) is expected to provide representation that is backed by legal knowledge, skill, thoroughness and preparation *[see 810.4]*.

#### **Scope of Representation**

- Relationships between a client and counsel are considered privileged once legal services are obtained or performed.
- Counsel will abide by decisions of the client regarding representation.
- Counsel's representation does not constitute endorsement of the client.
- Counsel may limit the scope of representation with client's informed consent.
- Counsel will not advise or assist the client in criminal or fraudulent conduct *[see 810.5]*.

#### **Diligence**

- Careful, persistent and immediate work are expected of counsel *[see 810.6]*

#### **Communication**

- Counsel is expected to *[see 810.7]*:
  - let the client know when informed consent is required by law.
  - consult with the client regarding the possible strategies that can be used in Court.
  - keep the client informed of the status of their case and any decisions that need to be made, as well as complying with requests by the client for information.
  - let the client know when their expectations are beyond what is permitted by law.
  - explain the case to the client so that they understand the decisions regarding representation.

#### **Fees**

- Fees must be reasonable considering *[see 810.8-1]*:
  - time and labor required, difficulty of the case, and the skill required.
  - the likelihood that acceptance of the case will prevent counsel from accepting other cases.
  - the price of local legal services.
  - time limitations.
  - the nature and length of the professional relationship with the client.
  - the experience, reputation and ability of counsel.
- The scope of representation and the basis or rate of the fee and expenses must be provided to the client in writing before or close after beginning representation. Any changes must be communicated in writing *[see 810.8-2]*.
- Counsel must immediately respond to a client's request for information regarding fees *[see 810.8-3]*.

#### **Confidentiality**

- Information related to the representation of a client is confidential except as necessary to provide representation *[see 810.9-1]*.
- Counsel must reveal information to any party they feel is appropriate related to the representation of a client to prevent the client from committing a criminal or fraudulent act that is likely to result in death or substantial bodily harm or injury to the financial interest or property of another *[see 810.9-2]*.
- Counsel may reveal information to any party they feel is appropriate related to the representation of a client to the extent counsel reasonably believes necessary *[see 810.9-3]*:
  - To secure legal advice about counsel's conduct under this law

- To establish a claim or defense regarding a controversy between client and counsel
- To establish a defense to an action seeking to deny admission to practice before the Judiciary
- To respond to allegations in any proceeding regarding counsel's representation of the client
- To comply with other laws or court orders
- To detect and resolve conflicts of interest, but only if the revealed information would not compromise the client-counsel privilege or prejudice the client
- Counsel must make reasonable effort to prevent the accidental disclosure or access to client's information *[see 810.9-4]*.

#### **Conflict of Interest**

- Counsel cannot represent a client if representation will adversely affect another client or if representation will be limited by counsel's responsibilities to another client, a former client, a third person or by a personal interest of counsel *[see 810.10-1]*.
- Counsel may represent a client if *[see 810.10-2]*:
  - they are able to provide competent and immediate representation to each affected client
  - representation is not prohibited by law
  - representation does not involve a claim by one client against another represented by counsel in any proceeding before the Judiciary
  - each affected client gives written informed consent
- Counsel cannot use information related to the representation of a client to their disadvantage without written consent except as permitted or required by this law *[see 810.10-3]*.
- Counsel cannot provide the client with any financial assistance related to the representation *[see 810.10-4]*

#### **Duties to Former Clients**

- Counsel cannot represent another client in the same or related matter as a previous client if it is materially adverse unless the former client gives informed consent *[see 810.11]*.

#### **Former Judge, Mediator or Peacemaker**

- Counsel cannot represent anyone in connection to a case where counsel participated as a judge, mediator or peacemaker *[see 810.12]*.

#### **Client with Diminished Capacity**

- Counsel must maintain a normal client-counsel relationship with a client with diminished capacity and may request a guardian ad litem for the client *[see 810.13]*.

#### **Declining or Terminating Representation**

- Counsel must decline or withdraw representation if this law is violated, counsel's physical or mental condition impairs their ability to represent the client, or counsel is discharged *[see 810.14-1]*.
- Counsel may withdraw representation of a client if *[see 810.14-2]*:
  - it does not affect the interests of the client,
  - the client insists on a course of action that is criminal or fraudulent,
  - the client uses counsels services to commit a crime or fraud,
  - the client insists on action that counsel considers distasteful or disagrees with,

- the client fails to fulfill an obligation to counsel and has been given reasonable warning that counsel will withdraw unless obligation is met,
- the representation will result in an unreasonable financial burden on counsel, or
- other good cause for withdrawal exists.
- Counsel must follow established notice requirements when terminating representation and must continue representation if ordered to do so by the Judiciary [*see 810.14-3*].
- Counsel must protect client's interests upon terminating representation [*see 810.14-4*].

#### **Duties to Prospective Clients**

- Counsel must keep information confidential even if a client-counsel relationship does not exist unless the client has given written informed consent otherwise or reasonable measures were taken to avoid exposure to disqualifying information in determining prospective services [*see 810.15*].

#### **Role as Advisor**

- Counsel may not:
  - knowingly advance a claim outside existing law unless the claim can be supported by good faith argument for an extension, modification or reversal of existing law
  - advance frivolous positions, or
  - injure another with court actions [*see 810.16-2*].
- Counsel cannot make false statements to a third person or fail to disclose facts to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client [*see 810.16-3*].

#### **Candor and Impartiality toward the Judiciary**

- Counsel cannot knowingly [*see 810.17-2*]:
  - make or fail to correct false statements previously made to the Judiciary
  - fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to be adverse to the client and not disclosed by opposing counsel
  - offer or fail to correct evidence presented to the Judiciary known to be false.
- Counsel cannot [*see 810.17-2*]:
  - influence a judge, juror or other court official
  - communicate one sided with a judge during proceeding unless authorized by law or court order or for scheduling purposes if permitted by the court
  - disrupt a jury

#### **Fairness to Opposing Party and Counsel**

- Counsel cannot [*see 810.18*]:
  - Obstruct access to evidence by another party or destroy evidence or advise or assist another to do so
  - Falsify evidence or advise a witness to provide false testimony
  - Knowingly disobey an obligation established by law or rule, except for open refusal based on an assertion that an obligation doesn't exist
  - Make frivolous discovery requests or fail to comply with discovery requests of opposing party
  - Allude to any matter not reasonably relevant or supported by admissible evidence



- Counsel cannot communicate about the representation with a person counsel knows is represented by an attorney or advocate unless counsel has consent of the other counsel or is authorized to do so by law or court order *[see 810.18-2]*.
- Counsel must inform others not represented by an attorney or advocate of their role in representation and correct misunderstandings regarding representation. Counsel cannot give legal advice except to secure counsel *[see 810.18-3]*.

#### **Counsel as Witness**

- Counsel cannot provide representation at a trial where they are likely to be called as a witness unless *[see 810.19]*:
  - The testimony relates to the legal services rendered in the case, or
  - Not doing so would cause hardship for the client.

#### **Admittance to Practice and Disciplinary Matters**

- Counsel must comply with the Judiciary's Rules of Admission to Practice and cannot knowingly make false statements or fail to disclose a fact necessary to correct a mistake or fail to respond for a demand for information regarding admission *[see 810.20]*.

#### **Misconduct**

- It is professional misconduct for counsel to *[see 810.21]*:
  - Violate or assist or encourage another to violate this law
  - Commit a criminal act unless act has been pardoned
  - Engage in dishonest, fraudulent, deceitful or misrepresentative behavior unless pardoned
  - State or imply an ability to influence a tribal or governmental official to achieve results
  - Violate counsel's oath to Judiciary
  - Fail to cooperate in an investigation of a complaint filed with the Judiciary

#### **Civil Actions for Negligence or Violation of Duty**

- A client alleging negligence by counsel can file a complaint with the Nation's Trial Court and must prove the following *[see 810.22]*:
  - A client-counsel relationship existed
  - Counsel committed acts that were negligent or violated their duty under the law
  - The client suffered actual damages
  - The negligence or violation of duty was the main reason for the damages
  - That the client would have been successful if not for the counsel's negligence
- The Trial Court will consider the merits of the client's case and if allegations are substantiated the court will issue a written order awarding monetary damages not to exceed five thousand dollars (\$5,000) *[see 810.22-3 and 810.22-4]*.
- Decisions of the Trial Court are appealable to the Court of Appeals.

#### **Disciplinary Actions**

- The Court of Appeals is granted jurisdiction to hear any complaints filed regarding disciplinary actions *[see 810.23-1]*.
- The Chief Judge of the Court of Appeals will screen out or take no action on complaints that are frivolous and communicate decisions regarding appeals in writing *[see 810.23-2]*.
- Anonymous complaints will be handled according to the Anonymous Letters Policy.
  - Anonymous complaints received shall be summarized and forwarded in a confidential manner to the Chief of the Oneida Police Department. The summary must include who

received the information, the day, date, and time of receipt and the information received.  
[see *Anonymous Letters Policy O.C. 307.4-1*].

- Complaints that move forward will be appointed a three judge panel by the Chief Judge of the Court of Appeals to preside. The case can be dismissed if there is not sufficient evidence to substantiate the allegation [see 810.23-4]. The party accused and the complainant will receive notice of the hearing. The three judge panel will determine the disciplinary methods if allegations are substantiated. Outside regulating authority will receive the decision if appropriate [see 810.23-5].
- All decisions of the Court of Appeals are final [see 810.23-6].

**B.** This legislation is not written as simply as possible but it is written clearly.

## **SECTION 6. INTENT**

**A.** The purpose of the law is clearly intended to govern the conduct of attorneys and advocates who are admitted to practice before the Judiciary.

**B.** This legislation applies to attorneys and advocates who practice before the Judiciary; as well as their clients who have an established set of guidelines to ensure they are receiving adequate representation and a process to follow regarding recourse for inadequate services rendered by practicing attorneys or advocates.

## **SECTION 7. EFFECT ON EXISTING LEGISLATION**

**A.** Anonymous Letters Policy

- The law will follow the Anonymous Letter Policy with respect to complaints that are filed anonymously. The Chief Judge may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy see [810.23-2(a)].

**B.** There are not any conflicts with existing laws of the Nation.

## **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

**A.** This law codifies the Oneida Judiciary Rules of Professional Conduct that are currently adopted by the Judiciary.

**B.** This law clearly establishes the expectations of attorneys and advocates who practice before the Judiciary and provides clients with an understanding of the level of service to be expected from attorneys and advocates who represent them before the Judiciary.

## **SECTION 9. ENFORCEMENT**

**A.** A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary's Trial Court [see 810.22-1]. Decisions of the Trial Court under this section may be appealed to the Court of Appeals [see 810.22-5]. The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law [see 810.23-1]. All decisions made by the Court of Appeals under this section are final [see 810.23-6].

**B.** The law will be enforced utilizing existing human resources.

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230 **SECTION 10. ACCOUNTABILITY**

231 **A.** The Judiciary is accountable for implementation and operation of this law.

232 **B.** There are no annual or other reporting requirements to the GTC.

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**Title 8. Judiciary - Chapter 810**  
**PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES**

810.1. Purpose and Policy  
810.2. Adoption, Amendment, Repeal  
810.3. Definitions  
810.4. Competence  
810.5. Scope of Representation  
810.6. Diligence  
810.7. Communication  
810.8. Fees  
810.9. Confidentiality  
810.10. Conflict of Interest  
810.11. Duties to Former Clients  
810.12. Former Judge, Mediator, or Peacemaker

810.13. Client with Diminished Capacity  
810.14. Declining or Terminating Representation  
810.15. Duties to Prospective Clients  
810.16. Role as Advisor  
810.17. Candor and Impartiality toward the Judiciary  
810.18. Fairness to Opposing Party and Counsel  
810.19. Counsel as Witness  
810.20. Admittance to Practice and Disciplinary Matters  
810.21. Misconduct  
810.22. Civil Actions for Negligence or Violation of Duty  
810.23. Disciplinary Actions

**810.1. Purpose and Policy**

810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.

810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that attorneys ~~or~~ and advocates are subject to rules governing their professional conduct.

**810.2. Adoption, Amendment, Repeal**

810.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

810.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

810.2-3. 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.

810.2-4. 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.

810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.

**810.3. Definitions**

810.3-1. 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) "Advocate" means a non-attorney advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party. "Advocate" shall not mean a domestic violence advocate present in court for the sole purpose of providing support.

(b) "Attorney" means a person trained and licensed to represent another person in Court, to prepare documents, and to give advice or counsel on matters of law.

(c) "Counsel" means an attorney or advocate that is admitted to practice before the Judiciary.



(d) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Appellate Court.

(e) “Informed consent” means the agreement by a person to a proposed course of conduct after counsel has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Preponderance of the evidence” means it is more likely than not that the facts presented are true.

(g) “Prospective client” means a person who consults with counsel about the possibility of forming a client-counsel relationship.

(h) “Pro Tem Judge” means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in professional conduct panels.

(i) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the conduct of a reasonably prudent and competent attorney or advocate.

#### **810.4. Competence**

810.4-1. Counsel shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

#### **810.5. Scope of Representation**

810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and section 804.8-2 of the Oneida Judiciary Rules of Evidence once they consult with counsel to obtain legal services or once counsel performs legal services for the client. Any professional opinion given by counsel without express disclosure negating a privileged relationship shall create a privileged client-counsel relationship.

810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. Counsel may take such action on behalf of the client as is impliedly authorized to carry out the representation.

810.5-3. Counsel’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed written consent.

810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed course of conduct with a client and may advise or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

#### **810.6. Diligence**

810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.

#### **810.7. Communication**

810.7-1. Counsel shall:

(a) Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by this law;

(b) Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

- (c) Keep the client reasonably informed about the status of the matter;
- (d) Promptly comply with reasonable requests by the client for information; and
- (e) Consult with the client about any relevant limitations on counsel's conduct when counsel knows that the client expects assistance not permitted by this law or other laws or rules.

810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

#### **810.8. Fees**

810.8-1. Counsel shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (b) The likelihood, ~~if apparent to the client,~~ that the acceptance of the particular employment will ~~preclude other employment by counsel~~ prevent counsel from taken other work;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount of fees involved and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances;
- (f) The nature and length of the professional relationship with the client; and
- (g) The experience, reputation, and ability of the ~~lawyer or lawyers~~ attorney or advocate performing the services.

810.8-2. The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

810.8-3. Counsel shall promptly respond to a client's request for information concerning fees and expenses.

#### **810.9. Confidentiality**

810.9-1. Counsel shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.

810.9-2. Counsel shall reveal information to any party determined by counsel to be appropriate relating to the representation of a client to the extent counsel reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

810.9-3. Counsel may reveal information to any party determined by counsel to be appropriate relating to the representation of a client to the extent counsel reasonably believes necessary:

- (a) To prevent reasonably likely death or substantial bodily harm;
- (b) To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used counsel's services;
- (c) To secure legal advice about counsel's conduct under this law;
- (d) To establish a claim or defense on behalf of counsel in a controversy between counsel and the client, to establish a defense to an action seeking to deny admission to

practice before the Judiciary, or to respond to allegations in any proceeding concerning counsel's representation of the client;

(e) To comply with other laws or court orders; or

(f) To detect and resolve conflicts of interest, but only if the revealed information would not compromise the client-counsel privilege or otherwise prejudice the client.

810.9-4. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

#### **810.10. Conflict of Interest**

810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(a) The representation of one client will be directly adverse to another client; or

(b) There is a significant risk that the representation of one or more clients will be materially limited by counsel's responsibilities to another client, a former client, a third person, or by a personal interest of counsel.

810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may represent a client if:

(a) Counsel reasonably believes that counsel will be able to provide competent and diligent representation to each affected client;

(b) The representation is not prohibited by law;

(c) The representation does not involve the assertion of a claim by one client against another client represented by counsel in the same litigation or other proceeding before the Judiciary; and

(d) Each affected client gives informed consent, confirmed in a writing signed by the client.

810.10-3. Counsel shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by this law.

810.10-4. Counsel shall not provide the client with any financial assistance pertaining to the matter for which counsel represents the client.

#### **810.11. Duties to Former Clients**

810.11-1. Counsel who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.

#### **810.12. Former Judge, Mediator or Peacemaker**

810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel participated personally and substantially as a judge, mediator or peacemaker.

#### **810.13. Client with Diminished Capacity**

810.13-1. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, counsel shall, as far as reasonably possible, maintain a normal client-counsel relationship with the client.

810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel may request that the court appoint a guardian ad litem for the client.

**810.14. Declining or Terminating Representation**

810.14-1. Counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) The representation will result in a violation of this law or any other applicable law or rule governing professional conduct;
- (b) Counsel's physical or mental condition materially impairs counsel's ability to represent the client; or
- (c) Counsel is discharged.

810.14-2. Counsel may withdraw from representing a client if:

- (a) Withdrawal can be accomplished without material adverse effect on the interests of the client;
- (b) The client persists in a course of action involving counsel's services that counsel reasonably believes is criminal or fraudulent;
- (c) The client has used the counsel's services to perpetrate a crime or fraud;
- (d) The client insists upon taking action that counsel considers repugnant or with which counsel has a fundamental disagreement;
- (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled;
- (f) The representation will result in an unreasonable financial burden on counsel or has been rendered unreasonably difficult by the client; or
- (g) Other good cause for withdrawal exists.

810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of the Judiciary when terminating a representation. When ordered to do so by the Judiciary, counsel shall continue representation notwithstanding good cause for terminating the representation.

810.14-4. Upon termination of representation, counsel shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for seeking other counsel, surrendering papers and property to which the client is entitled and refunding any fees not earned.

**810.15. Duties to Prospective Clients**

810.15-1. Even when no client-counsel relationship ensues, counsel who has learned information from a prospective client shall not use or reveal that information learned in the consultation, unless:

- (a) The affected client and/or the prospective client have given informed written consent; or
- (b) Counsel who received the information took reasonable measures to avoid exposure to more disqualifying information that was reasonably necessary to determine whether to represent the prospective client.

**810.16. Role as Advisor**

810.16-1. In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, and political factors that may be relevant to the client's situation.

810.16-2. In representing a client, counsel shall not:



(a) Knowingly advance a claim or defense that is unwarranted under existing law, except that counsel may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;

(b) Knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or

(c) File an action, assert a position, conduct a defense, delay a trial, or take other actions on behalf of the client when counsel knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

810.16-3. In the course of representing a client, counsel shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

### **810.17. Candor and Impartiality toward the Judiciary**

810.17-1. Counsel shall not knowingly:

(a) Make a false statement of fact or law to the Judiciary or fail to correct a false statement of material fact or law previously made to the Judiciary by counsel;

(b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(c) Offer evidence that counsel knows to be false. If counsel, counsel's client, or a witness called by counsel has offered material evidence and counsel comes to know of its falsity, counsel shall take reasonable remedial measures, including, if necessary, disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

810.17-2. Counsel shall not:

(a) Seek to influence a judge, juror, or other court official;

(b) Communicate ex parte with a judge during the proceedings unless authorized to do so by law or court order or for scheduling purposes, if permitted by the court; or

(c) Engage in conduct intended to disrupt the Judiciary.

### **810.18. Fairness to Opposing Party and Counsel**

810.18-1. Counsel shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. Counsel shall not advise or assist another person to do any such act;

(b) Falsify evidence, advise, or assist a witness to testify falsely;

(c) Knowingly disobey an obligation under any applicable law or rule, except for open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) In trial, allude to any matter that counsel does not reasonably believe is relevant or that will not be supported by admissible evidence.

810.18-2. In representing a client, counsel shall not communicate about the subject of the representation with a person counsel knows to be represented by another attorney or advocate in the matter unless counsel has the consent of the other attorney or advocate or is authorized to do so by law or a court order.

810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows

or reasonably should know that the unrepresented person misunderstands counsel's role in the matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not give legal advice to an unrepresented person other than the advice to secure counsel.

#### **810.19. Counsel as Witness**

810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to be a necessary witness unless:

- (a) The testimony relates to the nature and value of legal services rendered in the case; or
- (b) Disqualification of counsel would work substantial hardship on the client.

#### **810.20. Admittance to Practice and Disciplinary Matters**

810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

810.20-2. An applicant for admission to practice or counsel in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.

#### **810.21. Misconduct**

810.21-1. It is professional misconduct for counsel to:

- (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness, or fitness as counsel in other respects unless such criminal activity has been pardoned or forgiven;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless such conduct is pardoned or forgiven;
- (d) State or imply an ability to influence improperly a tribal or government agency or official or to achieve results by means that violate any applicable law or rule;
- (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable canons of judicial conduct or other law or rule;
- (f) Violate the counsel's oath given to the Judiciary; or
- (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.

#### **810.22. Civil Actions for Negligence or Violation of Duty**

810.22-1. A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary's Trial Court.

810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the burden of proving all of the following:

- (a) A client-counsel relationship existed;
- (b) That counsel committed acts that were negligent or in violation of duty under this law;
- (c) That the client suffered actual damages;
- (d) That the negligence or violation of duty was the proximate cause of the damages; and
- (e) That, but for the negligence or violation of duty on counsel, the client would have been successful in the prosecution or defense of the case.

810.22-3. In making a final determination, the Court shall consider what a particular counsel did or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written order awarding monetary damages to the client not to exceed five thousand dollars (\$5,000).

810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of Appeals.

### **810.23. Disciplinary Actions**

810.23-1. The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the Court of Appeals or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the Court of Appeals who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.

(a) The Chief Judge may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge of the Court of Appeals shall appoint a three (3) judge panel to preside over the disciplinary proceedings. Current or pro tem judges are eligible to be on the panel.

(a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.

(b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The three (3) judge panel can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

(a) The Court may opt to choose any combination of the following disciplinary methods:

(1) Private reprimand;

(2) Public reprimand through publication in the Nation's newspaper;

(3) Additional training requirements;

(4) Monetary fine not to exceed five thousand dollars (\$5,000); or

(5) Suspension or revocation of the right to practice before the Judiciary.

(b) The Judiciary may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).

810.23-6. All decisions made by the Court of Appeals under this section are final.

*End.*

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Adopted: \_\_\_\_\_



Legislative Operating Committee  
June 21, 2017

## Legal Resource Center

<b>Submission Date:</b> 3/1/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> 5/24/17 <b>Expires:</b> 11/24/17

**Summary:** *This item is a directive from General Tribal Council and was added to the Active Files List as an emergency on 4/1/17.*

**11/14/16 GTC:** Motion by Gina Powless to direct the OBC to establish a legal office consisting of advocates and an advising attorney for GTC, and be elected at the 2017 General Election, to represent employees employed by Oneida Nation, and Tribal enrolled members that have any type of litigation at the Oneida Judiciary, and to retain legal counsel specifically for GTC to advise during duly called GTC meetings, this office will not report to the OBC, but to GTC on an Annual and Semi-Annual schedule. Seconded by Robert Steffes. Motion carried by hand count: 827 support; 2017 opposed; 80 abstentions.

Amendment to the main motion by Lloyd Zeise that rule changes and scheduling issues for gaming employees be reviewed. Motion ruled out of order by Vice-Chairwoman Melinda J. Danforth.

Amendment to the main motion by Linn Cornelius to revise the timeframe to the 2017 General Election. Seconded by Don Miller. Motion carried by show of hands

Amendment to the main motion by Linda Dallas to have training on a bi-annual basis that includes but is not limited to training in Judiciary laws, processes, procedures, and tribal laws that apply to it (representation of matters in front of the judiciary), to be opened to all Tribal Members; and to begin FY2018. Seconded by Brad Graham. Motion carried by show of hands

**1/11/17 OBC:** Motion by Lisa Summers to assign Vice-Chairwoman Melinda J. Danforth and Councilman Brandon Stevens to work on the General Tribal Council directive regarding the establishment of a legal office with advocates and advising attorney for Oneida Nation employees and enrolled Tribal Members, seconded by Tehassi Hill. Motion carried unanimously

**2/8/17 OBC:** Motion by Lisa Summers to accept the job descriptions as information, noting that the Business Committee will review and provide any recommendations back by February 14, 2017, seconded by Jennifer Webster. Motion carried unanimously

**3/1/17 LOC:** Motion by Tehassi Hill to add the Legal Resource Center Governing Documents to the Active Files List as high priority, and assign Brandon Stevens as the sponsor; seconded by Fawn Billie. Motion carried unanimously.



**4/5/17 LOC:** Motion by Jennifer Webster to add the Legal Resource Center Emergency law to the active files list as a high priority with Brandon Stevens as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

Motion by Jennifer Webster to remove the GTC Legal Resource Center Governing Documents item from the active files list; seconded by David P. Jordan. Motion carried unanimously.

**5/17/17 LOC:** Motion by Jennifer Webster to accept the emergency adoption packet for the Legal Resource Center law and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

**5/24/17 OBC:** Motion by Lisa Summers to adopt resolution # 05-24-17-A Legal Resource Center Emergency Law, seconded by Brandon Stevens. Motion carried unanimously.

**6/7/17 LOC:** Motion by David P. Jordan to approve the May 17, 2017 E-Poll regarding the Legal Resource Center; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- Approve the public meeting packet and forward the Legal Resource Center law to a public meeting to be held on Thursday, July 20, 2017.

NOTICE OF  
**PUBLIC MEETING**  
TO BE HELD  
**Thursday, July 20th at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

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

**TOPIC: LEGAL RESOURCE CENTER**

**This is a proposal to permanently adopt the Legal Resource Center Law (Law) which was adopted on an emergency basis pursuant to BC 05-24-17-A**

This Law will permanently establish a Legal Resource Center that will provide advice and representation to both members of the Nation and the Nation's employees in cases that are brought before the Judiciary. In addition, the Legal Resource Center will represent the Oneida General Tribal Council at General Tribal Council meetings. The Law establishes the Legal Resource Center and specifies its organizational structure which includes at least one supervising attorney and at least two full time advocates. The Law identifies the supervising attorney and advocates' roles, responsibilities, and qualifications. The Law also includes the process for discipline and removal of the supervising attorney and advocates.

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

**PUBLIC COMMENT PERIOD**  
**OPEN UNTIL July 27, 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@oneidanation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**



## Legal Resource Center Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: GTC Directive	SPONSOR: Brandon Stevens	DRAFTER: Robert J. Collins	ANALYST: Maureen Perkins
<b>Intent of Law</b>	To govern the Legal Resource Center (LRC) including the establishment of the center, restrictions, prohibitions, filling vacancies, establishing qualifications of Advocates and Supervising Attorneys, election and duties of Supervising Attorneys and Advocates, and detail the discipline and removal process.		
<b>Purpose</b>	The purpose of this law is to establish a Legal Resource Center to provide legal advice and representation to both Tribal members and employees in cases before the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings <i>[see 811.1-1]</i> .		
<b>Affected Entities</b>	Judiciary, Employees of the Nation, Tribal members, Supervising Attorney, Advocates, Oneida General Tribal Council (GTC), Oneida Business Committee (OBC)		
<b>Affected Legislation</b>	Removal Law, Professional Conduct for Attorneys and Advocates (in development), Judiciary Rules of Admission		
<b>Enforcement/Due Process</b>	Supervising Attorneys and Advocates are subject to disciplinary actions pursuant to the Professional Conduct for Attorneys and Advocates law and any other laws that govern discipline and/or removal of elected positions <i>[see 811.7-1]</i> . Supervising Attorneys and Advocates are subject to the Removal Law if they have their admission to practice before the Judiciary revoked or no longer qualifies for the position <i>[see 811.7-2]</i> .		
<b>Public Meeting</b>	This draft is presented for permanent adoption. A public meeting has not yet been held.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The proposed legislation was developed in response to a directive from the GTC. The draft is presented for permanent adoption. The law was adopted as emergency legislation on May 24, 2017 because there is not enough time to follow the regular legislative process to have the legislation in place by the July 8, 2017 General Election.
- B. An alternative to this legislation was considered. Early on, there was discussion about setting the office up as a Tribal corporate entity similar to a legal aid entity; however, based on the motion and the timelines it was decided that the office would be created via legislation similar to that of the Judiciary.
- C. The benefits to this legislation include the development of the framework as a governing document to implement the Legal Resource Center to fulfill the GTC directive to elect Advocates and a Supervising Attorney to represent Tribal members and employees before the Judiciary and to represent the GTC at GTC meetings.

### SECTION 3. CONSULTATION

A. The Oneida Business Committee and the Oneida Judiciary were consulted about the contents of the legislation.

B. The laws and rules pertaining to the Judiciary were consulted in the drafting of this legislation.

## SECTION 4. PROCESS

A. This law has been adopted as emergency legislation in order to have a governing document in place when the Legal Resource Center Advocates are elected at the general election on July 8, 2017. This is the correct legislative process in light of the fact that there isn't time to have this law in place by the election through the regular legislative process. The current draft is presented for permanent adoption.

B. This law was directed by the GTC on 11/14/2016 and added to the Active Files List as an emergency on 4/5/17. The law was adopted on an emergency basis on 5/24/17. The current draft is presented for permanent adoption.

## SECTION 5. CONTENTS OF THE LEGISLATION

A. This legislation establishes general provisions related to the Legal Resource Center *[see 811.4]*.

- Established the Legal Resource Center which will provide legal advice and representation to Tribal members and employees in cases brought before the Judiciary and to represent the GTC at GTC meetings *[see 811.4-1]*.
- Restrictions are provided which limit the actions of the Legal Resource Center *[see 811.4-2]*.
- The Supervising Attorney or Advocates elected by the GTC may not be elected or appointed to serve on any of the Nation's boards, committees or commissions or be otherwise employed, elected or appointed by the Nation *[see 811.4-3]*.
- Vacancies of the Supervising Attorney or Advocate positions may be appointed by the OBC until the next general election at which time the successor will be elected to a four (4) year term *[see 811.4-4]*.
- If there is no Supervising Attorney in office (there are no candidates on the July general election ballot for the Supervising Attorney position), then the Advocates shall assume duties related to the administration of the Legal Resource Center *[see 811.4-5]*.

B. The Supervising Attorney is detailed in section 811.5 including:

- Qualifications *[see 811.5-1]*:
  - There shall be at least one full-time elected Supervising Attorney with qualifications detailed in this section.
- The elected term is four (4) years *[see 811.5-2]*.
- Duties are detailed in section 811.5-3 and include:
  - providing legal services
  - maintaining ethical standards
  - setting up the Legal Resource Center including drafting any rules or standard operating procedures (SOP's)
  - supervising Advocates and staff
  - representing the Legal Resource Center at functions and meetings
  - managing the Legal Resource Center including budgeting and reporting
  - advising the GTC at GTC meetings



- providing training to Tribal members regarding the Oneida Code of Laws and the Judiciary's processes and procedures
  - any other duties prescribed by the Nation's laws and the Legal Resources Center's SOP's.
- C. The Advocates are detailed in section 811.6 including:
- Qualifications *[see 811.6-1]*:
    - There shall be at least two (2) full time Advocates elected by the Nation's membership with qualifications detailed in this section.
      - Admission to practice before the Judiciary includes standards that appear in section 811.6-1 and passing a background check, receiving a pardon or forgiveness from the Nation if the background check includes a conviction of any offense involving fraud or misrepresentation or any felony *[see Judiciary Rules of Admission Rule 1-2(A)]*.
  - The elected term is four (4) years *[see 811.6-2]*.
  - Duties are detailed in section 811.6-3 and include:
    - providing legal services
    - representing the LRC at functions as appropriate
    - maintaining ethical standards
    - attending continuous training
    - maintaining informed regarding applicable laws
    - other duties as assigned by the Supervising Attorney or the laws and rules of the Nation and the LRC's SOPs.
    - The Advocates are responsible for a portion of the Supervising Attorney's duties related to the administration of the Legal Resource Center if this position is vacant *[see 811.4-5]*.
- D. Discipline and Removal *[see 811.7]*.
- Supervising Attorneys and Advocates are subject to disciplinary actions according to the Professional Conduct for Attorneys and Advocates law (under development) and the Removal Law.
- E. Administrative Rulemaking Authority
- The Supervising Attorney shall promulgate rules establishing how clients apply for the Legal Resource Center's services *[see 811.5-3(l)]*. The Advocates shall assume this duty if no Supervising Attorney is in office *[see 811.4-5]*.
- F. The proposed legislation is written clearly and simply.

## SECTION 6. INTENT

- A. The purpose of this law is to provide the foundation for the LRC in order to guide the development of the office.
- B. This legislation clearly applies to the elected positions of the LRC including the Supervising Attorney and the Advocates.

## SECTION 7. EFFECT ON EXISTING LEGISLATION

- 99 A. This law does not impact or conflict with any existing laws of the Nation. The Supervising Attorney  
100 and Advocates shall act in accordance with all existing laws and rules of the Nation that establish  
101 guidelines for attorneys and advocates including:
- 102 • The Rules of Civil Procedure *[see Chapter 803]*
    - 103 ○ Establishes the role and responsibilities of attorneys and advocates in the civil  
104 proceedings
  - 105 • The Rules of Appellate Procedure *[see chapter 805]*
    - 106 ○ Establishes the role and responsibilities of attorneys and advocates in the appellate  
107 proceedings
  - 108 • Oneida Judiciary Rules of Evidence *[see Chapter 804]*
    - 109 ○ Establishes the attorney-client and advocate-client relationship
  - 110 • Divorce, Annulment, Legal Separation *[see Chapter 702]*
    - 111 ○ Establishes the role and responsibilities of an attorney or advocate representing a party in  
112 divorce, annulment, or legal separation proceedings.
  - 113 • Professional Conduct for Attorneys and Advocates law (under development)
    - 114 ○ Governs the conduct of attorneys and advocates admitted to practice law before the  
115 Judiciary.
  - 116 • Judiciary Rules of Admission *[See Judiciary Website]*
    - 117 ○ Establishes minimum requirements for admission to practice before the Judiciary and to  
118 regulate those admitted to practice.
- 119 B. Although it is not a conflict; this law establishes Advocates as elected by the membership, whereas the  
120 laws above do not consider advocates to be elected positions; rather non-attorneys admitted by the  
121 Judiciary to practice law as a representative or advisor to a party *[see Rules of Civil Procedure,*  
122 *803.3(a)]*.

## 124 SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR 125 OBLIGATIONS

- 126 A. This legislation does not impact existing rights, privileges, benefits or obligations.
- 127 B. Due process is addressed through the Professional Conduct for Attorneys and Advocates law (in  
128 development) regarding disciplinary action and the Removal Law regarding elected Supervising  
129 Attorneys or Advocates who have their admission to practice before the Judiciary revoked or no longer  
130 qualify to serve as a Supervising Attorney or Advocate *[see 811.7]*.
- 131 C. The Judiciary Rules of Admission details the revocation process should an attorney or advocate violate  
132 any of the rules of admission and no long qualify to practice before the Judiciary *[see Judiciary Rules*  
133 *of Admission on the Judiciary website]*.
- 134 D. The Supervising Attorney and the Advocates are elected to four year terms. The first election for the  
135 Advocates will be for staggered terms with the Advocate with the highest votes getting a term of four  
136 (4) years and the candidate with the next highest votes with a term of three (3) years *[see emergency*  
137 *adopting Resolution]*.
- 138 E. This legislation will not affect any existing legislation or any processes currently in place.

## 140 SECTION 9. ENFORCEMENT

- 141 A. The Professional Conduct for Attorneys and Advocates law (currently in development) will establish:

- the requirement of competent representation of clients
- the scope of representation, promptness of representation
- the required nature of communication with clients
- any legal fees
- the confidential nature of representation
- address any conflicts of interest
- duties to former clients
- restrictions for former judges, mediators, or peacemakers
- representing clients with diminished capacity
- declining or terminating representation
- duties to perspective clients
- the role as advisor
- candor and impartiality toward the Judiciary
- fairness to opposing party and counsel
- counsel as witness
- admittance to practice and disciplinary matters
- misconduct
- civil actions for negligence or violation of duty
- disciplinary actions

- B.** The GTC will enforce this law in accordance with the Removal Law which governs the removal of elected officials [*see Removal Law, 104.4-1*].

## **SECTION 10. ACCOUNTABILITY**

- A.** The Supervising Attorney and the Advocates are elected positions who are accountable directly to the GTC.
- B.** The Legal Resource Center will report to GTC on an Annual and Semi-Annual schedule.
- C.** These reports are available to Tribal members at GTC meetings, on the Members Only website, or through the Secretary's Office.

## **SECTION 11. OTHER CONSIDERATIONS**

- A.** Section 109.9-5 of the Legislative Procedures Act authorizes the OBC to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process [*see Legislative Procedures Act, 109.9-5(b)*]. This law was adopted by emergency resolution on May 25, 2017 because there would not be time to implement the law through the standard legislative process prior to the Nation's general election on July 8, 2017.
- The emergency adoption of this law will remain in effect for up to six months, with the possibility of a one-time extension of up to an additional six months [*see Legislative Procedures Act, 109.9-5(b)*].
- B.** There are no candidates for the Supervising Attorney position. In this case the elected Advocates will be responsible for the implementation of this law and establishing and administering the Legal Resource Center [*see 811.4-5*].

184 C. The emergency adopting resolution for this legislation includes a transition plan which includes  
185 staggered terms for the Advocate positions as noted above, and an official opening date for the Legal  
186 Resource Center of February 1, 2018 to allow the elected Advocates time to create the rules and  
187 SOP's necessary to run the LRC [*see emergency adopting resolution*].  
188

189

## **Title 8. Judiciary – Chapter 811**

### **LEGAL RESOURCE CENTER**

811.1. Purpose and Policy  
811.2. Adoption, Amendment, Repeal  
811.3. Definitions  
811.4. General Provisions

811.5. Supervising Attorney  
811.6. Advocates  
811.7. Discipline and Removal

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#### **811.1. Purpose and Policy**

811.1-1. *Purpose.* The purpose of this law is to establish a Legal Resource Center to provide legal advice and representation to both Tribal members and employees in cases before the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings.

811.1-2. *Policy.* It is the policy of the Nation to provide legal assistance to its members and employees in an effort to protect individual rights.

#### **811.2. Adoption, Amendment, Repeal**

811.2-1. This law was adopted by the Oneida Business Committee by emergency resolution BC-05-24-17-A and permanently adopted by resolution BC-\_\_-\_\_-\_\_.

811.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

811.2-3. 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.

811.2-4. 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.

811.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **811.3. Definitions**

811.3-1. 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) “Advocate” means a person elected by the membership who is a non-attorney admitted to practice law before the Judiciary and presented to the Court as the representative or advisor to a party.

(b) “Employee” means any individual hired by the Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, elected/appointed officials, political appointees, and contracted persons.

(c) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court, and Appellate Court.

(d) “Nation” means the Oneida Nation.

(e) “Rule” means a set of requirements enacted by an authorized agency in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret, and/or enforce this law.

(f) “Supervising Attorney” means a person elected by the membership who is trained and licensed to represent another person in Court, to prepare documents, and to give advice or counsel on matters of law.



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

#### **811.4. General Provisions**

811.4-1. *Establishment.* There is hereby established a Legal Resource Center, which shall provide legal advice and representation to Tribal members and employees in cases brought forth in the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings.

811.4-2. *Restrictions.* The Legal Resource Center shall not:

- (a) Accept a case that is determined to be frivolous or without legal merit. Whenever the Supervising Attorney or Advocate makes such a determination in a case where a notice of representation has been filed or an appearance has been made, he or she shall motion the court for withdrawal;
- (b) Accept a case when there is a conflict of interest pursuant to the Professional Conduct for Attorneys and Advocates law;
- (c) Appear in any case before the Judiciary prior to the client applying for the services of the Legal Resource Center; or
- (d) Appear in any case before the Judiciary where the Supervising Attorney or Advocate does not meet the qualifications established by law.

811.4-3. *Prohibitions.* While serving a term of office, no Supervising Attorney or Advocate may:

- (a) Be elected or appointed to serve on any of the Nation’s boards, committees or commissions; or
- (b) Be otherwise employed, elected, or appointed by the Nation.

811.4-4. *Vacancies.* If a Supervising Attorney or Advocate dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive days, is declared incompetent by a court of competent jurisdiction, or there are no candidates for the position in the election, the position shall be declared vacant by the Oneida Business Committee and the Oneida Business Committee may appoint a successor to fill the position until the next general election at which time a successor will be elected to a four (4) year term.

811.4-5. *Assumption of Duties.* If there is no Supervising Attorney in office, then the Advocates shall share the duties promulgated by sections 811.5-3(b), (d), (e), (f), (g), (h), (l), (m), and (o).

#### **811.5. Supervising Attorney**

811.5-1. *Qualifications.* There shall be at least one (1) full-time Supervising Attorney of the Legal Resource Center. This position shall be an elected position and shall have the following qualifications:

- (a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date of the election;
- (b) have a juris doctor (J.D.) degree from an accredited law school;
- (c) have at least two (2) years of previous experience practicing law and/or equivalent combination of education and experience;
- (d) be licensed to practice law in the State of Wisconsin and in good standing; and
- (e) be admitted to practice before the Judiciary.

811.5-2. *Election.* The Supervising Attorney shall be elected by the Nation’s membership to a term of four (4) years.

86 811.5-3. *Duties.* The Supervising Attorney shall have the duty of administering the Legal  
87 Resource Center, which shall include the following:

- 88 (a) provide legal services;
- 89 (b) oversee the assignment of cases to the Advocates;
- 90 (c) supervise the Advocates;
- 91 (d) supervise any administrative personnel;
- 92 (e) establish standards concerning the training and continued education for the
- 93 Advocates;
- 94 (f) manage the operation, activities, policies, and procedures of the Legal Resource
- 95 Center;
- 96 (g) submit an annual budget for consideration by the Oneida General Tribal Council;
- 97 (h) provide annual and semi-annual reports to the Oneida General Tribal Council;
- 98 (i) represent the Legal Resource Center at functions and meetings where appropriate;
- 99 (j) maintain the integrity of the legal process by acting ethically and honestly both in
- 100 private and in public and maintaining the strictest of confidentiality;
- 101 (k) remain informed about changes to Tribal, state and federal laws, and state and federal
- 102 court and administrative hearing body decisions that may impact Indian country;
- 103 (l) develop standard operating procedures to ensure confidentiality and accommodate the
- 104 handling of potential conflicts of interest by the Legal Resource Center (e.g. should the
- 105 Legal Resource Center represent both parties to an action, written informed consent shall
- 106 be obtained by both parties prior to the commencement of representation). The
- 107 procedures shall not conflict with existing law, including the Professional Conduct for
- 108 Attorneys and Advocates law;
- 109 (m) promulgate rules establishing how clients apply for the Legal Resource Center's
- 110 services;
- 111 (n) advise the Oneida General Tribal Council during General Tribal Council meetings;
- 112 (o) provide bi-annual training starting in FY 2018 that is open to all Tribal members and
- 113 includes, but is not limited to, training on the Oneida Code of Laws and the Judiciary's
- 114 processes and procedures; and
- 115 (p) other duties as prescribed by the Nation's laws and the Legal Resource Center's
- 116 standard operating procedures.
- 117

#### 118 **811.6. Advocates**

119 811.6-1. *Qualifications.* There shall be at least two (2) full-time Advocates in the Legal  
120 Resource Center. The Advocates shall be elected by the Nation's membership and have the  
121 following qualifications:

- 122 (a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date
- 123 of the election;
- 124 (b) have one (1) of the following from an accredited institution:
  - 125 (1) a juris doctor degree;
  - 126 (2) a doctor of philosophy degree;
  - 127 (3) a master's degree; or
  - 128 (4) a bachelor's degree or associate's degree in one of the following fields of
  - 129 study, provided that a degree in a similar field of study shall also apply:
    - 130 (A) Criminal Justice
    - 131 (B) Education
    - 132 (C) Political Science (including Government, Politics or Public Policy)

- (D) Human Rights
- (E) Journalism
- (F) Legal Studies
- (G) Native American Studies
- (H) Psychology
- (I) Sociology
- (J) Public Administration
- (K) History
- (L) Business Administration
- (M) Economics or Finance
- (N) Philosophy
- (O) Judicial Studies
- (P) Paralegal Studies
- (Q) Family Law

- (c) have at least two (2) years of experience in litigation, negotiation, or advocacy and/or equivalent combination of education and experience; and
- (d) be admitted to practice before the Judiciary.

811.6-2. *Election.* Advocates shall be elected by the Nation's membership to a term of four (4) years.

811.6-3. *Duties.* Advocates shall represent clients in accordance with the Professional Conduct for Attorneys and Advocates law. In addition to all other duties imposed by this law and other laws or rules of the Nation, advocates shall:

- (a) provide legal services;
- (b) complete assignments given by the Supervising Attorney or pursuant to section 811.4-5;
- (c) represent the Legal Resource Center at functions and meetings where appropriate;
- (d) maintain the integrity of the legal process by acting ethically and honestly both in private and in public and maintaining the strictest of confidentiality;
- (e) attend training and continued education;
- (f) remain informed about changes to Tribal, state and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country; and
- (g) other duties as established by the Supervising Attorney or pursuant to section 811.4-5, the Nation's laws and rules, and the Legal Resource Center's standard operating procedures.

### **811.7. Discipline and Removal**

811.7-1. Supervising Attorneys and Advocates shall be subject to disciplinary actions pursuant to the Professional Conduct for Attorneys and Advocates law and any other laws that govern discipline and/or removal of elected positions.

811.7-2. Supervising Attorneys and Advocates shall at all times be subject to removal. When a Supervising Attorney or Advocate has their admission to practice before the Judiciary revoked or no longer qualifies to serve as a Supervising Attorney or Advocate, removal proceedings shall be commenced in accordance with the Removal Law.

*End.*

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Adopted – BC-05-24-17-A (Emergency)

Adopted – BC-



## Legislative Operating Committee June 21, 2017

# Landlord-Tenant Permanent Amendments

<b>Submission Date:</b> 12/21/16	<b>Public Meeting:</b> 6/5/17
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> 01/25/17 <b>Expires:</b> 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.

**2/1/17 LOC:** Motion by Jennifer Webster to direct the Finance Department to complete a fiscal impact statement by February 15, 2017 and to approve the public meeting packet, including the fiscal impact statement when completed, and forward the Landlord-Tenant law amendments to a public meeting to be held on March 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

**3/1/17 LOC:** Motion by Tehassi Hill to accept the February 22, 2017 e-poll which cancelled the March 2, 2017 Landlord-Tenant Public Meeting into the record; seconded by Fawn Billie. Motion carried unanimously.

**4/19/17 LOC:** Motion by Jennifer Webster to accept the Landlord-Tenant permanent amendments draft and request a legislative analysis due back May 3, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/3/17 LOC:** Motion by Tehassi Hill to approve the public meeting packet and forward the Landlord-Tenant permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie. Motion carried unanimously.

**6/5/17:** Public meeting held.

### Next Steps:

- Accept the public meeting comments.
- Approve the Landlord Tenant permanent amendments and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)  
FROM: Krystal L. John, Oneida Law Office Staff Attorney  
DATE: June 21, 2017  
RE: Landlord-Tenant Law Amendments: Public Meeting Comment Review

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On June 5, 2017, a public meeting was held regarding the proposed Landlord-Tenant Law Amendments (“the Amendments”). This memorandum is submitted as a review of the oral comments received at the public meeting; there were no written comments submitted during the public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

On June 15, 2017 the Legislative Operating Committee held a work meeting to review and consider the public comments.

#### **Comment 1 – Oneida Housing Authority Rules:**

611.4-1. Available Rental Programs. Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and 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:

- (a) Elder tribal members;
- (b) Low-income Oneida tribal members and families; and
- (c) Tribal members in general.

**Ed Delgado (oral):** And the final one is, has to do with the rules. I found that the rules submitted by Housing for low income families seemed to be very, very discriminatory against people who are poor, number one. It makes the law really come down on people who are poor. Any member of the family, maybe they have a teenage son or daughter and if they’re caught, have a drug conviction for a minor marijuana offense, the whole family gets affected or that teenager may have to leave the family. That’s overly abusive or overly restrictive or whatever you want to call it. It breaks up a family. It might be for something, it is for something minor. I asked LOC to consider what was being passed in that regulatory rule where they make no differentiation between a minor drug offense and a drug dealer. They both, as far as Housing is concerned, are punished equally and that’s not right. I mean, if you go almost anywhere, if a family member is busted for a minor offense, the whole family doesn’t usually have to do it. That was instituted here on the Oneida Reservation and that’s instituted in some of the worst ghettos in the country, I can’t name then but I’m imagining some of the worst ghettos, we don’t have that here and the families shouldn’t have to endure that kind of punishment over something that is unreasonable and overly intrusive. We should care about busting drug dealers, but you should not break up a family and make an Indian family leave this reservation just because somebody has a minor drug conviction. You did not differentiate between a minor and a major



drug offense in those rules passed by Housing and you should have. That's far beyond the restrictions put out by HUD. HUD does not make, you can't blame that on HUD, you can't blame that on Federal regulations, you can only blame it on the LOC and the BC for passing rules that hurt their people unnecessarily and that's the last one, my last comment. Thank you.

### ***Response***

The Oneida Housing Authority's rental program rules do not contain any requirements related to evictions and terminations and rather focused on eligibility requirements for entering the housing program. The authority to evict and terminate the rental agreement stems from the Eviction and Termination law and, prior to the adoption of that law, OHA's rental agreement. OHA maintains a commitment to healthy and safe neighborhoods by setting standards that engaging in criminal activities is not acceptable behavior for OHA's tenants because it causes risk to others' healthy and safe enjoyment of their OHA premises. This commitment to healthy and safe neighborhoods is part of OHA's responsibility to the Nation but is also required to be incorporated into our Indian Housing Plan by NAHASDA in order to remain eligible for federal funding.

While OHA did have a One Strike, You're Out policy related to criminal activities, that is no longer a part of the rental agreement as the rental agreement now defers to the Eviction and Termination law, which discusses eviction and termination for violation of a law in section 610.5-3(c). That provision allows for eviction and termination based on an alleged violation of law (criminal or otherwise), but leaves discretion to the landlord to decide, based on the totality of the circumstances, whether eviction and termination is required to maintain a health and safe neighborhood. That being said, it is my understanding that OHA will continue to enforce a low tolerance for tenant's engaging in criminal activities while residing in OHA properties, again for the health and safety of the neighboring community members.

There are no recommended revisions based on this comment as the comment does not apply to the Landlord-Tenant law or corresponding rules, rather the comment applies to the Eviction and Termination law, which was not a topic of discussion at this public meeting.

### ***LOC Consideration***

The LOC agrees with the attorney's explanation that this comment would be better discussed under the Eviction and Termination law but would like to emphasize that the One Strike, You're Policy has been replaced with the Eviction and Termination law and an updated rental agreement. The LOC further encourages the commenter to discuss the many changes to the low-income rental program that have been recently implemented with OHA management if he has any on-going considerations.

### **Comment 2 – General Comment of Support for Eligibility Requirements:**

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions: ... (f) Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:

- (1) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; but
- (2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

**Ed Delgado (oral):** In reading this first part, it started out really good, most of it is reasonable. I really like the part where for rent-to-own we don't consider outside evictions like in Green Bay, you just consider Tribal evictions and utility bills under \$200.00 gives everybody a pretty good chance and erases any record you might have off the reservation, the way it should be. Your life out there should not reflect your life on this Oneida Indian reservation, I believe.

### ***Response***

The commenter has neither asked a question nor requested revisions, therefore no attorney response is required.

### ***LOC Consideration***

The LOC appreciates the commenter's show of support for these newly added provisions of the law.

### **Comment 3 – Tenant Liability for Causes Outside of the Tenants Control:**

611.5-2. *Requirements of Rental Agreements and Terminations.* (b) Any provision of a rental agreement that does any of the following is void and unenforceable. ... (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 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

**Ed Delgado (oral):** I did have a question on Line 151 or 52, I can't really see it. Imposes liability on the tenant for any of the following and it says personal injury arising from causes clearly beyond the tenant's control. So, I take that to understand, I understand that the tenants living in the house and something happens that is not under his or her control. But there are instances probably where a tenant may report that to Housing, a structural damage, maybe there's something loose on the ceiling and then it's not addressed by the Housing Authority or the landlord and then that falls on somebody's head. It's beyond the tenant's control, but the tenant is liable for that. Maybe it's addressed later on. I looked for it later on in the law, I couldn't find it, but maybe someone with a trained, with more time can find it. But on its own, by itself, it seems like it puts the tenant at a disadvantage, having reported something that could be dangerous and then it not being acted upon and then it causes an injury. So I had a concern there.

**Krystal John (oral):** So I just wanted to clarify that on Line 151 where he is referring to imposing liability on the tenant, it refers back to Subsection B and that's actually not permitted, so it reads: "Any provision of a rental agreement that does any of the following is void and unenforceable." So it would be an unenforceable agreement in the event that it imposed liability on the tenant for personal injury arising from causes beyond the tenant's control and the rest of them will be covered in the public comment review.

### ***Response***

There are no recommended revisions based on this comment. As explained at the public meeting, the section the commenter was reading from referenced back to subsection (b) which clarifies that any agreement containing a provision as described in lines 151 and 152 is not permitted and would void and therefore unenforceable.

### ***LOC Consideration***

The response, both oral and written, adequately addressed the commenter's concern and the LOC agrees that no revisions are necessary based on this comment.

## **Comment 4 – Death of a Tribal Member Tenant:**

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

**Ed Delgado (oral):** The other part was if the deceased, Line 325, 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either ninety (90) days from the date of the person's death or there's another one there. I really don't understand it, but it does seem like if there's a tribal family and the Tribal member dies and you've been paying on this rent-to-own 10-15 years and then he dies or she dies, the non-Tribal member still may have a family there, having paid into this rent-to-own for a good part of their family's history and then all of a sudden they're asked to leave because the Tribal member has died. It seems wrong no matter what race you are. You suffered, you sacrificed, you had a Tribal member who was doing this to provide for his or her family and then he or she dies and this family is mistreated after he or she dies by having to leave within 90 days. It just does not seem like a good thing to do, unless I'm misreading it.

### ***Response***

The commenter has correctly identified that the provision related to the death of a Tribal member tenant applies equally the same to a tenant in the low-income rental program as it does to a tenant in the low-income rent-to-own program. The reason is because only Tribal members may enter residential land leases and a residential land lease is required at the time the home conveys from a rental property to tenant ownership.

The difference between the rent-to-own program offered through OHA and the mortgage program offered by Division of Land Management, is that the residential lease is entered at the same time as the mortgage, so the mortgagors will have been eligible for and received a valid residential lease right away, then the residential lease provides terms which allows the non-Tribal co-mortgagor to remain on leased premises, which may include increased lease payment requirements. On the other hand, under the rent-to-own program, the tenants have no ownership interest in the premises until the rental agreement is satisfied (which could take anywhere from 5-30 years) and the home is conveyed to tenant ownership. In this program, the tenants do not require a residential lease until the time of conveyance. So, if the tribal member tenant passes away while still under the rental agreement, the household becomes ineligible to enter a residential land lease and therefore their rent-to-own agreement must be terminated. This risk is communicated to all tenants entering the rent-to-own program. Further, in the event that a household does become ineligible to remain in the rent-to-own program, whether as a result of the death of a Tribal member or otherwise, OHA does pay out any equity the tenants may have accrued in the property upon termination of the rent-to-own agreement. Also, where a tenant becomes ineligible for the rent-to-own program, but remains eligible for other housing options offered by the Nation, OHA will work with the tenant to transition into a new program.

In my review of this section to respond to this comment I did notice an unintended consequence of including the rent-to-own program in this law as part of the emergency amendments without updating this section. This relevant sentence currently reads, “If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant’s death.” This sentence worked when it applied only to the regular rental programs, for which the agreement is limited to one year terms, but as applied to the rent-to-own program, for which the agreement may span 30 years, it does not. It does not work for the rent-to-own agreements because it would allow the remaining tenant to remain in the property and continue paying into the rent-to-own agreement all the way up to conveyance, but they would still be ineligible for conveyance because they are not eligible for the residential land lease, which sets the tenant up for failure. I recommend revising the language to put the rent-to-own tenant on the same footing as the rental program tenants by replacing the highlighted sentence with the following:

If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises as follows:

(a) If subject to a standard rental agreement (i.e. not on a rent-to-basis), for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant’s death. Any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension.  
~~(a)~~(b) If the rental agreement was on a rent-to-own basis, a maximum of one (1) year from the date of the Tribal member tenant’s death. In such circumstances the rent-to-own agreement shall be terminated upon the tenant’s ineligibility to remain in the rent-to-own program and a new rental agreement, which may be for a limited term, shall be executed.

Again, OHA does already pay out any accrued equity when a rent-to-own agreement is terminated, but the LOC may want to consider incorporating this current practice into the law. If

incorporating, I would do so by adding the following sentence to section 611.9-4(b) per my recommendations above: Where a landlord is so terminating a rental agreement entered on a rent-to-own basis, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

### ***LOC Consideration***

While the LOC recognizes the tragic impact the death of a family member may have on a household, the LOC also accepts the explanation as provided by the attorney and reaffirms the limitation that residential land leases are reserved for Tribal members only. Further, the LOC accepts the attorney's recommendation and would like to include the additional language proposed to ensure that OHA's current equity pay out policy is captured in the law for the protection of current and future rent-to-own tenants.



**Title 7. Property - Chapter 611**  
**LANDLORD-TENANT**  
**Tsi> Yuhw<tsyaw@ku Aolihw@ke**  
*where it bound to the earth - issues*

611.1.	Purpose and Policy	611.6.	Rights and Duties of Landlords and Tenants
611.2.	Adoption, Amendment, Repeal	611.7.	Domestic Abuse Protections
611.3.	Definitions	611.8.	Sex Offender Registry
611.4.	Rental Programs	611.9.	Termination of Tenancy at Death of Tenant
611.5.	Rental Agreement Documents	611.10.	Landlord or Tenant Actions

**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.<sup>1</sup>

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

<sup>1</sup> 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.

(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

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

(j) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

#### **611.4. Rental Programs**

**611.4-1. Available Rental Programs.** Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and 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:

(a) Elder tribal members;

(b) Low-income Oneida tribal members and families; and

(c) Tribal members in general.<sup>2</sup>

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<sup>2</sup> **Ed Delgado – Written Comment:** And the final one is, has to do with the rules. I found that the rules submitted by Housing for low income families seemed to be very, very discriminatory against people who are poor, number one. It makes the law really come down on people who are poor. Any member of the family, maybe they have a teenage son or daughter and if they’re caught, have a drug conviction for a minor marijuana offense, the whole family gets affected or that teenager may have to leave the family. That’s overly abusive or overly restrictive or whatever you want to call it. It breaks up a family. It might be for something, it is for something minor. I asked LOC to consider what was being passed in that regulatory rule where they make no differentiation between a minor drug offense and a drug dealer. They both, as far as Housing is concerned, are punished equally and that’s not right. I mean, if you go almost anywhere, if a family member is busted for a minor offense, the whole family doesn’t usually have to do it. That was instituted here on the Oneida Reservation and that’s instituted in some of the worst ghettos in the country, I can’t name then but I’m imagining some of the worst ghettos, we don’t have that here and the families shouldn’t have to endure that kind of punishment over something that is unreasonable and overly intrusive. We should care about busting drug dealers, but you should not break up a family and make an Indian family leave this reservation just because somebody has a minor drug conviction. You did not differentiate between a minor and a major drug offense in those rules passed by Housing and you should have. That’s far beyond the restrictions put out by HUD. HUD does not make, you can’t blame that on HUD, you can’t blame that on Federal

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

- (a) Be eighteen (18) years of age at the time of the application;
- (b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
- (c) Meet the local governments' laws' requirements regarding residency restrictions for convicted sex offenders;
- (d) Meet the income requirements for entering the rental agreement as determined by the rental program's governing rules;
- (e) Not hold a residential lease with the Nation; and
- (f) Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:
  - (1) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; but-
  - (2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).<sup>3</sup>

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

## **611.5. Rental Agreement Documents**

611.5-1. *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.

611.5-2. *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;

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regulations, you can only blame it on the LOC and the BC for passing rules that hurt their people unnecessarily and that's the last one, my last comment. Thank you.

<sup>3</sup> Edward Delgado – Oral Comment: In reading this first part, it started out really good, most of it is reasonable. I really like the part where for rent-to-own we don't consider outside evictions like in Green Bay, you just consider Tribal evictions and utility bills under \$200.00 gives everybody a pretty good chance and erases any record you might have off the reservation, the way it should be. Your life out there should not reflect your life on this Oneida Indian reservation, I believe.

- 118 (5) State that nothing in the agreement may be considered a waiver of the  
119 Nation's sovereign immunity, provided that tenants may seek enforcement of a  
120 rental agreement or dispute an action taken pursuant to a rental agreement with  
121 the Oneida Judiciary; and  
122 (6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking  
123 use/occupancy of the premises;  
124 (A) The rental agreement is not required to be signed by all adults  
125 using/occupying the premises, provided that the rights and responsibilities  
126 contained in the rental agreement do not extend to persons that are not  
127 named as tenants in the rental agreement.  
128 (B) Unless legally separated, if a tenant(s) is married, the landlord shall  
129 require that each spouse sign the rental agreement.  
130 (b) Any provision of a rental agreement that does any of the following is void and  
131 unenforceable.  
132 (1) Allows a landlord to do or threaten to do any of the following because a tenant  
133 has contacted an entity for law enforcement services, health services or safety  
134 services:  
135 (A) Increase rent;  
136 (B) Decrease services;  
137 (C) Bring an action for eviction pursuant to the Eviction and Termination  
138 law; and/or  
139 (D) Refuse to renew a rental agreement.  
140 (2) Except as otherwise provided in this law in regards to domestic abuse,  
141 authorizes the eviction or exclusion of a tenant from the premises other than  
142 through the process described in the Eviction and Termination law.  
143 (3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in  
144 any legal action or dispute arising under the rental agreement except as supported  
145 by a court order.  
146 (4) States that the landlord is not liable for property damage or personal injury  
147 caused by negligent acts or omissions of the landlord. This subsection does not  
148 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed  
149 by a tenant under a rental agreement or other written agreement between the  
150 landlord and the tenant.  
151 (5) Imposes liability on the tenant for any of the following:  
152 (A) Personal injury arising from causes clearly beyond the tenant's control.  
153 (B) Property damage caused by natural disasters or by persons other than  
154 the tenant or the tenant's guests or invitees. This subsection does not  
155 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or  
156 assumed by a tenant under a rental agreement or other written agreement  
157 between the landlord and the tenant.<sup>4</sup>

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<sup>4</sup> **Ed Delgado – Written Comment:** I did have a question on Line 151 or 52, I can't really see it. Imposes liability on the tenant for any of the following and it says personal injury arising from causes clearly beyond the tenant's control. So, I take that to understand, I understand that the tenants living in the house and something happens that is not under his or her control. But there are instances probably where a tenant may report that to Housing, a structural damage, maybe there's something loose on the ceiling and then it's not addressed by the Housing Authority or the

(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.

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

#### **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. 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.

611.6-2. *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.

611.6-3. *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 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

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landlord and then that falls on somebody's head. It's beyond the tenant's control, but the tenant is liable for that. Maybe it's addressed later on. I looked for it later on in the law, I couldn't find it, but maybe someone with a trained, with more time can find it. But on its own, by itself, it seems like it puts the tenant at a disadvantage, having reported something that could be dangerous and then it not being acted upon and then it causes an injury. So I had a concern there.

**Krystal John – Oral Comment:** So I just wanted to clarify that on Line 151 where he is referring to imposing liability on the tenant, it refers back to Subsection B and that's actually not permitted, so it reads: "Any provision of a rental agreement that does any of the following is void and unenforceable." So it would be an unenforceable agreement in the event that it imposed liability on the tenant for personal injury arising from causes beyond the tenant's control and the rest of them will be covered in the public comment review.



(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

*(b) Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

*(c) Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

## **611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

(a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

(d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;

(e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;

(f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or

(g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

#### **611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

#### **611.9. Termination of Tenancy at Death of Tenant**

611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

(a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;

(b) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the

Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.<sup>5</sup>

**611.10. Landlord or Tenant Actions**

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

*End.*

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Adopted – BC-10-12-16-C  
Emergency Amended – BC-01-25-17-C

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<sup>5</sup> The other part was if the deceased, Line 325, 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either ninety (90) days from the date of the person's death or there's another one there. I really don't understand it, but it does seem like if there's a tribal family and the Tribal member dies and you've been paying on this rent-to-own 10-15 years and then he dies or she dies, the non-Tribal member still may have a family there, having paid into this rent-to-own for a good part of their family's history and then all of a sudden they're asked to leave because the Tribal member has died. It seems wrong no matter what race you are. You suffered, you sacrificed, you had a Tribal member who was doing this to provide for his or her family and then he or she dies and this family is mistreated after he or she dies by having to leave within 90 days. It just does not seem like a good thing to do, unless I'm misreading it.



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Landlord Tenant Amendments**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
June 5, 2017, 12:15 p.m.

**Present:** Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candice Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

**Name of LOC Member Chairing Meeting:** Brandon Yellowbird-Stevens

In attendance from the LOC is: Jennifer Webster and David Jordan

This public meeting for Landlord-Tenant Amendments, it is 12:24 p.m.

This is a proposal to amend the existing 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 is included.
- Include additional limitations on minimum rental eligibility requirements for income-based rental programs.

Ed Delgado is signed up to speak to give testimony. All right, you have the floor.

Edward Delgado: In reading this first part, it started out really good, most of it is reasonable. I really like the part where for rent-to-own we don’t consider outside evictions like in Green Bay, you just consider Tribal evictions and utility bills under \$200.00 gives everybody a pretty good chance and erases any record you might have off the reservation, the way it should be. Your life out there should not reflect your life on this Oneida Indian reservation, I believe.

I did have a question on Line 151 or 52, I can’t really see it. Imposes liability on the tenant for any of the following and it says personal injury arising from causes clearly beyond the tenant’s control. So, I take that to understand, I understand that the tenants living in the house and something happens that is not under his or her control. But there are instances probably where a tenant may report that to Housing, a structural damage, maybe there’s something loose on the ceiling and then it’s not addressed by the Housing Authority or the landlord and then that falls on somebody’s head. It’s beyond the tenant’s control, but the tenant is liable for that. Maybe it’s addressed later on. I looked for it later on in the law, I couldn’t find it, but maybe someone with a trained, with more time can find it. But on its own, by itself, it seems like it puts the tenant at a disadvantage, having reported something that could be dangerous and then it not being acted upon and then it causes an injury. So I had a concern there.



The other part was if the deceased, Line 325, 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either ninety (90) days from the date of the person's death or there's another one there. I really don't understand it, but it does seem like if there's a tribal family and the Tribal member dies and you've been paying on this rent-to-own 10-15 years and then he dies or she dies, the non-Tribal member still may have a family there, having paid into this rent-to-own for a good part of their family's history and then all of a sudden they're asked to leave because the Tribal member has died. It seems wrong no matter what race you are. You suffered, you sacrificed, you had a Tribal member who was doing this to provide for his or her family and then he or she dies and this family is mistreated after he or she dies by having to leave within 90 days. It just does not seem like a good thing to do, unless I'm misreading it.

And the final one is, has to do with the rules. I found that the rules submitted by Housing for low income families seemed to be very, very discriminatory against people who are poor, number one. It makes the law really come down on people who are poor. Any member of the family, maybe they have a teenage son or daughter and if they're caught, have a drug conviction for a minor marijuana offense, the whole family gets affected or that teenager may have to leave the family. That's overly abusive or overly restrictive or whatever you want to call it. It breaks up a family. It might be for something, it is for something minor. I asked LOC to consider what was being passed in that regulatory rule where they make no differentiation between a minor drug offense and a drug dealer. They both, as far as Housing is concerned, are punished equally and that's not right. I mean, if you go almost anywhere, if a family member is busted for a minor offense, the whole family doesn't usually have to do it. That was instituted here on the Oneida Reservation and that's instituted in some of the worst ghettos in the country, I can't name then but I'm imagining some of the worst ghettos, we don't have that here and the families shouldn't have to endure that kind of punishment over something that is unreasonable and overly intrusive. We should care about busting drug dealers, but you should not break up a family and make an Indian family leave this reservation just because somebody has a minor drug conviction. You did not differentiate between a minor and a major drug offense in those rules passed by Housing and you should have. That's far beyond the restrictions put out by HUD. HUD does not make, you can't blame that on HUD, you can't blame that on Federal regulations, you can only blame it on the LOC and the BC for passing rules that hurt their people unnecessarily and that's the last one, my last comment. Thank you.

Brandon: Are you going to provide comment or an answer?

Krystal John: I'm going to provide just one clarification and I will leave the rest to the public comment response.

Brandon: Okay.

Krystal John: So I just wanted to clarify that on Line 151 where he is referring to imposing liability on the tenant, it refers back to Subsection B and that's actually not permitted, so it reads: "Any provision of a rental agreement that does any of the following is void and unenforceable." So it would be an unenforceable agreement in the event that it imposed liability on the tenant for

personal injury arising from causes beyond the tenant's control and the rest of them will be covered in the public comment review.

Brandon: Thank you. Is there anyone else who would like to provide comment? Okay, seeing none, I will close the public meeting at 12:33 p.m. and thank you for joining us today for the Vehicle Driver Certification and Fleet Management policies amendments, Audit Law Amendments, Conflict of Interest Amendments, Domestic Animals Amendments and Landlord Tenant Amendments.

Again, written comments may be submitted until the close of business on June 12, 2017. Thank you.

**Add name of LOC member closing meeting:** Brandon Yellowbird-Stevens

**-End of Meeting-**



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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  
DATE: June 28, 2017  
RE: Landlord-Tenant Law Amendments

Please find the following attached backup documentation for your consideration of the Landlord-Tenant law:

1. Resolution: Landlord-Tenant (Law) Amendments
2. Statement of Effect: Landlord-Tenant (Law) Amendments
3. Landlord-Tenant (Law) Amendments Legislative Analysis
4. Landlord-Tenant (Law) Amendments Clean Draft
5. Landlord-Tenant (Law) Amendments Redline to Current Draft
6. Landlord-Tenant (Law) Amendments Fiscal Impact Statement

#### *Overview*

This resolution adopts amendments to the Landlord-Tenant law which:

- Include rent-to-own agreements in the definition of rental agreements by allowing them to extend beyond 1 year terms when entered on a rent-to-own basis [see 611.3-1(e)];
- Provides limits on what previous rental history and/or rental related debt may be considered when considering tenants' applications [see 611.4-2(f)(1) and (2)]; and
- Clarifies how the section related to termination of tenancy upon death of tenant applies to tenants in the rent-to-own program [see 611.9-4].

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. Those comments were considered by the Legislative Operating Committee (LOC) at a June 15, 2017 LOC work meeting and were thereafter formally accepted on the record at the June 21, 2017 LOC meeting. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Thursday, July 13, 2017.

#### **Requested Action**

Approve the Resolution: Landlord-Tenant (Law) Amendments

**BC Resolution \_\_\_\_\_**  
*Landlord-Tenant (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 Oneida Business Committee originally adopted the Landlord-Tenant law through resolution BC-10-12-16-C; and

**WHEREAS,** following adoption, the Oneida Business Committee adopted emergency amendments to the Landlord-Tenant law through resolution BC-01-25-17-C; and

**WHEREAS,** the emergency amendments revised the definition of rental agreement to include the rent-to-own agreements currently offered through the Oneida Housing Authority which may last longer than one (1) year; and

**WHEREAS,** these Amendments to the Landlord-Tenant adopt the emergency amendments on a permanent basis and include the following two other revisions:

(1) Adding a limitation as to what rental related debts and prior evictions may be considered by the landlord when considering applicants so that only utility debts of \$200 or more and only eviction from the Nation may cause an applicant to be ineligible for the income-based rental program; and

(2) Clarifying how the death of a Tribal member tenant may impact non-Tribal member co-tenant in a rent-to-own agreement;

**WHEREAS,** a public meeting on the proposed Amendments was held on June 5, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the Landlord-Tenant law is hereby adopted.



## **Statement of Effect**

### *Landlord-Tenant (Law) Amendments*

#### ***Summary***

This Resolution adopts Amendments to the Landlord-Tenant Law (the “Law”) which permanently adopt prior emergency amendments which included the Oneida Housing Authority’s (OHA’s) rent-to-own program in the definition of rental agreement and also include the following two other revisions:

- (1) Adding a limitation as to what rental related debts and prior evictions may be considered by the landlord when considering applicants so that only utility debts of \$200 or more and only eviction from the Nation may cause an applicant to be ineligible for the income-based rental program; and
- (2) Clarifying how the death of a Tribal member tenant may impact non-Tribal member co-tenant in a rent-to-own agreement.

*Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office*

#### ***Analysis by the Legislative Reference Office***

This Law was originally adopted by Resolution BC-10-12-16-C. Thereafter, emergency amendments were adopted to include OHA’s rent-to-own program within the Law’s definition of rental agreement. The emergency amendments were necessary because as written the Law applied to rental agreements that are defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.” The rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies.

After the adoption of the Law it was discovered that Oneida Housing Authority’s (OHA’s) rent-to-own program does not fall into the definition of rental agreements provided in the Law because the rental agreement for the rent-to-own program generally has a longer term, generally fifteen (15) years, with conveyance of the home at the satisfaction of the rental agreement.

The emergency amendment to the Law maintains the policies the Law sets forth while including OHA’s rent-to-own program by revising the definition of “rental agreement” to state, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.” These amendments adopt the emergency amendments on a permanent basis as required by the Legislative Procedures Act.

In addition to adopting the emergency amendments on a permanent basis, these Amendments also:



- (1) Add a limitation as to what rental related debts and prior evictions may be considered by the landlord when considering applicants so that only utility debts of \$200 or more and only eviction from the Nation may cause an applicant to be ineligible for the income-based rental program; and
- (2) Clarify how the death of a Tribal member tenant may impact non-Tribal member co-tenant in a rent-to-own agreement.

The limitation as to what may be considered as part of applicant eligibility was added at the direction of resolution BC-03-27-17-C entitled *Repeal of Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy*. In that policy, the Oneida Business Committee repealed an existing resolution which prohibited any prior evictions or rent and utility related debts from being considered as part of eligibility for applicants to the low-income rental program and required that minimum limitation be included in the law to safeguard future tenants from any revisions that may be proposed in future rules. Specifically, the resolution stated:

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Legislative Operating Committee is hereby directed to amend the Landlord-Tenant law to include the following restrictions on the rules governing the income-based rental program:

1. The rules may not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; and
2. The rules may contain eligibility requirements that consider debt owed to utility providers, but may not deny eligibility for any past due debt owed to a utility provider with a balance of less than two hundred dollars (\$200).

Accordingly, the limitation as to eligibility requirements included in these Amendments is required action and satisfies the LOC's responsibility pursuant to resolution BC-03-27-17-C.

Lastly, the revision to clarify how the death of a Tribal member tenant may impact a non-Tribal member co-tenant in a rent-to-own agreement was required to place the rent-to-own tenants on equal footing with the regular rental program tenants. The Amendments add to the Law OHA's current practice of paying out any accrued equity in the event of the termination of a rent-to-own agreement.

A public meeting was held for these amendments on June 5, 2017 for which the comment period expired on June 12, 2017 in accordance with the Legislative Procedures Act.

### ***Conclusion***

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



# Landlord-Tenant Amendments

## Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Krystal L. John	SPONSOR: David P. Jordan	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
<b>Intent of Proposed Amendments</b>	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. Additionally minimum eligibility requirements were added under the proposed amendments as directed by Oneida Business Committee Resolution 3-22-17-C.		
<b>Purpose of the Law</b>	To provide mechanisms for protecting the rights of the landlords and tenants within the reservation [see 611.1-1].		
<b>Affected Entities</b>	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.		
<b>Affected Legislation</b>	Eviction and Termination, Administrative Rulemaking, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness, and Real Property		
<b>Enforcement/Due Process</b>	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement [see 611.10-1].		
<b>Public Meeting</b>	A public meeting was held 6/5/17.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current amendments permanently adopt the emergency amendments adopted by resolution 1-25-17-C to clarify the current law to specifically allow rent-to-own rental agreements to last longer than one year [see 611.3-1(e)].
- B. Additional amendments were included as detailed below.

### 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. The OBC has decided that it is in the best interest of Oneida families to ensure that any current or future rules developed to govern the income based rental program do not consider debt owed or evictions from entities other than the Comprehensive Housing Division or past due utility accounts of less than \$200 as part of the selection criteria. This is a policy decision of the OBC.
- C. These changes do 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. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement

is available, to be electronically provided to all managers or directors [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were never provided electronically to all managers or directors; however, the public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*].

- C. 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.
- D. The current amendments permanently adopt the emergency amendments and include the additional provision related to the minimum eligibility requirements [see 611.4-2(f)(1) and (2)], prior evictions and debt owed from outside the Nation are not considered other than past due utility bills in excess of \$200 [see 611.4-2 (f) (1) and (2)] and provisions related to non-Tribal member tenants that no longer qualify for the rental agreement upon the death of the qualifying Tribal member tenant agreement [see 611.9-4(b)]. A public meeting was held 6/5/17.

## SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A. The term for “rental agreements” is restricted to one year or less in the adopted Landlord-Tenant law. This definition excludes rent-to-own contracts which are longer than one (1) year. The amendment ensures rent to own contracts are covered by the definition of rental agreements by expanding the definition to include rent to own contracts which are for terms longer than one year [see 611.3-1(e)].
- B. A definition for Tribal member was added to the law [see 611.3-1(i)].
- C. Minimum rental eligibility requirements were added relating to rules developed for the low income rental program which prohibits considering debt owed to or evictions from entities other than the Comprehensive Housing Division but allows consideration of past due debt owed to utility providers over two hundred dollars (\$200) [see 611.4-2 (f) (1) and (2)].
- D. If a deceased tenant is a Tribal member whose death places a non-Tribal member tenant ineligible for the rental agreement, the non-Tribal member tenant may remain in the premises:
  - If a standard rental agreement, any extension beyond the original term of agreement requires an amendment or limited term rental agreement which covers the term of the extension [see 611.9-4(a)].
  - If the rental agreement was on a rent-to-own basis, a maximum of one year from the date of the Tribal member’s death. In this case, the rent-to-own agreement will be terminated upon the tenant’s ineligibility to remain in the rent-to-own agreement and a new rental agreement, which may be a limited term rental agreement, will be executed. The landlord will pay the remaining co-tenant all equity the tenants have accrued according to the rental agreement [see 611.9-4(b)].

## SECTION 6. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. The proposed amendments will permanently ensure the Landlord-Tenant law covers existing rent to own contracts and future rent to own contracts and ensures Tribal members who enter into these contracts have the same due process and other rights as all other rental agreements under the Landlord-Tenant law.

- 64 **B.** The amendments ensure that prior evictions and debt from outside the Nation are not considered other  
65 than past due debt owed to a utility provider over two hundred dollars (\$200).  
66 **C.** The amendments ensure that non-Tribal member co-tenants in rent-to-own rental agreements are paid  
67 the equity that has accumulated in the property due to the fact that they are no longer eligible to remain  
68 in the rental agreement. Additionally,  
69

## 70 **SECTION 7. OTHER CONSIDERATIONS**

- 71 **A.** The Landlord-Tenant law was adopted on October 12, 2016 and became effective on February 9,  
72 2017. The emergency amendments to the Landlord-Tenant law were adopted on January 25, 2017,  
73 became effective February 9, 2017 and expire August 9, 2017. The current proposed amendments  
74 permanently adopt these emergency amendments and add the provisions related to debt owed,  
75 evictions and rental agreements related to non-Tribal member co-tenants who are no longer eligible  
76 for the rental agreement when the eligible Tribal member tenant dies.  
77  
78  
79

**Title 6. Property and Land- Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

611.1.	Purpose and Policy	611.6.	Rights and Duties of Landlords and Tenants
611.2.	Adoption, Amendment, Repeal	611.7.	Domestic Abuse Protections
611.3.	Definitions	611.8.	Sex Offender Registry
611.4.	Rental Programs	611.9.	Termination of Tenancy at Death of Tenant
611.5.	Rental Agreement Documents	611.10.	Landlord or Tenant Actions

**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 and thereafter amended by resolution \_\_\_\_\_.

611.2-2. 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.

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.<sup>1</sup>

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

<sup>1</sup> 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.



(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

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

(j) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

#### **611.4. Rental Programs**

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and 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:

(a) Elder tribal members;

(b) Low-income Oneida tribal members and families; and

(c) Tribal members in general.

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

(a) Be eighteen (18) years of age at the time of the application;

(b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;

(c) Meet the local governments’ laws’ requirements regarding residency restrictions for convicted sex offenders;

(d) Meet the income requirements for entering the rental agreement as determined by the rental program’s governing rules;

(e) Not hold a residential lease with the Nation; and

(f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:

(1) May not contain eligibility requirements that consider debt owed or evictions

from entities other than the Comprehensive Housing Division; but  
(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

#### **611.5. Rental Agreement Documents**

611.5-1. *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.

611.5-2. *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 611.6-3(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 611.6-3(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.

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

## **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. 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.

611.6-2. *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.

611.6-3. *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 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

*(b) Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.



**611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

- (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

**611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

**611.9. Termination of Tenancy at Death of Tenant**

611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;
- (b) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises as follows:

(a) If subject to a standard rental agreement (i.e. not on a rent-to-basis), for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. Any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension.

(b) If the rental agreement was on a rent-to-own basis, a maximum of one (1) year from the date of the Tribal member tenant's death. In such circumstances the rent-to-own agreement shall be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a new rental agreement, which may be for a limited term, shall be executed. Where a landlord is so terminating a rental agreement entered on a rent-to-own basis, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

#### **611.10. Landlord or Tenant Actions**

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

*End.*

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Adopted – BC-10-12-16-C  
Emergency Amended – BC-01-25-17-C

**Title 67. Property and Land - Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

611.1.	Purpose and Policy	611.6.	Rights and Duties of Landlords and Tenants
611.2.	Adoption, Amendment, Repeal	611.7.	Domestic Abuse Protections
611.3.	Definitions	611.8.	Sex Offender Registry
611.4.	Rental Programs	611.9.	Termination of Tenancy at Death of Tenant
611.5.	Rental Agreement Documents	611.10.	Landlord or Tenant Actions

**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 and thereafter amended by resolution.

611.2-2. 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.

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.<sup>1</sup>

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

<sup>1</sup> 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.

(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

~~(i)~~ “(i) “Tribal member” means an individual who is an enrolled member of the Nation.

~~(j)~~ “(j) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

#### **611.4. Rental Programs**

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and 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:

- (a) Elder tribal members;
- (b) Low-income Oneida tribal members and families; and
- (c) Tribal members in general.

611.4-2. Minimum Rental Eligibility Requirements. In order to be eligible for a rental agreement, applicants shall meet the following conditions:

- (a) Be eighteen (18) years of age at the time of the application;
- (b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
- (c) Meet the local governments’ laws’ requirements regarding residency restrictions for convicted sex offenders;
- (d) Meet the income requirements for entering the rental agreement as determined by the rental program’s governing rules;
- (e) Not hold a residential lease with the Nation; and
- (f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:

(1) May not contain eligibility requirements that consider debt owed or evictions

from entities other than the Comprehensive Housing Division; but  
(2) May contain eligibility requirements that consider debt owed to utility  
providers, provided that eligibility may not be denied for any debt owed to a  
utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

#### **611.5. Rental Agreement Documents**

611.5-1. *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.

611.5-2. *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 611.6-3(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 611.6-3(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.

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

## **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. 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.

611.6-2. *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.

611.6-3. *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 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

*(b) Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

**611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

- (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

**611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

**611.9. Termination of Tenancy at Death of Tenant**

611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;
- (b) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises ~~for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration as follows:~~

(a) If subject to a standard rental agreement (i.e. not on a rent-to-basis), for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. Any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension.

(b) If the rental agreement was on a rent-to-own basis, a maximum of one (1) year from the date of the Tribal member tenant's death. In such circumstances the rent-to-own agreement shall be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a new rental agreement, which may be for a limited term, shall be executed. Where a landlord is so terminating a rental agreement entered on a rent-to-own basis, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

#### **611.10. Landlord or Tenant Actions**

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

*End.*

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Adopted – BC-10-12-16-C  
Emergency Amended – BC-01-25-17-C



# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

DATE: June 20, 2017

FROM: Rae Skenandore, Financial Management Analyst

TO: Larry Barton, Chief Financial Officer  
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Financial Impact of the Landlord Tenant Amendments**

## I. Estimated Fiscal Impact Summary

<b>Law:</b> Landlord Tenant Amendments		Draft 1
<b>Implementing Agency</b>	Oneida Housing Authority Division of Land Management Elder Services Land Commission	
<b>Estimated time to comply</b>	10 days from adoption	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	<b>\$0</b>	<b>\$0</b>

## II. Background

### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C. Emergency Amendments to the Law were approved by BC-1-25-17-C.

### B. Summary of Content

1. Permanently adopt an emergency amendment to the Landlord-Tenant Law. The emergency amendment resolution included the following:
  - a) the Law applied to rental agreements defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less;”

b) the Oneida Housing Authority's rent-to-own program did not fall into the Law's definition of rental agreements because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement;

c) the rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies;

d) the emergency amendment to the Law maintained the Law's policies while including the Oneida Housing Authority's rent-to-own program by revising the definition of "rental agreement" to state, "a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis;"

2. Include additional eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this Law, provided that rules developed for low-income Tribal members and families:

a) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division;

b) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

### **C. Methodology and Assumptions**

1. A "Fiscal Impact Statement" means an estimate of the total identifiable 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.

2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

3. The analysis was completed based on the information provided as of the date of this memo.

**II. Agency**

There are no startup, personnel, office, or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

**III. Financial Impact**

No impact.

**IV. Recommendation**

Finance 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 the information with which to render a decision.



Legislative Operating Committee  
June 21, 2017

## Conflict of Interest Permanent Amendments

<b>Submission Date:</b> 3/15/17	<b>Public Meeting:</b> 6/5/17
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> April 26, 2017 <b>Expires:</b> October 26, 2017

**Summary:** *An emergency amendment to the Conflict of Interest law in regards to the HUD Site Monitoring Review Finding #2.*

**3/15/17 LOC:** Motion by Jennifer Webster to add the Conflict of Interest Emergency Amendments to the Active Files List as a high priority and assign Brandon Stevens as the sponsor seconded by Fawn Billie. Motion carried unanimously.

**4/5/17 LOC:** Motion by Jennifer Webster to accept the Conflict of Interest Emergency Amendments draft and analysis and direct the Legislative Reference Office to prepare an adoption packet for an e-poll if HUD responds approving the draft prior to the April 12, 2017 Oneida Business Committee meeting; seconded by David P. Jordan. Motion carried unanimously.

**4/19/17 LOC:** Motion by Jennifer Webster to accept the Conflict of Interest permanent amendments draft with the noted changes and request a legislative analysis from the Legislative Reference Office, due back May 3, 2017; seconded by Tehassi Hill. Motion carried unanimously.

*Noted changes include: 1) line 142 to remove "it owns", 2) line 128 add "whether as a prime contractor" or "subcontractor" to the end of the sentence, and 3) line 168 change "shall" to "may".*

**4/26/17 OBC:** Motion by Brandon Stevens to adopt resolution # 04-26-17-C Conflict of Interest Emergency Amendments seconded by Fawn Billie. Motion carried unanimously.

**5/3/17 LOC:** Motion by Tehassi Hill to approve the public meeting packet and forward the Conflict of Interest permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Jennifer Webster. Motion carried unanimously.

**5/17/17 LOC:** Motion by David P. Jordan to approve the updated public meeting packet for the approved June 5, 2017 public meeting; seconded by Fawn Billie. Motion carried unanimously.

**6/5/17:** Public meeting held.

**Next Steps:**

- Accept the public meeting comments.
- Approve the Conflict of Interest permanent amendments adoption packet and forward to the OBC for consideration.





TO: Legislative Operating Committee (LOC)  
FROM: Krystal John, Staff Attorney, Oneida Law Office  
DATE: June 21, 2017  
RE: Conflict of Interest Amendments: Public Meeting Comment Review

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On June 5, a public meeting was held regarding the Conflict of Interest Amendments. There were no oral or written comments received during the public meeting on June 5, 2017, or during the public meeting comment period ending on June 12, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Conflict of Interest Amendments**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
June 5, 2017, 12:15 p.m.

**Present:** Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candace Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

**Name of LOC Member Chairing Meeting:** Brandon Yellowbird-Stevens

In attendance from the LOC is: Jennifer Webster and David Jordan

Conflict of Interest Policy Amendments. We'll begin today's public meeting for the Conflict of Interest Amendments. This is a proposal to amend the existing Conflict of Interest Law which would:

- Permanently adopt the emergency amendment regarding organizational conflict of interest by establishing measures and processes to mitigate the potential for organizational conflicts of interest when any of the Nation's businesses compete to contract with the Nation
- Add a definition for the term "contractor"
- Add a definition for the term "organizational conflict of interest"
- Add a section regarding employees who contract with the Nation as Independent contractors

I don't see anyone to provide comment today. Call for a last call for any oral comments on the Conflict of Interest Amendments. Seeing none, we'll move on to the next.

**Add name of LOC member closing meeting:** Brandon Yellowbird-Stevens

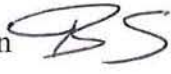
**-End of Meeting-**



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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   
DATE: June 28, 2017  
RE: Conflict of Interest Amendments

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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) Amendments Clean Draft
5. Conflict of Interest (Law) Amendments Redline to Current Draft
6. Conflict of Interest (Law) Amendments Fiscal Impact Statement

#### *Overview*

This resolution adopts permanent amendments to the Conflict of Interest law which:

- Permanently adopt the emergency amendment regarding organizational conflict of interest by establishing measures and processes to mitigate the potential for organizational conflicts of interest when any of the Nation's businesses compete to contract with the Nation [see 217.5-1 and 217.5-1];
- Add a definition for the term "contractor" [see 217.2(c)] ;
- Add a definition for the term "organizational conflict of interest" [see 217.3-1(k)] ;
- Add a section regarding employees who contract with the Nation as independent contractors [see 217.5-4].

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. There were no comments provided. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Thursday, July 13, 2017.

#### **Requested Action**

Approve the Resolution: Conflict of Interest (Law) Amendments

**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 Oneida Business Committee originally adopted this Law through resolution BC-06-10-98-C and thereafter amended it through resolution BC-02-08-17-B; and

**WHEREAS,** following the most recent adoption of this Law, it was brought to the Oneida Housing Authorities attention that those amendments did not completely bring the Law into compliance based on the audit findings provided as part of the onsite-monitoring completed by the United States Department of Housing and Urban Development (HUD); and

**WHEREAS,** emergency amendments were required to bring the Law into compliance with federal contracting standards related to organizational conflicts of interest within the timeline provided by HUD; and

**WHEREAS,** these Amendments permanently adopt those emergency amendments which brought our law into compliance with federal contracting standards related to organizational conflicts of interest and also add a section regarding employees who contract with the Nation as independent contractors; and

**WHEREAS,** a public meeting on the proposed Amendments was held on June 5, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the Conflict of Interest (Law) Amendments are hereby adopted.



**Statement of Effect**  
*Conflict of Interest (Law) Amendments*

***Summary***

This Resolution adopts Amendments to the Conflict of Interest Law (the “Law”) which permanently adopt prior emergency amendments which brought the Law into compliance with federal contracting standards related to organizational conflicts of interest and add a section regarding employees who contract with the Nation as independent contractors.

*Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office*

***Analysis by the Legislative Reference Office***

This Law was originally adopted by Resolution BC-06-10-98-C and was thereafter amended by Resolution BC-02-08-17-B. Thereafter, emergency amendments were adopted which are currently in effect that bring the law into compliance with federal contracting requirements related to organizational conflicts of interest within the timeframe provided by the United States Department of Housing and Urban Development (HUD) in its Onsite Monitoring Report.

In addition to adopting the emergency amendments on a permanent basis, these Amendments also provide limitations and requirements for employees when contracting with the Nation as an independent contractor to provide fairness and integrity of the contracting process.

A public meeting was held for these amendments on June 5, 2017 for which the comment period expired on June 12, 2017 in accordance with the Legislative Procedures Act.

***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: Oneida Law Office	SPONSOR: Brandon Stevens	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
<b>Intent of the Amendments</b>	Adopt permanent amendments which bring this legislation in compliance with HUD requirements regarding organizational conflicts of interest including provisions related to businesses owned by the Nation that compete for federally funded contracts.		
<b>Purpose</b>	Ensure that anyone that has access to confidential information be subject to specific limitations in order to protect the interests of the Nation <i>[see 217.1-1]</i> .		
<b>Affected Entities</b>	The Nation's agents; contractors; 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 <i>[see 217.3-1(m) &amp; 217.8-2]</i> . The HRD and the Secretary's Office are responsible for maintaining and distributing/collecting annual Conflict of Interest disclosure forms <i>[see 217.4-3 (a) &amp; (b)]</i> .		
<b>Affected Legislation</b>	Investigative Leave Policy, Personnel Policies and Procedures, Comprehensive Policy Governing Boards, Committees and Commissions, Removal Law, Independent Contractor Policy.		
<b>Enforcement/Due Process</b>	<ul style="list-style-type: none"> <li>▪ 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 <i>[see 217.6-1]</i>. 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.</li> <li>▪ 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 <i>[see 217.6-2]</i>.</li> <li>▪ 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 <i>[see 217.6-3]</i>.</li> <li>▪ Political appointees that fail to disclose a conflict may be subject to discipline at the discretion of the elected official they serve <i>[see 217.6-4]</i>.</li> <li>▪ A person or organization that contracts with the Nation may have their contracts terminated for failing to disclose a conflict <i>[see 217.6-5]</i>.</li> </ul>		
<b>Public Meeting</b>	A public meeting was held 6/5/17.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Oneida Law Office (OLO) requested the Legislative Operating Committee (LOC) to develop a second set of emergency amendments to the Conflict of Interest (Law) to address mandatory organizational conflicts of interest. This request stemmed from an audit completed by the U.S. Department of Housing and Urban Development (HUD) on

June 12, 2016, which found that the Law was not in compliance with certain HUD requirements. One of the findings was addressed through previous amendments to the law, but the finding regarding a lack of an organizational conflict of interest policy was left out of those amendments. The HUD Final Monitoring Report of March 1, 2017 gave the Oneida Nation (Nation) 60 days to become compliant (May 5, 2017). A lack of organizational conflict of interest policy means that the Nation currently lacks a policy to ensure that the Nation maintains objectivity, fairness and equal access to information when businesses owned by the Nation compete for contracts with the Nation. The amendments fill this gap by establishing measures and processes to mitigate the potential for organizational conflicts of interest when any of the Nation's businesses compete to contract with the Nation.

### SECTION 3. CONSULTATION

- A. The following departments/divisions were consulted when developing the revisions to this Law: Oneida Law Office, Development Division, Engineering Department, Oneida Housing Authority, Oneida Purchasing Department, and Indian Preference Office, Finance Department.
- B. In developing these amendments, the drafting attorney reviewed the applicable Federal Acquisition Regulations, federal contracting training materials and sample organizational conflict of interest mitigation plans submitted when bidding on federal contracts.

### SECTION 4. PROCESS

- A. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors [*See Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were never provided electronically to all managers or directors; however, the public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register as required by the LPA [*See Legislative Procedures Act, 1 O.C. 8-2 (a & b)*].
- B. March 15, 2017: This item was added to the Active Files List as emergency legislation.
- C. The proposed amendments were adopted on an emergency basis on 4/26/17.
- D. The proposed amendments are being considered for permanent adoption.

### SECTION 5. PROPOSED AMENDMENTS TO LEGISLATION

Proposed amendments to the Law include the following:

- A. Expand the definition section to include a term for contractor [*see 217.2(c)*] to include businesses. Eliminate the definition for consultant which is not broad enough to cover the Nation's businesses and considering that consultants are actually contractors because they work under contract with the Nation.
- B. Include a definition for organizational conflict of interest [*see 217.3-1(k)*] required by HUD. Organization conflict of interests occur when due to activities or relationships with other parties a potential contract or contractor is unable to render impartial assistance or advice, is not objective or has an unfair competitive advantage with respect to their business with the Nation.
- C. Include a section regarding organizational conflict of interest which applies to businesses owned by the Nation and establishes the presumption of a conflict of interest any time a

business owned by the nation seeks to contract directly with the Nation [see 217.5-1]. Amendments establish objectivity in contracting by providing potential and actual contractors with equal access to information [see 217.5-2]. Restricting an employee of the Nation who has knowledge and experience that is critical to a contract from participation in a contract unless there is a mitigation plan in place [see 217.5-2(a)]. Requirements for an organizational conflict of interest mitigation plan include limited participation from employees with a conflict to specific components of the project/contract that requires the employee's knowledge and/or expertise [see 217.5-2(b)]. If the Nation contracts with a business it owns to prepare ground rules for a subsequent project/contract including specifications or work statements, the business may not compete for the subsequent project/contract [see 217.5-3].

- D. A section was added regarding employees who contract with the Nation as independent contractors. Employees, either prime contractor or subcontractor, may not contract within the same area as their employment with the Nation, contract with any entity within the same divisional budget and/or chain of command as their employment with the Nation, must have written consent and approval from their supervisor to submit a bid, and employees within the Oneida Law Office, Internal Audit Department and Oneida Finance Department cannot contract with the Nation [see 217.5-4].

## SECTION 6. EFFECT ON EXISTING LEGISLATION, ENFORCEMENT, & DUE PROCESS

### A. Personnel Policies and Procedures

- An employee can have his/her employment terminated for failing to disclose a conflict of interest. However, he/she can appeal the adverse employment action pursuant to the Nation's laws, rules and policies governing employment [see 217.6-1].

### B. Removal Law and Comprehensive Policy Governing Boards, Committees and Commissions

- If an officer, elected official, or elected member fails to disclose a conflict of interest, he/she may be subject to removal pursuant to the Removal Law and if an appointed member of an entity fails to disclose a conflict of interest, the OBC may terminate his/her appointment in accordance with the law governing boards, committees and commissions for appointed officials [see 217.6-2 & 217.6-3].

### C. Nation's laws regarding penalties

- If an elected official, officer, or elected/appointed member of a board, committee or commission fails to disclose a conflict of interest, he/she may be subject to penalties pursuant to laws of the Nation regarding penalties [see 217.6-2 & 217.6-3]. The Nation currently does not have legislation regarding penalties but if in the future such a law is adopted, elected officials, officers, and elected/appointed members that violate this Law may face penalties/sanctions.

### D. Penalties for Non-Disclosure of a Conflict of Interest for Contractors

- An organization or person who does not disclose conflicts of interest may be subject to termination of their contracts [see 217.6-5].

## SECTION 7. OTHER CONSIDERATIONS

- A. See fiscal impact statement for any financial impacts.

For OBC Consideration  
Clean – 2017 06 28

## Title 2. Employment – Chapter 217

### CONFLICT OF INTEREST

4	217.1. Purpose and Policy	9	217.6. Penalties for Non-Disclosure of a Conflict of Interest
5	217.2. Adoption, Amendment, Repeal	10	217.7. Prohibited Activities Resulting from a Disclosed Conflict
6	217.3. Definitions	11	of Interest
7	217.4. General	12	217.8. Exemptions
8	217.5. Organizational Conflicts of Interest		

#### 217.1. Purpose and Policy

217.1-1 *Purpose.* The purpose of this law is for the Nation to ensure that all employees, contractors, elected officials, officers, political appointees, 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 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 Nation.

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 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. The Nation asserts that no persons who work for the 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 Nation's interests without full and complete prior disclosure to the Nation.

#### 217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B.

217.2-2. 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.

217.2-3. 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.

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

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

#### 217.3. Definitions

217.3-1. 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) "Agent" means a person who is authorized to act for or in place of another, which may include an employee, contractor, elected official, officer, political appointee, and appointed or elected member of the Nation.

(b) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee,

For OBC Consideration  
Clean – 2017 06 28

employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(c) "Contractor" means a person or business providing expertise, services, goods or guidance to the Nation.

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

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

(f) "Entity" means a department, program or service of the Nation.

(g) "Immediate family member" means an individual's husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

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

(i) "Nation" means the Oneida Nation.

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

(k) "Organizational conflict of interest" means that because of other activities or relationships with other parties, a potential contract or contractor is:

(1) unable to render impartial assistance or advice to the Nation;

(2) cannot perform a contract with the Nation in an objective way; or

(3) has an unfair competitive advantage compared to others.

(l) "Political appointee" means a person who assists an elected member of the Oneida Business Committee in their daily activities and operations.

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

#### 217.4. General

##### 217.4-1. Scope.

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

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

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

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

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

(2) Current employees shall disclose existing conflicts of interest, if any.

(b) Persons or organizations contracting with the Nation shall include a provision in their contract reciting the prohibition against undisclosed conflicts of interest.

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

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

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

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

## **217.5. Organizational Conflicts of Interest**

217.5-1. *Presumed Organizational Conflict of Interest.* It is presumed that there is an organizational conflict of interest any time that a business owned by the Nation or an employee of the Nation seeks to contract with the Nation.

217.5-2. *Maintaining Objectivity and Equal Access to Information.* The Nation shall maintain objectivity in contracting and shall provide all potential and actual contractors with equal access to information. Should an employee of the Nation also be an employee, officer, director, or agent of any business owned by the Nation, the said employee shall be restricted from participating in any part of the contract process, including but not limited to the bidding, selection, award and administration, for that business.

(a) In the event that an employee has knowledge and experience that is critical to a contract and is restricted from participation based on an organizational conflict of interest, the said employee may only participate if the Nation and the contractor execute a



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conflict of interest mitigation plan.

(b) An organizational conflict of interest mitigation plan shall require the conflicted employee's participation be limited to the specific components of the project/contract that require the employee's knowledge and/or experience.

217.5-3. *Biased Ground Rules.* Should the Nation contract with a business it owns to prepare ground rules for a subsequent project/contract, including but not limited to preparing/writing specifications or work statements, said business may not compete for the subsequent project/contract.

217.5-4. *Employees Contracting with the Nation as Independent Contractors.* In addition to meeting the requirements of the Nation's independent contractor laws, policies and/or rules, employees that seek to contract with the Nation as an independent contractor may not, in any circumstance, whether as a prime contractor or a subcontractor:

(a) Contract with the Nation within the same scope for which they are employed by the Nation.

(b) Contract with any entity within the Nation that is within the same divisional budget and/or chain of command for which the employee is employed by the Nation.

(c) Submit a bid to contract with Nation without receiving and submitting with the bid written notice from the employee's supervisor providing consent and approval to bid and that such bid and/or potential resultant contract will not interfere with the employees current responsibilities to the Nation.

(d) Contract with the Nation if the employee is employed by any of the following areas:

(1) The Oneida Law Office;

(2) The Internal Audit Department; and/or

(3) The Oneida Finance Department.

## **217.6. Penalties for Non-Disclosure of a Conflict of Interest**

217.6-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be 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 concluded within seven (7) days of the 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.

217.6-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to laws of the Nation regarding penalties.

217.6-3. *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 members.

217.6-4. *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.

217.6-5. *Contracts.* An organization or a person who does not disclose conflicts of interest may be subject to termination of their contracts.

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**217.7. Prohibited Activities Resulting from a Disclosed Conflict of Interest**

217.7-1. When an existing conflict of interest is disclosed, no employee, contractor, 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.

217.7-2. 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 217.7-1(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 217.7-1(a).

**217.8. Exemptions**

217.8-1. Exemptions to this law are for the purpose of excluding activities of the Nation for which no conflict of interest can exist. These activities generally occur when the Nation is acting as a provider of services for which another will be making payments or reimbursing costs of providing the services. Exemptions shall be specifically identified within this law.

217.8-2. *Pharmacy*. This exemption shall be designed to relieve the Pharmacy and insurance providers from the requirements of the Conflict of Interest law while recognizing the unique relationship between the Pharmacy and insurance providers in third party payment agreements where no proprietary information of the Nation is provided to the insurance providers, and there is little or no opportunity for a conflict of interest between the insurance providers and the Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to subscribers of multiple insurance providers. This exemption shall apply solely to insurance providers seeking to enter into third party payment agreements with the Pharmacy.

*End.*

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Adopted - BC-06-10-98-C

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

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

Emergency Amended – BC-08-10-16-M

Amended - BC-02-08-17-B

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## Title 2. Employment – Chapter 217

### CONFLICT OF INTEREST

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#### 217.1. Purpose and Policy

217.1-1 Purpose. The purpose of this law is for the Nation to ensure that all employees, consultantscontractors, elected officials, officers, political appointees, 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 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 Nation.

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 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. The Nation asserts that no persons who work for the 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 Nation's interests without full and complete prior disclosure to the Nation.

#### 217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B.

217.2-2. 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.

217.2-3. 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.

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

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

#### 217.3. Definitions

217.3-1. 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) "Agent" -means a person who is authorized to act for or in place of another, which may include an employee, consultantcontractor, elected official, officer, political appointee, and appointed -or elected member of the Nation.

(b) "Conflict of interest" means any interest, real or apparent, whether it be personal,



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financial, political, or otherwise, in which an elected official, officer, political appointee, employee, ~~consultant~~~~contractor~~, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, ~~consultant~~~~contractor~~, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(c) ~~“Consultant”~~ “Contractor” means a person ~~who provides~~ business providing expertise, services, goods or guidance to the Nation.

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

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

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

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

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

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

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

(k) “Organizational conflict of interest” means that because of other activities or relationships with other parties, a potential contract or contractor is:

(1) unable to render impartial assistance or advice to the Nation;

(2) cannot perform a contract with the Nation in an objective way; or

(3) has an unfair competitive advantage compared to others.

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

~~(h-m)~~ (m) ~~“Third party agreement”~~ means any agreement with the Pharmacy in which an insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to subscribers of a valid health plan of that insurance provider.

#### 217.4. General.

##### 217.4-1. Scope.

(a) ~~“This law shall apply to agents, elected officials, officers, political appointees, employees, consultants~~~~contractors~~, appointed or elected members or any other persons with whom they may be associated in personal, marital, familial, business, financial or



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other relationships.

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

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

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

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

(2) Current employees shall disclose existing conflicts of interest, if any.

(b) Persons or organizations contracting with the Nation shall include a provision in their contract reciting the prohibition against undisclosed conflicts of interest.

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

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

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

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

## **217.5. ~~Penalties for Non-Disclosure of a Conflict~~ Organizational Conflicts of Interest**

~~217.5-1. Employees.~~ 217.5-1. Presumed Organizational Conflict of Interest. It is presumed that there is an organizational conflict of interest any time that a business owned by the Nation or an employee of the Nation seeks to contract with the Nation.

217.5-2. Maintaining Objectivity and Equal Access to Information. The Nation shall maintain objectivity in contracting and shall provide all potential and actual contractors with equal access to information. Should an employee of the Nation also be an employee, officer, director, or agent of any business owned by the Nation, the said employee shall be restricted from participating in any part of the contract process, including but not limited to the bidding, selection, award and administration, for that business.

(a) In the event that an employee has knowledge and experience that is critical to a contract and is restricted from participation based on an organizational conflict of



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interest, the said employee may only participate if the Nation and the contractor execute a conflict of interest mitigation plan.

(b) An organizational conflict of interest mitigation plan shall require the conflicted employee's participation be limited to the specific components of the project/contract that require the employee's knowledge and/or experience.

217.5-3. *Biased Ground Rules.* Should the Nation contract with a business it owns to prepare ground rules for a subsequent project/contract, including but not limited to preparing/writing specifications or work statements, said business may not compete for the subsequent project/contract.

217.5-4. *Employees Contracting with the Nation as Independent Contractors.* In addition to meeting the requirements of the Nation's independent contractor laws, policies and/or rules, employees that seek to contract with the Nation as an independent contractor may not, in any circumstance, whether as a prime contractor or a subcontractor:

(a) Contract with the Nation within the same scope for which they are employed by the Nation.

(b) Contract with any entity within the Nation that is within the same divisional budget and/or chain of command for which the employee is employed by the Nation.

(c) Submit a bid to contract with Nation without receiving and submitting with the bid written notice from the employee's supervisor providing consent and approval to bid and that such bid and/or potential resultant contract will not interfere with the employees current responsibilities to the Nation.

(d) Contract with the Nation if the employee is employed by any of the following areas:

(1) The Oneida Law Office;

(2) The Internal Audit Department; and/or

(3) The Oneida Finance Department.

## **217.6. Penalties for Non-Disclosure of a Conflict of Interest**

217.6-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be 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 concluded within seven (7) days of the 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.

217.56-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to laws of the Nation regarding penalties.

217.56-3. *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 members.

217.56-4. *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.

217.6-5-5-. *Contracts.* An organization or a person who does not disclose conflicts of interest



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may be subject to termination of their contracts.

**217.6-7. Prohibited Activities Resulting from a Disclosed Conflict of Interest**

217.67-1. When an existing conflict of interest is disclosed, no employee, ~~consultant~~contractor, elected official, political appointee, officer, agent, or appointed or elected member may participate in:

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

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

217.67-2. 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 217.67-1(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 217.67-1(a).

**217.7-8. Exemptions**

217.78-1. Exemptions to this law are for the purpose of excluding activities of the Nation for which no conflict of interest can exist. These activities generally occur when the Nation is acting as a provider of services for which another will be making payments or reimbursing costs of providing the services. Exemptions shall be specifically identified within this law.

217.78-2. *Pharmacy*. This exemption shall be designed to relieve the Pharmacy and insurance providers from the requirements of the Conflict of Interest law while recognizing the unique relationship between the Pharmacy and insurance providers in third party payment agreements where no proprietary information of the Nation is provided to the insurance providers, and there is little or no opportunity for a conflict of interest between the insurance providers and the Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to subscribers of multiple insurance providers. This exemption shall apply solely to insurance providers seeking to enter into third party payment agreements with the Pharmacy.

*End.*

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Adopted - BC-06-10-98-C  
Emergency Amended - BC-04-12-06-JJ  
Emergency Amended - BC-09-27-06-E  
Emergency Amended – BC-08-10-16-M  
Amended - BC-02-08-17-B

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



### MEMORANDUM

DATE: June 20, 2017

FROM: Rae Skenandore, Financial Management Analyst

TO: Larry Barton, Chief Financial Officer  
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Financial Impact of the Conflict of Interest Amendments**

#### I. Estimated Fiscal Impact Summary

<b>Law:</b> Conflict of Interest Amendments		Draft 3
<b>Implementing Agency</b>	Human Resource Department Oneida Nation's Office of the Secretary	
<b>Estimated time to comply</b>	10 days from adoption	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	<b>\$0</b>	<b>\$0</b>

#### II. Background

##### A. Legislative History

This law was originally adopted by the Oneida Business Committee by Resolution BC-06-10- 98-C. Emergency amendments were adopted through BC-08-10-16-M and permanently adopted by BC-02-08-17-B.

##### B. Summary of Content

1. Add a definition for the term "contractor" to include businesses;
2. Add a definition for the term "organizational conflict of interest;
3. Include a section regarding organizational conflict of interest which applies to businesses owned by the Nation and establishing measures and processes to mitigate the potential for organizational conflicts of interest when any of the Nation's businesses compete to contract with the Nation;

4. A section was added regarding employees who contract with the Nation as independent contractors.

**C. Methodology and Assumptions**

1. A “Fiscal Impact Statement” means an estimate of the total identifiable 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.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

**II. Agency**

There are no startup, personnel, office, or documentation costs associated with this legislation. In accordance with the Legislative Procedures Act, the amendments will become effective 10 days from adoption.

**III. Financial Impact**

No impact.

**IV. Recommendation**

Finance 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 the information with which to render a decision.



Legislative Operating Committee  
June 21, 2017

## Audit Law Amendments

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> 12/15/16, 1/15/17, & 6/5/17
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was deferred to the LOC by the OBC on May 8, 2013 and carried over into the current term by the LOC. The Audit Committee was requesting establishment of a standard requirement for correction of high risk findings and that the BC clarify roles and responsibilities related to audit issue interpretations and resolutions, including: identifying the primary authority to determine whether audit issues are pursued or closed, identifying who can enforce the need for management action and establishing a process to achieve results so past audits can be resolved and closed. The Audit Committee presented additional proposed amendments to the OBC on July 23, 2014.*

**9/17/14 OBC:** Motion by Jennifer Webster to add the Audit Law Amendments to the Active Files List, with Jennifer Webster as sponsor; seconded by Tehassi Hill. Motion carried unanimously.

**10/21/15 LOC:** Motion by Fawn Billie to defer the Audit Law Amendments for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

**7/25/16:** *Work Meeting held.* Meeting held for an update on the status of this item. Attendees include Jen Falck, Tani Thurner, Jo Anne House.

**5/3/17 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Audit law amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

**6/5/17:** Public meeting held.

**Next Steps:**

- Accept the public meeting comments.
- Approve the Audit Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)  
FROM: Krystal John, Staff Attorney, Oneida Law Office  
DATE: June 21, 2017  
RE: Audit Law Amendments: Public Meeting Comment Review

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On June 5, a public meeting was held regarding the Audit Law Amendments. There were no oral or written comments received during the public meeting on June 5, 2017, or during the public meeting comment period ending on June 12, 2017; therefore no additional revisions were made to the draft.





## LEGISLATIVE OPERATING COMMITTEE

### PUBLIC MEETING

#### Audit Law Amendments

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

June 5, 2017, 12:15 p.m.

**Present:** Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candace Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

**Name of LOC Member Chairing Meeting:** Brandon Yellowbird-Stevens

In attendance from the LOC is: Jennifer Webster and David Jordan

Audit Law Amendments. Okay, we'll call this public meeting to order at 12:20 p.m.

This proposal is to amend the existing Audit Law which would:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process;
- Identify the primary authority responsible to when and for what reason an internal audit is initiated;
- Identify who can require and enforce management response and action as a result of an audit findings;
- Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
- Provide greater detail regarding the audit process; and
- Clarify the difference between an internal audit and an external audit and explain the process for reviewing each internal and external audit report.

Okay, not seeing anyone on the list for providing comments today, I'll do a last call if anyone wishes to provide an oral comment today. Seeing none I'll move on to the next.

**Add name of LOC member closing meeting:** Brandon Yellowbird-Stevens

**-End of Meeting-**



TO: Oneida Business Committee  
FROM: Brandon Stevens, LOC Chairperson *BS*  
DATE: June 28, 2017  
RE: Audit Law Amendments

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

1. Resolution: Audit (Law) Amendments
2. Statement of Effect: Audit (Law) Amendments
3. Audit (Law) Amendments Legislative Analysis
4. Audit (Law) Amendments Clean Draft
5. Audit (Law) Amendments Redline to Current Draft
6. Audit (Law) Amendments Fiscal Impact Statement

#### *Overview*

This resolution adopts amendments to the Audit law which:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process [see 108.4 and 108.5];
- Identify the primary authority responsible when and for what reason an internal audit is initiated [see 108.6-1 and 108.6-2];
- Identify who can require and enforce management response and action as a result of audit findings [see 108.6-6];
- Capture additional functions and purposes of an audit aside from protecting the Nation's assets [see 108.1-2 and 108.3-1(a)];
- Provide greater detail regarding the audit process [see 108.6]; and
- Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports [see 108.8].

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. There were no comments provided. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Thursday, July 13, 2017.

#### **Requested Action**

Approve the Resolution: Audit (Law) Amendments

**BC Resolution \_\_\_\_\_***Audit (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 Oneida Business Committee originally adopted the Audit law through resolution BC-07-15-98-C; and

**WHEREAS,** these Amendments to the Audit law:

1. Update the title of the law to Internal Audit;
2. Clarify the roles and responsibilities related to the internal audit process;
3. Identify the primary authority responsible when and for what reason an internal audit is initiated;
4. Identify who can require and enforce management response and action as a result of audit findings;
5. Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
6. Provide greater detail regarding the audit process; and
7. Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports.

**WHEREAS,** a public meeting on the proposed Amendments was held on June 5, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the Audit (Law) Amendments are hereby adopted.



## **Statement of Effect** *Audit (Law) Amendments*

### ***Summary***

This Resolution adopts Amendments to the Audit (Law) (the “Law”) which:

1. Update the title of the law to Internal Audit;
2. Clarify the roles and responsibilities related to the internal audit process;
3. Identify the primary authority responsible when and for what reason an internal audit is initiated;
4. Identify who can require and enforce management response and action as a result of audit findings;
5. Capture additional functions and purposes of an audit aside from protecting the Nation’s assets;
6. Provide greater detail regarding the audit process; and
7. Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports.

*Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office*

### ***Analysis by the Legislative Reference Office***

This Law was originally adopted by Resolution BC-07-15-98-C. The actual revisions contained in these Amendments are listed above.

A public meeting was held for these Amendments on June 5, 2017 for which the public comment period expired on June 12, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

The Nation does not currently have any other laws or resolutions that govern internal audit related issues. There is no applicable state or federal law that would preclude the Nation from exercising its authority to conduct internal audits of Tribal entities.

### ***Conclusion***

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



## Internal Audit Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: Jennifer Webster	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
<b>Intent of the Amendments</b>	Establishment of a standard requirement for correction of high risk findings, request OBC to clarify roles and responsibilities related to audit issue interpretations and resolutions including: identifying the primary authority to determine whether audit issues are pursued or closed, identifying who can enforce the need for management action and establishing a process to achieve results so past audits can be resolved and closed. Changes were requested in OBC executive session on July 23, 2014 and are included in the current draft. The law was significantly redrafted to capture the additional functions and purposes of an audit aside from protecting the Nation's assets and to provide greater detail regarding the audit process.		
<b>Purpose</b>	Create a process by which internal audits are conducted upon the Nation's entities and to delegate responsibilities for the purpose of conducting such audits.		
<b>Affected Entities</b>	Oneida Business Committee, Audit Committee, Internal Audit Department		
<b>Affected Legislation</b>	Code of Ethics, Conflict of Interest, Comprehensive Policy Governing Boards, Committees and Commissions, Personal Policies and Procedures, Removal law, Audit Committee Bylaws, Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing		
<b>Enforcement/Due Process</b>	<p>The Audit Committee is hereby granted authority to utilize all existing enforcement mechanisms, including those provided in this law, to carry out its responsibilities <i>[see 108.4-2]</i>.</p> <p>Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law <i>[see 108.7-1]</i>.</p> <p>Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions. <i>[see 108.7-2]</i>.</p>		
<b>Public Meeting</b>	A public meeting was held 6/5/17.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The law was significantly redrafted to capture the additional functions and purposes of an audit aside
- 3 from protecting the Nation's assets. Greater detail is provided regarding the internal audit process
- 4 including who may initiate an audit, what the possible focuses of an audit may be and the proper
- 5 course of action regarding responses to audit findings. Additionally, changes clarify the difference
- 6 between the internal and external audit responsibilities and provide the two different points of access
- 7 for internal and external audits to Tribal members.
- 8 **B.** Some detail of the law was removed that was duplicative of the bylaws of the Audit Committee *[see*
- 9 *108.4-1 and 108.5-1 of current Audit Law and Audit Committee Bylaws]*.



- C. The expected benefits of the proposed amendments are a law that is more detailed regarding the internal audit process.

### SECTION 3. CONSULTATION

- A. The Internal Audit Department and the Audit Committee were consulted regarding the proposed amendments.
- B. The Cornell University Audit Office website was referenced for the recommended amendments.

### SECTION 4. PROCESS

- A. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors [*See Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were never provided electronically to all managers or directors; however, the public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register as required by the LPA [*See Legislative Procedures Act, 1 O.C. 8-2 (a & b)*].
- B. This item was carried over from the previous term and added to the current Active Files List 9/17/14. A public meeting was held 6/5/17.

### SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A. The title of the law is updated to Internal Audit.
- B. Additional functions and purposes of an audit are captured by the proposed amendments.
- C. Additional detail regarding the audit process:
- Additional Audit Committee responsibilities [*see 108.4*]:
    - Shall not direct the audit of an individual Tribal member or employee [*see 108.4-1(a)*]
    - Shall include in all reports containing findings recommendations for improvement [*see 108.4-1(b)*]
  - Who may initiate an audit from the Audit Committee [*see 108.6-1*]:
    - Confidential schedule of sporadic entity audits approved by the Audit Committee
    - An entity
    - Required by policy, law rule and/or directive
    - Directed by the OBC
    - Requested by a Tribal member and approved by the Audit Committee.
      - The Audit Committee shall approve or deny the audit request based upon the validation of concerns [*see 108.6-1(e)(1) and (2)*]
  - Focus areas of an audit [*see 108.6-2*]:
    - Reliability and integrity of information;
    - Noncompliance with policies, laws, rules and/or directives;
    - Safeguarding of assets;
    - Use of resources;

- Financial performance;
- Fraudulent or dishonest activities;
- Follow-up related to a previous audit report;
- General assessment of an entity; and/or
- New or final status of an entity.
- Information gathering *[see 108.6-3]*:
  - The Internal Audit Department shall issue a written request for information to entity being audited including the following *[see 108.6-3(a)(1) – (4)]*:
    - Request for relevant information needed to complete the audit
    - Notice of time requirements
    - Notice that failure to provide requested information may lead to corrective action
    - Notice that the entity may request consultation from the Internal Audit Department regarding the information gathering process
  - The entity shall have fourteen (14) days to respond to the request for information unless an extension is requested within seven (7) days of the written request and granted by the Internal Audit Department within three (3) days from the request *[see 108.6-3(b)(1)]*
- Continual access to information *[see 108.6-4]*:
  - All entities shall provide continual access to information throughout the audit process.
- Access to facilities and premises *[see 108.6-5]*:
  - All entities subject to an audit shall allow the Internal Audit Department access to enter all facilities and premises of the Nation to conduct an audit.
- Management response to audit findings shall include *[see 108.6-6]*:
  - Any concerns the entity may have related to an audit finding. The entity may request consultation with the Audit Committee to discuss their concerns with the audit finding
    - The Audit Committee shall respond to the request by one of the following *[see 108.6-6(b)]*:
      - excusing the entity from providing a remedy in the management response
      - directing the Internal Audit Department to conduct additional information gathering
      - noticing the entity that the Audit Committee agrees with the draft audit report findings and directs full compliance
  - Management's plan to address, remedy or resolve issues discovered as part of an audit finding
  - The title of the person(s) responsible for implementing management's plan
  - The timeline for completion of management's plan
- Audit Report Finalization *[see 108.6-7]*:

- The Audit Committee shall approve finalized audit reports and forward to the OBC for approval. The OBC shall include in the approval notice if the audit report is released to for Tribal member viewing in whole or in part.

**D. Compliance and Enforcement [see 108.7]:**

- Any entity and / or management found violating this law is subject to corrective action
- The Internal Audit Department shall send a report including recommended actions to the Audit Committee if there is knowledge or belief that an entity has violated this law
  - The Audit Committee may request OBC executive session and direct management staff to attend.
  - The OBC may direct an entity to comply with this law and information gathering efforts and/or take corrective action necessary to enforce compliance.
  - The OBC, in consultation with the Oneida Law Office, may report illegal activity to the proper law enforcement authorities.
  - The OBC may direct discipline of management staff or other responsible employees for the failure to comply with the Nation's laws
  - Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board member pursuant to the Nation's applicable laws.
  - Restricting an internal entity's budget funding.
- Special Investigations [see 108.7-3]:
  - The Internal Audit Department may launch a special investigation upon approval from the Audit Committee.
- External Communications [108.7-4]:
  - The Internal Audit Department shall receive approval from the Audit Committee prior to initiating communication with any outside entity; including law enforcement.

**E. Access to Internal and External Audits [see 108.8]:**

- Restricted on-site review access of completed internal audit reports approved by the OBC available to Oneida Nation members with Tribal member identification card and signature.
- Reports may not be provided in any GTC agenda packet.
- Requests for internal audit reports are made directly to the Internal Audit Department.
- Requests for external audit reports shall be submitted to the responsible custodian at any of the following locations: Oneida Community Library, Office of the Nation's Treasurer, Finance Department, or Oneida Business Committee Records Management Office(s).
- Internal and external audit reports are available for viewing only and shall not be copied or printed.

**F. Rulemaking Authority [see 108.7-3]:**

- The Audit Committee and the Internal Audit Department shall have joint rulemaking authority to develop rules related to special investigations.

**G. The proposed amended legislation is drafted with more detail to adhere to current best practices related to internal audits.**

## SECTION 6. INTENT

- 136 A. The purpose of the law is clearly stated to examine and assess the Nation's entities by means of  
 137 internal audits in order to enhance policies, procedures, and systems which are in place to ensure the  
 138 reliability and integrity of information; compliance with policies, laws, regulations and directives; the  
 139 safeguarding of assets; and the efficient use of resources.
- 140 B. It is clear that the legislation applies to entities of the Nation, the Internal Audit Department, the Audit  
 141 Committee and the OBC. Entities are defined as: any activity, function, operation, board, committee,  
 142 commission, department, division or other grouping within the Nation which reports under the  
 143 Nation's Federal Identification Number (FIN) [see 108.3-1(c)].

## 145 SECTION 7. EFFECT ON EXISTING LEGISLATION

- 146 A. The Code of Ethics law includes provisions related to program personnel approaching organization  
 147 and operational duties with a positive attitude and constructively support open communication. As  
 148 well as upholding and implementing policies adopted by officials (including this law) [see *Code of*  
 149 *Ethics, 103.4-7*].
- 150 B. The Conflict of Interest law includes provisions related to disclosure of all conflicts of interests for  
 151 employees [see *Conflict of Interest, 217.4-2(a)(2)*]. This would apply to the Internal Audit  
 152 Department in their involvement with the audit process [see 108.5-2(a)].
- 153 C. The Personnel Policies and Procedures detail the process to be followed regarding corrective actions  
 154 detailed in this law.
- 155 D. The Comprehensive Policy Governing Boards, Committees and Commissions details the process used  
 156 to terminate a board, committee or commission member who is not adhering to the Nation's laws,  
 157 rules or policies (including this law).
- 158 E. The Removal Law details the process used to remove an elected member of a board, committee or  
 159 commission who is not adhering to the Nation's laws, rules or policies (including this law).
- 160 F. The Audit Committee Bylaws contain the detail regarding the scope of authority of the Audit  
 161 Committee.
- 162 B. The Audit Committee bylaws will need to be updated to reflect changes in this law; including  
 163 reference to the Audit Law.

## 165 SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR 166 OBLIGATIONS

- 167 A. The proposed amendments to the Audit Law will not affect any existing rights or privileges.
- 168 B. Due process is included in the law in that an entity that does not agree with an audit report or finding  
 169 can request consultation with the Internal Audit Department or the Audit Committee [see 108.6-  
 170 3(a)(4) and 108.6-6(a)(1)].
- 171 C. No terms of office will be affected by the proposed amendments.
- 172 D. It will not affect any current agreements or legal agreements.
- 173 E. The amendments provide further detail that aligns with the current practices of the Internal Audit  
 174 Department and the Audit Committee in relation to the internal audit process.

## 176 SECTION 9. ENFORCEMENT

- 177 A. General Compliance: Any entity and/or management found violating this law are subject to corrective  
 178 action in accordance with the Nation's employment laws, rules and policies *[see 108.7-1]*.  
 179 B. Noncompliance with the Audit Process: The Internal Audit Department shall send a report including  
 180 recommended actions to the Audit Committee if there is knowledge or belief that an entity has  
 181 violated this law *[see 108.7-2]*.  
 182       • The Audit Committee may request OBC executive session and direct management staff  
 183 to attend *[see 108.7-2(a)]*.  
 184       • The OBC may direct an entity to comply with this law and information gathering efforts  
 185 and/or take corrective action necessary to enforce compliance *[see 108.7-2(b)]*.  
 186       • The OBC, in consultation with the Oneida Law Office, may report illegal activity to the  
 187 proper law enforcement authorities *[see 108.7-2(b)(1)]*.  
 188       • The OBC may direct discipline of management staff or other responsible employees for  
 189 the failure to comply with the Nation's laws *[see 108.7-2(b)(2)]*.  
 190       • Where a board, committee or commission is noncompliant, taking steps to terminate or  
 191 remove a board member pursuant to the Nation's applicable laws *[see 108.7-2(b)(3)]*.  
 192       • Restricting an internal entity's budget funding *[see 108.7-2(b)(4)]*.  
 193 C. The Internal Audit Department will utilize existing staff to implement this law.  
 194

## 195 SECTION 10. ACCOUNTABILITY

- 196 A. The Internal Audit Department, in coordination with the Audit Committee and OBC, will be  
 197 responsible for implementation and operation of this law.  
 198 B. Internal audit reports are finalized and approved by the OBC for Tribal member viewing in whole or  
 199 in part *[see 108.6-7]*.  
 200

## 201 SECTION 11. OTHER CONSIDERATIONS

- 202 A. The Audit Committee bylaws were updated on January 27, 2016 and reflect some of the current  
 203 amendments to this law. Additional amendments will require the Audit Committee bylaws to be  
 204 amended.  
 205



**Title 1. Government and Finances - Chapter 108**  
**INTERNAL AUDIT**  
**wahatiwist@hsehte> Aolihw@ke**  
***they count money – issues***

108.1.	Purpose And Policy	108.5.	Internal Audit Department
108.2.	Adoption, Amendment, Repeal	108.6.	Audit Process
108.3.	Definitions	108.7.	Compliance And Enforcement
108.4.	Audit Committee	108.8.	Access To Internal And External Audits

**108.1. Purpose and Policy**

108.1-1. *Purpose.* It is the purpose of this law to create a process by which internal audits are conducted upon the Nation's entities and to delegate responsibilities for the purpose of conducting such audits.

108.1-2. *Policy.* It is the policy of the Nation to continually examine and assess the Nation's entities by means of internal audit in order to enhance policies, procedures, and systems which are in place to ensure: the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the efficient use of resources.

**108.2. Adoption, Amendment, Repeal**

108.2-1. This law was adopted by the Oneida Business Committee by resolution BC-7-15-98-C and amended by \_\_\_\_.

108.2-2. 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.

108.2-3. 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.

108.2-4. 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.

108.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**108.3. Definitions**

108.3-1. 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) "Audit" means an internal, independent, objective assurance and consulting activity designed to add value and improve an organization's operations by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes and includes a review of the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the use of resources.

(b) "Day" means business day of the Nation and excludes holidays observed by the Nation.

(c) "Entity" means any activity, function, operation, board, committee, commission, department, division or other grouping within the Nation which reports under the Nation's Federal Identification Number (FIN).

(d) "Finding" means an indication that a problem does exist based on an audit and may include, but is not limited to, the criteria or basis for determining that the problem exists, a condition or situation that was observed, the effect or impact of the condition, and the root

cause of the problem to the extent that it is able to be determined.

(e) “Nation” means the Oneida Nation.

(f) “Reasonably related” means the condition of being directly or indirectly associated with a given issue or situation whether the relation be integral or incidental in nature.

(g) “Relevant information” means, but is not limited to, financial information and records, facilities, offices, people, equipment, inventories, tapes, activities, network servers, and files regardless of storage medium.

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

#### **108.4. Audit Committee**

108.4-1. *Audit Committee.* The Audit Committee, a standing committee of the Oneida Business Committee, shall oversee the internal audit process including but not limited to any and all investigation into complaints received alleging or suspecting improprieties and/or violations of the Nation’s policies, laws, rules and directives.

(a) The Audit Committee may not, under any circumstance, direct the audit of an individual Tribal member and/or employee.

(b) The Audit Committee shall include in all audit reports containing findings a set of follow-up recommendations highlighting opportunities for improvement.

108.4-2. *Enforcement.* The Audit Committee is hereby granted authority to utilize all existing enforcement mechanisms, including those provided in this law, to carry out its responsibilities.

108.4-3. *Mandatory Attendance at Audit Committee Meeting(s).* The Audit Committee may require management representation, through the appropriate chain of authority, to appear at Audit Committee meetings as necessary.

#### **108.5. Internal Audit Department**

108.5-1. *Internal Audit Department.* The Internal Audit Department operates under the oversight of the Audit Committee and shall conduct audits at the direction of the Audit Committee, provided that once a confidential schedule of sporadic entity audits is approved by the Audit Committee, further approval from the Audit Committee is not required.

108.5-2. *General.* The Internal Audit Department shall work with entities to obtain information reasonably related to the purpose of the audit directed by the Audit Committee. The scope of their research and investigation shall be unrestricted, provided that employees of the internal audit department shall:

(a) Refrain from participating, in any way, in any audit of an activity over which he or she has related authorities and/or responsibilities;

(b) Adhere to the Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing; and

(c) Strictly maintain the utmost confidentiality in all aspects of the audit process, including but not limited to confidentiality of information obtained during an audit and audit results and recommendations.

108.5-3. *Audit.* Any revision to the audit objectives named by the Audit Committee pursuant to section 108.6-2 deemed necessary after commencement of the audit shall be approved by the Internal Audit Department’s management prior to initiating any change in the audit objective and noticed to the Audit Committee.

108.5-4. *Records.* The Internal Audit Department shall maintain all information collected or derived from an audit. Upon closure of an audit, all documentation shall be retained in a secure location in accordance with the laws of the Nation.

**108.6. Audit Process**

108.6-1. *Initiating an Audit.* The Audit Committee may direct the Internal Audit Department to initiate, provided that the direction shall be based on one (1) or more of the following:

- (a) The confidential schedule of sporadic entity audits approved by the Audit Committee;
- (b) An entity's request for an audit of its practices;
- (c) An audit is required by policy, law, rule and/or directive;
- (d) An audit is directed by the Oneida Business Committee; and/or
- (e) An audit is requested by a Tribal member.

(1) Where an audit is requested by a Tribal member, the Audit Committee shall consider the basis of the request. If the Audit Committee finds no valid concerns as provided in section 108.6-2, it shall deny the audit request.

(2) Regardless of whether the audit request is granted, the Audit Committee shall provide written notice to the Tribal member indicating whether the audit request has been granted or denied, in whole or in part.

108.6-2. *Focus of the Audit.* When directing the Internal Audit Department to begin any audit, the Audit Committee shall direct the audit focus on concerns related to one (1) or more of the following:

- (a) Reliability and integrity of information;
- (b) Noncompliance with policies, laws, rules and/or directives;
- (c) Safeguarding of assets;
- (d) Use of resources;
- (e) Financial performance;
- (f) Fraudulent or dishonest activities;
- (g) Follow-up related to a previous audit report;
- (h) General assessment of an entity; and/or
- (i) New or final status of an entity.

108.6-3. *Information Gathering.* The Internal Audit Department shall begin information gathering by issuing the entity being audited a written request for information.

(a) The Internal Audit Department shall include the following in its request for information:

- (1) A request for relevant information needed to complete the audit;
- (2) Notice of the time requirements found in section 108.6-3(b), including the deadline for requesting an extension;
- (3) Notice that failure to provide requested information and cooperate with the Internal Audit Department may lead to corrective action from the Oneida Business Committee in accordance with 108.7-2; and
- (4) Notice that the entity may request a consultation with the Internal Audit Department as part of the information gathering process.

(b) Unless granted an extension, an entity receiving a written request shall respond and submit the information identified in the request within fourteen (14) days after receiving the written request or as otherwise requested by the Internal Audit Department.

(1) Entities may submit a written request for an extension allowing more time to respond to a written request for information provided that a requesting entity shall submit the request to the Internal Audit Department within seven (7) days of the date of the written request for information and shall identify in detail the reason(s) an extension is needed.

(2) Within three (3) days of receipt of a request for an extension, the Internal Audit Department shall respond either denying or granting, in whole or in part, the

extension. If the request is granted, the response shall identify the new deadline for submitting the requested information.

108.6-4. *Continual Access to Information.* After the entity's initial response to the Internal Audit Department's request for information, the entity remains responsible for providing the Internal Audit Department with continual access to information and shall timely respond to all requests for additional information.

108.6-5. *Access to Facilities and Premises.* Entities subject to an audit shall allow Internal Audit Department staff to enter all facilities and premises of the Nation as the Internal Audit Department deems necessary to conduct the audit.

108.6-6. *Management Response.* Once a draft audit report has been issued to an entity, the entity shall provide a management response within fourteen (14) days of receiving the draft.

(a) *Management Response Content.* Management shall include the following in its response:

(1) Any concerns the entity may have related to an audit finding, provided that, if any concerns are identified by entity, the entity may also request a consultation with the Audit Committee to further discuss the contents of the draft audit report prior to finalization of the audit report;

(2) Management's plan to address, remedy or resolve issues discovered as part of an audit finding;

(3) The title of the person(s) responsible for implementing management's plan; and

(4) A specific timeline for completion of management's plan.

(b) *Audit Committee Consultation.* When an entity is granted an Audit Committee consultation, the Audit Committee shall take any combination of the following actions:

(1) Excuse the entity from providing a remedy in its management response to any draft audit report findings which the Audit Committee deems unfounded or for which remedy is not feasible based on the totality of the circumstances;

(2) Direct the Internal Audit Department to conduct additional information gathering and/or consultation with the entity and to report back to the Audit Committee upon completion; and/or

(3) Notice the entity that the Audit Committee concurs with the draft audit report findings and direct full compliance with the requirements of section 108.6-6(a)(2).

108.6-7. *Audit Report Finalization.* Once the Audit Committee has reviewed the management response and approved the draft audit report, the audit report is finalized and forwarded to the Oneida Business Committee for approval. The final audit report shall include all findings as well as any required entity follow-up and/or further scheduled auditing. The Oneida Business Committee shall include in its approval notice as to whether the audit report is released for Tribal member viewing in whole or in part.

## **108.7. Compliance and Enforcement**

108.7-1. *General.* Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law.

108.7-2. *Noncompliance with the Audit Process.* Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions.

(a) In the event of noncompliance with a written request and/or this law, the Audit

Committee may request the matter be placed on an Oneida Business Committee meeting agenda as part of executive session and may direct the management and any other appropriate parties involved to appear at that meeting.

(b) If the Oneida Business Committee determines that an entity has failed to respond to a valid written request and/or is otherwise not in compliance with this law, the Oneida Business Committee shall direct the entity to submit any relevant information and/or take such corrective action as is necessary to enforce compliance and/or to prevent future noncompliance, including but not limited to:

(1) In consultation with the Oneida Law Office, reporting illegal activity to the proper law enforcement authorities;

(2) Directing discipline of the management staff or other responsible employee(s) for the failure to comply with the Nation's policies, laws and rules in accordance with the Nation's employment practices;

(3) Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board, committee or commission member(s) pursuant to the Nation's applicable laws; and/or

(4) Restricting an internal entity's budget funding.

108.7-3. *Special Investigations.* Should the Internal Audit Department suspect an entity has conducted illegal activity, it may launch a special investigation upon the Audit Committee's approval of the special investigation. Entities are responsible for knowing their rights and responsibilities in the event a special investigation is conducted and shall comply with the special investigation rules, which the Audit Committee and the Internal Audit Department shall develop pursuant to joint rulemaking authority.

108.7-4. *External Communications.* Prior to communicating any information related to an audit to an external entity, including but not limited to law enforcement agencies, the Internal Audit Department shall receive approval from the Audit Committee.

## **108.8. Access to Internal and External Audits**

108.8-1. *Access Requests Limited to Tribal Members.* Only Tribal members may request access to internal and/or external audits reports, provided that audit reports may not under any circumstances be provided in a General Tribal Council agenda packet.

(a) Prior to granting access, the custodian of the audit report shall require:

(1) Verification of Tribal member status by means of a Tribal member identification card; and

(2) The Tribal member sign and print their full name on the applicable audit report access log.

(b) Custodians of audit reports shall limit access to on-site review and shall deny permission to print and/or make copies of audit reports.

108.8-2. *Internal Audit Reports.* Requests for internal audit reports shall be submitted to the Internal Audit Department. To protect the integrity of the audit process, the Internal Audit Department shall keep all information related to an incomplete audit, including audit progress, strictly confidential until the audit report has been approved by the Oneida Business Committee and released for Tribal member viewing. The Audit Committee may provide progress updates related to incomplete audits to the Oneida Business Committee upon request, provided that any such update shall be conducted in executive session.

108.8-3. *External Audit Reports.* Requests for external audit reports, which include but are not limited to, the annual financial audit of the Nation and any audit of a vendor, consultant or other



party organized outside of the Nation's Federal Identification Number (FIN), shall be submitted to the responsible custodian located at any of the following locations:

- (a) The Oneida Community Library;
- (b) The Office of the Nation's Treasurer;
- (c) The Finance Department; and/or
- (d) The Oneida Business Committee Records Management Office(s).

*End.*

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Adopted - BC-7-15-98-C

Emergency Amendment – BC-5-12-99-C (expired)

Emergency Amendment – BC-6-9-99-C (expired)

Amended - BC

**Title 1. Government and Finances - Chapter 108****AUDIT LAW****108.1. INTERNAL AUDIT****wahatiwistáhsehte? Aolihwá:ke****they count money – issues**

108.1. Purpose And Policy  
108.2. Adoption, Amendment, Repeal  
108.3. Definitions  
108.4. Audit Committee

108.5. Internal Audit Department  
108.6. Audit Process  
108.7. Compliance And Enforcement  
108.8. Access To Internal And External Audits

**108.1. Purpose and Policy**

108.2. Adoption, Amendment, Repeal  
108.3. Definitions  
108.4. General

108.5. Authority of the Audit Committee  
108.6. Authority of the Internal Audit Department  
108.7. Reports  
108.8. Responsibilities of Administration

**108.1. Purpose and Policy**

108.1-1. Purpose. It is the purpose of this law to create a framework of process by which internal audits are conducted upon the Nation's entities and delegated authorities to protect the assets of the Oneida Nation. It is further the purpose of this law to define the respective delegate responsibilities of parties involved to fully implement this law for the purpose of conducting such audits.

108.1-2. Policy. It is the policy of this law the Nation to create a system with the necessary tools continually examine and delegated authorities assess the Nation's entities by means of internal audit in order to evaluate all activities, functions enhance policies, procedures, and operations of the Tribe. It is also systems which are in place to ensure: the policy of this law to include reliability and integrity of information; compliance with policies, laws, regulations and directives; the Tribe's component units, vendors, investments, and partners, within safeguarding of assets; and the scope efficient use of the law resources.

**108.2. Adoption, Amendment, Repeal**

108.2-1. This law is was adopted by the Oneida Business Committee by resolution #BC-7-15-98-C, and amended by \_\_\_\_\_.

108.2-2. 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 Oneida Administrative Legislative Procedures Act.

108.2-3. by 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.

108.2-4. In the event of a conflict between a provision of this law and a provision of another law, the Oneida Business Committee or the General Tribal Council provisions of this law shall control.

108.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

108.2-3. All other Oneida policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically reenacted after adoption of this law.

**108.3. Definitions**

108.3-1. This section shall govern the definitions of words or and phrases as used herein within this law. All words not defined herein shall be used in their ordinary and everyday sense.

Forma



(a) ~~Internal Audit Department.~~ The department established within the Oneida Tribe of Indians of Wisconsin responsible for conducting independent appraisals of entities which examine and evaluate the activities as a service to the organization. It shall at all times observe the confidential nature of the information and audit results.

(b) ~~Audit Committee.~~ That entity responsible for protecting assets of the Oneida Nation, by analyzing audit and financial reports, receiving complaints or allegations, and pursuing follow up on audit recommendations.

(c) ~~Audit or Investigation.~~ The process of gathering, reviewing, testing and evaluating the facts of financial, operational, compliance or management issues. This includes necessary industry specific research.

(d) (a) "Audit" means an internal, independent, objective assurance and consulting activity designed to add value and improve an organization's operations by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes and includes a review of the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the use of resources.

(b) "Day" means business day of the Nation and excludes holidays observed by the Nation.

(c) "Entity" means any activity, function, operation, board, committee, commission, department, division or other grouping within the Nation which reports under the Nation's Federal Identification Number (FIN).

(d) "Finding" means an indication that a problem does exist based on an audit and may include, but is not limited to, the criteria or basis for determining that the problem exists, a condition or situation that was observed, the effect or impact of the condition, and the root cause of the problem to the extent that it is able to be determined.

(e) "Nation" means the Oneida Nation.

(f) "Reasonably related-The" means the condition of being directly or indirectly associated with a given issue or situation. ~~It may~~ whether the relation be integral or incidental in nature.

(e) ~~Entity.~~ Includes any or all activities, functions and operations of the Tribe, component units, vendors, consultants, partner in joint ventures, or businesses in which the Tribe has an investment.

(f) ~~Component Units.~~ Tribally chartered corporations and autonomous entities including, but not limited to, limited liability corporations, State chartered corporations, Housing Authority, Economic Development Authority, boards, committees and commissions.

(g) ~~Relevant Information.~~ Includes information means, but is not limited to, financial information and records ~~regardless of custody~~, facilities, offices, people, equipment, inventories, tapes, activities, network servers, and files regardless of storage medium.

(h) "Tribal member" means an enrolled member of the Nation.

108.4.(h) Administration. Includes all supervisory personnel of all tribal entities

(i) ~~Ethics.~~ Includes the Code of Ethics of the Oneida Tribe, Standards for Professional Practice of Internal Auditing as developed by the Institute of Internal Auditing Standards Board and any other law or professional standards as may be applicable.

#### 108.4. General



**~~108.4.1.~~ Audit Committee**

~~108.4.1.~~ There is hereby created Audit Committee. The Audit Committee, a standing committee of the Oneida Business Committee ~~which~~, shall ~~have five members, two of which shall be designated a Chairperson and Vice Chairperson.~~ The Committee will be composed of four Oneida Business Committee members selected concurrently with the election to the Oneida Business Committee, and a Tribal member, appointed at mid-term, who is not an employee of the Tribe, with appropriate knowledge, skills and experience. Members shall adhere to all Tribal laws, codes, policies and procedures with the strictest confidentiality.

~~108.4.2.~~ Internal Audit Department. There is hereby created an Internal Audit Department which shall be responsible to the Audit Committee. The Internal Audit Department shall be managed by an Internal Audit Manager and shall begin audits based on one or more of the following:

- a. The established oversee the internal audit plan.
- b. Financial performance.
- c. Approved audit requests.
- d. Fraudulent or dishonest activities.
- e. Previous audit results.
- f. New or final status of an operating unit, activity, or function.

~~108.4.3.~~ Entity. Entities that submit response and/or action plans to audits, investigations or recommendations are responsible for following through with the representations or providing adequate status change information to the Audit Committee.

~~108.4.4.~~ Audit. The Internal Audit Department shall begin and complete any audits or investigations in a confidential manner. There shall be a specifically identified objective approved by the Internal Audit Manager prior to commencement and any revision deemed necessary after commencement will also have the Internal Audit Manager approval prior to affecting that change in the audit plan.

**~~108.5.~~ Authority of the Audit Committee**

~~108.5.1.~~ General. The Audit Committee has been delegated the authority by the Oneida Business Committee to ensure the integrity of the Tribe's financial reporting and audit systems.

~~108.5.2.~~ Oversight. The Audit Committee shall have the responsibility of oversight over the Tribal audit processes and the process of including but not limited to any and all investigation into any alleged or suspected complaints received alleging or suspecting improprieties and/or violations of fiscal and ethics ~~the Nation's~~ policies, ~~codes, regulations,~~ laws, rules and directives.

(a) The Audit Committee may not, under any circumstance, direct the audit of an individual Tribal member and/or employee.

(b) The Audit Committee shall include in all audit reports containing findings a set of follow-up recommendations highlighting opportunities for improvement.

~~108.5.3.~~ ~~4.2.~~ Enforcement. The Audit Committee ~~will have the ability~~ is hereby granted authority to utilize all existing enforcement ~~authorities~~ mechanisms, including those provided in this law, to carry out ~~their~~ its responsibilities.

~~108.5.4.~~ ~~3.~~ Mandatory Attendance of Meetings at Audit Committee Meeting(s). The Audit Committee ~~shall~~ may require ~~appropriate administration~~ management representation, through the appropriate chain of authority, to appear at Audit Committee meetings as necessary.

**~~108.6.~~ Authority of the 5. Internal Audit Department**

~~108.6.1.~~ ~~General.~~ Internal Audit Department. The Internal Audit Department operates under the oversight of the Audit Committee and shall ~~have delegated authority~~ conduct audits at the direction of



the Audit Committee, provided that once a confidential schedule of sporadic entity audits is approved by the Audit Committee, further approval from the Audit Committee ~~and shall have the greatest ability is not required.~~

108.5-2. General. The Internal Audit Department shall work with entities to obtain information reasonably related to ~~an audit.~~ the purpose of the audit directed by the Audit Committee. The scope of their research and investigation shall be unrestricted, provided that employees of the internal audit department shall:

(a) Refrain from participating, in any way, in any audit of an activity over which he or she has related authorities and/or responsibilities;

~~(b) Adhere~~ 108.6-2. Confidentiality. The Internal Audit Department shall adhere to the Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing. ~~The scope of their work shall be unrestricted and members of the Internal Audit Department will have no authority or responsibilities for the activities they audit. All members of the Internal Audit Department will; and~~ strictly adhere to confidentiality in all aspects of their work and will not misuse or abuse their authorities.

~~108.6-3. Records Management.~~ (c) Strictly maintain the utmost confidentiality in all aspects of the audit process, including but not limited to confidentiality of information obtained during an audit and audit results and recommendations.

108.5-3. Audit. Any revision to the audit objectives named by the Audit Committee pursuant to section 108.6-2 deemed necessary after commencement of the audit shall be approved by the Internal Audit Department's management prior to initiating any change in the audit objective and noticed to the Audit Committee.

108.5-4. Records. The Internal Audit Department shall maintain all information collected or derived from an audit. Upon closure of an audit, all documentation shall be retained ~~for seven years~~ in a secure location in accordance with the ~~Records Management Law.~~ The files may be accessed ~~by laws of~~ the Internal Audit Department for reference, planning or status update. Any other requests ~~for access must be first approved by the Internal Audit Manager and the Audit Committee~~ Nation.

## 108.7. Reports **6. Audit Process**

~~108.76-1.~~ Initiating an Audit. The Audit Committee ~~shall report, as deemed appropriate, may direct the Internal Audit Department to initiate,~~ provided that the direction shall be based on one (1) or more of the following:

(a) The confidential schedule of sporadic entity audits approved by the Audit Committee;

(b) An entity's request for an audit of its practices;

(c) An audit is required by policy, law, rule and/or directive;

(d) An audit is directed by the Oneida Business Committee-; and/or

(e) An audit is requested by a Tribal member.

(1) Where an audit is requested by a Tribal member, the Audit Committee shall consider the basis of the request. If the Audit Committee finds no valid concerns as provided in section ~~108.76-2.~~ The Internal Audit Department shall make reports, it shall deny the audit request.

(2) Regardless of whether the audit request is granted, the Audit Committee shall provide written notice to the Tribal member indicating whether the audit request has been granted or denied, in whole or in part.

108.6-2. Audit Committee. Focus of the Audit. When directing the Internal Audit Department to



begin any audit, the Audit Committee shall direct the audit focus on concerns related to one (1) or more of the following:

- (a) Reliability and integrity of information;
- (b) Noncompliance with policies, laws, rules and/or directives;
- (c) Safeguarding of assets;
- (d) Use of resources;
- (e) Financial performance;
- (f) Fraudulent or dishonest activities;
- (g) Follow-up related to a previous audit report;
- (h) General assessment of an entity; and/or
- (i) New or final status of an entity.

108.6-3. *Information Gathering.* The Internal Audit Department shall begin information gathering by issuing the entity being audited a written request for information.

(a) The Internal Audit Department shall include the following in its request for information:

- (1) A request for relevant information needed to complete the audit;
- (2) Notice of the time requirements found in section 108.6-3(b), including the deadline for requesting an extension;
- (3) Notice that failure to provide requested information and cooperate with the Internal Audit Department may lead to corrective action from the Oneida Business Committee, and Administration on a need to know basis, in accordance with 108.7-2; and
- ~~108.7-3. *Annual*~~ (4) Notice that the entity may request a consultation with the Internal Audit Department as part of the Oneida Tribe information gathering process.

(b) Unless granted an extension, an entity receiving a written request shall ~~be posted~~ respond and submit the ~~locations~~ information identified in ~~this~~ the request within fourteen (14) days after receiving the written request or as otherwise requested by the Internal Audit Department.

(1) Entities may submit a written request for an extension allowing more time to respond to a written request for information provided that a requesting entity shall submit the request to the Internal Audit Department within seven (7) days of the date of the written request for information and shall identify in detail the reason(s) an extension is needed.

(2) Within three (3) days of receipt of a request for an extension, the Internal Audit Department shall respond either denying or granting, in whole or in part, the extension. If the request is granted, the response shall identify the new deadline for submitting the requested information.

108.6-4. *Continual Access to Information.* After the entity's initial response to the Internal Audit Department's request for information, the entity remains responsible for providing the Internal Audit Department with continual access to information and shall timely respond to all requests for additional information.

108.6-5. *Access to Facilities and Premises.* Entities subject to an audit shall allow Internal Audit Department staff to enter all facilities and premises of the Nation as the Internal Audit Department deems necessary to conduct the audit.

108.6-6. *Management Response.* Once a draft audit report has been issued to an entity, the entity shall provide a management response within fourteen (14) days of receiving the draft.



(a) Management Response Content. Management shall include the following in its response:

(1) Any concerns the entity may have related to an audit finding, provided that, if any concerns are identified by entity, the entity may also request a consultation with the Audit Committee to further discuss the contents of the draft audit report prior to finalization of the audit report;

(2) Management's plan to address, remedy or resolve issues discovered as part of an audit finding;

(3) The title of the person(s) responsible for implementing management's plan; and

(4) A specific timeline for completion of management's plan.

(b) Audit Committee Consultation. When an entity is granted an Audit Committee consultation, the Audit Committee shall take any combination of the following actions:

(1) Excuse the entity from providing a remedy in its management response to any draft audit report findings which the Audit Committee deems unfounded or for which remedy is not feasible based on the totality of the circumstances;

(2) Direct the Internal Audit Department to conduct additional information gathering and/or consultation with the entity and to report back to the Audit Committee upon completion; and/or

(3) Notice the entity that the Audit Committee concurs with the draft audit report findings and direct full compliance with the requirements of section 108.6-6(a)(2).

108.6-7. Audit Report Finalization. Once the Audit Committee has reviewed the management response and approved the draft audit report, the audit report is finalized and forwarded to the Oneida Business Committee for approval. ~~The annual audit shall be final~~ audit report shall include all findings as well as any required entity follow-up and/or further scheduled auditing. The Oneida Business Committee shall include in its approval notice as to whether the audit report is released for Tribal member viewing in whole or in part.

## **108.7. Compliance and Enforcement**

108.7-1. General. Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law.

108.7-2. Noncompliance with the Audit Process. Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions.

(a) In the event of noncompliance with a written request and/or this law, the Audit Committee may request the matter be placed on an Oneida Business Committee meeting agenda as part of executive session and may direct the management and any other appropriate parties involved to appear at that meeting.

(b) If the Oneida Business Committee determines that an entity has failed to respond to a valid written request and/or is otherwise not in compliance with this law, the Oneida Business Committee shall direct the entity to submit any relevant information and/or take such corrective action as is necessary to enforce compliance and/or to prevent future noncompliance, including but not limited to:

(1) In consultation with the Oneida Law Office, reporting illegal activity to the proper law enforcement authorities;



(2) Directing discipline of the management staff or other responsible employee(s) for the failure to comply with the Nation's policies, laws and rules in accordance with the Nation's employment practices;

(3) Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board, committee or commission member(s) pursuant to the Nation's applicable laws; and/or

(4) Restricting an internal entity's budget funding.

108.7-3. *Special Investigations.* Should the Internal Audit Department suspect an entity has conducted illegal activity, it may launch a special investigation upon the Audit Committee's approval of the special investigation. Entities are responsible for knowing their rights and responsibilities in the event a special investigation is conducted and shall comply with the special investigation rules, which the Audit Committee and the Internal Audit Department shall develop pursuant to joint rulemaking authority.

108.7-4. *External Communications.* Prior to communicating any information related to an audit to an external entity, including but not limited to law enforcement agencies, the Internal Audit Department shall receive approval from the Audit Committee.

#### 108.8. review by      **Access to Internal and External Audits**

108.8-1. *Access Requests Limited to Tribal Members.* Only Tribal members may request access to internal and/or external audits reports, provided that audit reports may not under any circumstances be provided in a General Tribal Council ~~members only, and shall require that the individual sign in to review the document~~ agenda packet.

a- (a) Prior to granting access, the custodian of the audit report shall require:

(1) Verification of Tribal member status by means of a Tribal member identification card; and

(2) The Tribal member sign and print their full name on the applicable audit report access log.

(b) Custodians of audit reports shall limit access to on-site review and shall deny permission to print and/or make copies of audit reports.

108.8-2. *Internal Audit Reports.* Requests for internal audit reports shall be submitted to the Internal Audit Department. To protect the integrity of the audit process, the Internal Audit Department shall keep all information related to an incomplete audit, including audit progress, strictly confidential until the audit report has been approved by the Oneida Business Committee and released for Tribal member viewing. The Audit Committee may provide progress updates related to incomplete audits to the Oneida Business Committee upon request, provided that any such update shall be conducted in executive session.

108.8-3. *External Audit Reports.* Requests for external audit reports, which include but are not limited to, the annual financial audit of the Nation and any audit of a vendor, consultant or other party organized outside of the Nation's Federal Identification Number (FIN), shall be submitted to the responsible custodian located at any of the following locations:

(a) The Oneida Community Library;

(b. ~~Tribal Treasure's~~) The Office, of the Nation's Treasurer;

(c-) The Finance Department ~~Offices;~~ and/or

(d-) The Oneida Business Committee Records ~~Technician's Offices.~~ Management Office(s).

For OBC Consideration  
2017 06 28

~~108.8.~~ **Responsibilities of Administration**

~~108-1. General. Administration is required to adhere to the Audit Law and all related procedures.  
Failure to comply shall be considered as uncooperative and subject to enforcement under sec. 5-3.~~

*End.*

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Adopted - BC-7-15-98-C

Emergency Amendment – BC-5-12-99-C (expired)

Emergency Amendment – BC-6-9-99-C (expired)

Amended - BC



Legislative Operating Committee  
June 21, 2017

## Business Committee Meetings Law

<b>Submission Date:</b> 8/27/15	<b>Public Meeting:</b> 12/29/16, 5/18/17
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.*

**9/2/15 LOC:** Motion by Jennifer Webster to add the Business Committee Meetings Law to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously. *Note: Brandon Stevens will be the sponsor for this item.*

**11/4/15 LOC:** Motion by Fawn Billie to accept the memorandum for the Business Committee Meetings Law as FYI and defer to the sponsor to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**5/4/16 LOC:** Motion by Fawn Billie to make the Business Committee Meeting law a priority item on the Active Files List and to direct the sponsor to schedule a strategy meeting to discuss possible solutions to mitigate tension and improve the communication process at Business Committee meetings; seconded by Jennifer Webster. Motion carried unanimously.

**9/21/16 LOC:** Motion by Jennifer Webster to accept the Oneida Business Committee Meetings law and send to the Legislative Reference Office for legislative and fiscal analysis; seconded by Tehassi Hill, seconded by Fawn Billie. Motion carried unanimously.

**10/19/16:** *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. LRO Director will schedule a work meeting to decide on some policy issues.

**11/7/16:** *Work meeting held.* Present: Clorissa Santiago, Maureen Perkins, Tehassi Hill, Cathy Bachhuber, Fawn Billie, Brandon Stevens, Jo Anne House. In addition to working out draft details, the group decided to request that the Secretary change the Regular BC Meeting agenda, to improve efficiency.

**11/16/16 LOC:** Motion by Fawn Billie to approve the Oneida Business Committee Meetings Law public meeting packet with the noted change and direct the LRO to hold a public meeting on December 29, 2016; seconded by Tehassi Hill. Motion carried unanimously.

**12/29/16:** Public meeting held.

**3/1/17 LOC:** Motion by Tehassi Hill to accept the public meeting comments and defer this item to a work



meeting; seconded by Fawn Billie. Motion carried unanimously.

**3/15/17:** *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck, Danelle Wilson, Mike Debraska. Public meeting comments were reviewed and considered. Drafter will update draft to reflect revisions discussed.

**4/5/17 LOC:** *Item deleted at adoption of the agenda and deferred to a work meeting.*

**4/17/17:** *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David P. Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck. Updated revisions to draft were discussed. Drafter will update draft and prepare a public meeting packet.

**4/19/17 LOC:** Motion by David P. Jordan to approve the public meeting packet and forward the Oneida Business Committee Meetings law to a public meeting to be held on May 18, 2017; seconded by Fawn Billie. Motion carried unanimously.

Motion by Jennifer Webster to request the Finance Department to prepare a fiscal analysis due to the Legislative Reference Office on May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/18/17:** Public Meeting Held.

**6/7/17 LOC:** Motion by Fawn Billie to accept the Business Committee Meetings Law public comments and to defer to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.

**6/7/17:** *Work Meeting Held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David P. Jordan, Fawn Billie, Clorissa Santiago, Candice Skenandore, Jen Falck. LOC reviewed and considered all public comments.

#### **Next Steps:**

- Accept the public meeting comment response memorandum and updated draft;
- Direct the Legislative Reference Office to update the legislative analysis and prepare an adoption packet.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 21, 2017  
RE: Oneida Business Committee Meetings Law: Public Meeting Comment Review

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On May 18, 2017, a second public meeting was held regarding the proposed Oneida Business Committee Meetings law. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

On June 7, 2017, the Legislative Operating Committee (LOC) accepted the public comments and held a work meeting to review and consider each comment. This memorandum reflects the considerations and decisions made by the LOC.

#### **Comment 1 – General Comment Regarding the Authority of the OBC to Adopt this Law:**

**Bonnie Pigman (written):** For the record I am not opposed to the purpose of this law, but I strongly, oppose the Oneida Business Committee being able to adopt it or being able to amend anything in it. I feel the Oneida Business Committee should not be creating a law for their benefit and then be able to adopt or amend it, stating legislatively the GTC has given them this authority. I feel GTC gave the Oneida Business Committee authority to create and approve laws, but not laws that are developed for their (OBC) benefit, under the guise it's for the benefit of the membership. GTC is their supervisor and therefore, should approve any laws the OBC wishes to create to help them do their job. Allowing the Oneida Business Committee to adopt this law would be like someone being able to be their own judge, jury and carry out their own sentencing. I recommend line 29 be re-written as:

117.2-2 this law may only be amended or repealed by the General Tribal Council ...

#### ***Response***

The Oneida General Tribal Council has delegated authority to the Oneida Business Committee and the Legislative Operating Committee for the development and adoption of legislation.

Article III Section 3 of the Constitution of the Oneida Nation states that the “qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members age twenty-one (21) and over who physically reside in either Brown or Outagamie Counties of Wisconsin by secret ballot (a) a chairman; (b) a vice-chairman; (c) a secretary; (d) a treasurer; (e) and five councilmen. These shall constitute the Business Committee and shall perform such duties as may be authorized by the General Tribal Council.”

The General Tribal Council then adopted resolution GTC-01-07-13-A, which adopted the Legislative Procedures Act (LPA). The LPA created the Legislative Operating Committee (LOC) and delegated duties and responsibility to the LOC by stating the LOC shall be responsible for the development of laws for the Nation in accordance with the LPA, other such duties as provided by laws of the Nation and the development and maintenance of the Oneida Register. *[see LPA section 109.4].*

The LPA then states that the LOC shall forward proposed legislation to the Oneida Business Committee when legislation is ready for consideration, and the Oneida Business Committee shall consider the legislation or forward the legislation to the Oneida General Tribal Council for consideration. The LPA then goes on to state that the Oneida Business Committee shall amend and repeal laws in accordance with the laws governing Oneida Business Committee action. The General Tribal Council shall adopt, amend and repeal laws in accordance with the laws governing General Tribal Council action. *[see LPA section 109.9-2].*

Since the Oneida Business Committee Meetings law governs the action of the Oneida Business Committee during their meetings, the Oneida Business Committee should be the adopting party of this Law.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC discussed the commenters concern that the Oneida Business Committee be allowed to adopt a law governing the Oneida Business Committee meetings. The LOC feels there should be no concern about the Oneida Business Committee adopting this Law because it is no different than a department of the Nation developing standard operating procedures and administrative rules to govern their processes and procedures. The intent of the Law is to provide standards for Oneida Business Committee Meetings so that the meetings are conducted in a consistent, peaceful, and orderly manner. The Law governs only Oneida Business Committee meetings, and not General Tribal Council meetings.

The LOC discussed the fact that the Legislative Procedures Act clearly states that the Oneida Business Committee has the authority to adopt, amend, and repeal laws governing Oneida Business Committee action. Through the legislative process two public meetings to collect comments from the community were held for this Law, one on December 29, 2016, and then again on May 18, 2017. All public comments were carefully considered, and changes to improve the draft resulted from each public comment period.

Additionally, although it is the Oneida Business Committee that is adopting the Law, the General Tribal Council does have the ability to amend or repeal the Law.

The LOC determined no revisions are necessary based on this comment.

## Comment 2 – Public Comment and Discussion of Individuals:

### 117.5-2. Public Comment.

- (a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Oneida Nation Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.
- (b) Individuals shall be allowed to make public comments at the beginning of each agenda item only. All public comments made shall be relevant to the current agenda item. Each individual shall be allowed to give public comment one time per agenda item. Each individual shall be limited to speaking for a maximum of three (3) minutes each per agenda item. The time limitation may be extended by request of the individual with approval of the Oneida Business Committee.
- (c) All comments are subject to the limitations of section 117.5-1 when discussing individuals or groups of individuals.
- (d) No action is required to accept or otherwise take action regarding a comment being made. Oneida Business Committee meeting attendees may ask questions while providing public comment. If an Oneida Business Committee meeting attendee can provide a proper response to a posed question then that individual may answer the question.
- (e) Public comments shall be relevant to the current agenda item and may be any of the following:
  - 1. A request to have the Oneida Business Committee review an issue or action;
  - 2. A comment on an item on the agenda;
  - 3. Praise regarding an entity, an individual or an employee;
  - 4. A public notice about an activity or fundraising event; and/or
  - 5. Other comments deemed pertinent by the presiding Chairperson.
- (f) The Oneida Business Committee shall proceed with conducting official business related to the agenda item once all public comments are received.

**Bonnie Pigman (written):** In section 117.5-2. Public Comment. Sub-section (b) states the time limitation may be extended by request of the individual with approval of the OBC. The sub-section does not state when an individual can do this or the manner by which to make the request. think three {3} minutes to make comment per agenda item is not sufficient and depending on some of the more controversial subjects the entity holding the public meeting should recognize this prior to the public meeting and adjust the public comment time limits according. I think not doing so is disrespectful to those individuals who made time to come and share their thoughts on the subject matter (per 117.5-1.. .. there is a need for frank and honest discussions in all meeting of the OBC))

### *Response*

Section 117.5-2(b) of the Law states that each individual may have up to three (3) minutes, per agenda item, to provide public comment. If the individual feels the three (3) minutes are not long enough to provide public comment on that agenda item the Law allows the individual to request

an extension from the Oneida Business Committee, and the individual can make that request by simply asking the Oneida Business Committee during their public comment. This time extension is not unilateral for all speakers, but applies solely to the individual making the request.

The commenter then discusses that “*depending on some of the more controversial subjects the entity holding the public meeting should recognize this prior to the public meeting and adjust the public comment time limits according,*” but this time limit extension applies solely to the public comment period each Oneida Business Committee meeting attendee is allotted at the beginning of each agenda item, and not to general public meetings for proposed legislation or rules held by the Legislative Operating Committee or other entity of the Nation.

The purpose of conducting Oneida Business Committee meetings is for official business of the Oneida Nation, as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation, to be completed. The Oneida Business Committee meetings law intends to balance the need for official business to be conducted by the Oneida Business Committee with open discussion from the community related to items on the agenda.

There is no recommended revision based on this comment. The LOC can consider whether a three (minute) allotment for public comment on each agenda item, with an opportunity to request an extension from the Oneida Business Committee is sufficient.

### ***LOC Consideration***

The LOC discussed the motivation behind the policy decision, and concluded that a three (3) minute time limitation with the opportunity to request an extension from the Oneida Business Committee is sufficient. The LOC understands that some topics might garner more in depth conversation than others, and the opportunity for the time extension will address those situations. The LOC had discussion on the intent of this section of the Law, and the fact that the Oneida Business Committee is trying to balance the need to conduct official business with the value of obtaining input and comments from the community.

The LOC determined there is no revision necessary based on this comment.

### **Comment 3 – General Comment Regarding the Public Comment Period:**

**Ed Delgado (oral):** But my comment on this, umm, you make, you’re proposing that just during the beginning of the meeting General Tribal Council, I mean attendees can make comments. And then you gotta be pretty much, you’re done, if you’re not a member of on the agenda, or anything like, you’re done making comments. And then for the rest of the meeting it sounds to me that if you want to stay, you’re just listen to, you know you’d be like the peanut gallery. You’re there to listen only. And that might work in some other smaller, I mean bigger cities or big nations or big states, but I don’t think it works for a small tribe. Even though we are a big tribe, when it comes to something like this we are, we have a small population. And not everyone has the time or the energy to come up and make comments, or be familiar with what’s going on within their tribe. Most people who do decide to come, they, they’re interested in the presentations given by the many programs. And after they, the way I read it, when somebody provides a report the



membership in attendance, they'd be done already because the public comment area time is done. So you'd have to sit there for the rest of the meeting with your mouth quiet. And as it is, as it is the tribal membership gets very little say and provides very little comment in the legislative process and this will diminish that. I think the Business Committee should be encouraging public comment. Respectful, you got that in here, that's very good. But to discourage public comment after a report is given, umm or during a report, or. What we have now, umm I think that's a good thing. It provides the tribe, the Nation, with an opportunity to provide comment on the programs that we fund and that's important. And other than that it's pretty much okay. But I think you're going to run into a roadblock if you try and promote this thing that whereby you have to come and speak when you got your public comment time but you haven't heard the reports yet. Uhh and you'd have to sit through the, I don't know, it just, I just do not think its gonna fly. So thank you.

### ***Response***

The commenter discusses a prior draft of the Law in which individuals were limited to providing public comment during one period at the beginning of the agenda for the Oneida Business Committee meeting. The LOC received comments about this proposal during the December 29, 2016, public meeting for the Law and made revisions to reflect the desires of the community. Section 117.5-2 of the Law now describes the new proposed policy regarding public comment, which allows an individual to provide public comment at the beginning of each agenda item for a maximum of three (3) minutes. The Oneida Business Committee meetings law intends to balance the need for official business to be conducted by the Oneida Business Committee with open discussion from the community related to items on the agenda.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC agrees the commenter was referencing the prior public meeting draft of the Law in which there was one period at the beginning of the Oneida Business Committee agenda that was designated for attendees to provide public comment. The commenter's concerns were addressed, and the Law now allows for public comment at the beginning of each agenda item, which will provide for more opportunity for the community to provide input.

The LOC determined there is no revision necessary based on this comment.

### **Comment 4 – Responsibilities of Oneida Business Committee Meeting Attendees:**

**117.8-1. Behavior of Oneida Business Committee Meeting Attendees. Keeping in line with the Oneida principle of Kalihwi-ya%, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:**

- (a) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees;**
- (b) Be under the influence of alcohol or illegal drugs;**

- (c) **Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation; and**
- (d) **Take action that violates any laws, rules or policies of the Nation.**

**Bonnie Pigman (written):** In section 117.8-1. Behavior of Oneida Business Committee Attendees. It identifies that the OBC members are included as attendees, so I am requesting letter (d) be added to state "when OBC members are arguing with each other, non-OBC members (attendees) be able to request the remaining OBC body, regardless of title, to immediately notice the offending OBC members and remind them of the consequences for their inappropriate behavior". There have too many times that I as an attendee have sat in OBC sessions and witnessed the inappropriate behaviors between OBC members. The behaviors of the OBC to, need to be addressed.

### ***Response***

The commenter wishes to add a provision to the law that would allow Oneida Business Committee meeting attendees to make a request to the Oneida Business Committee to provide notice to an Oneida Business Committee meeting member who is violating the behavior requirements found in section 117.8 of the Law. This added provision is unnecessary because the Law already requires the Oneida Business Committee members to ensure every attendee is following the requirements under the Law, or else the Oneida Business Committee would be tasked with removing the individual. The Law states the following:

**117.9-2. Removal of a Disorderly or Disruptive Person. If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.8-1 regarding behavior of Oneida Business Committee attendees and/or section 117.5-1 regarding the discussion of individuals, the Oneida Business Committee shall decide if the individual shall be removed from the meeting. The Oneida Business Committee's decision to remove a person shall be final and not appealable. At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove the person from the meeting.**

Whether the disruptive or disorderly individual is a member of the community or a member of the Oneida Business Committee, the Oneida Business Committee as a whole is still responsible for ensuring the meeting is not willfully interrupted or that a person does not violate the behavior requirements in the Law and does not violate the requirements for the discussion of individuals.

At any time during the meeting, the Law allows a member of the Oneida Business Committee to request a point of order to direct compliance with requirements set forth in this Law. [*see OBC Meetings law section 117.10*].

There is no recommended revision based on this comment. The LOC may consider whether the Law properly addresses potential improper behavior of an Oneida Business Committee member, or whether more detail should be added to address this issue.

### *LOC Consideration*

The LOC had discussion on whether the Law is clear that Oneida Business Committee members are considered attendees of Oneida Business Committee meetings and therefore are subject to the behavior requirements codified in section 117.8-1 of the Law. The LOC determined that it was clear that the Law applies to Oneida Business Committee members.

While reviewing this comment the LOC decided to make the following revision to clarify that if someone is acting within the normal scope of their employment, for example as a police officer or security officer, then section 117.8-1(c) would not apply:

117.8-1. *Behavior of Oneida Business Committee Meeting Attendees.* Keeping in line with the Oneida principle of Kalihwi-y%, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

- (c) Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation unless the Oneida Business Committee meeting attendee is required to carry a weapon when acting in the official capacity of his or her employment; and

### **Comment 5 – Removal of a Disorderly or Disruptive Person:**

**117.9-4. *Banning a Disorderly or Disruptive Person.*** The Oneida Business Committee may permanently ban a person from attending Oneida Business Committee meetings for any of the following:

- (a) A person is repeatedly removed from Oneida Business Committee meetings for disorderly or disruptive behavior; or
- (b) The behavior of a person reaches such a severe level that an automatic ban from attending Oneida Business Committee meetings is necessary for the protection of the health and safety of all other Oneida Business Committee meeting attendees.

**Bonnie Pigman (written):** One question: Might it be possible an OBC member gets permanently banned, since they too are defined as an attendee?

### *Response*

If an Oneida Business Committee member meets the requirements for banning a disorderly or disruptive person found in section 117.9-4 of the Law then that Oneida Business Committee member can be banned.

There is no recommended revision based on this comment. The LOC can determine whether or not they agree with section 117.9-4 of the Law which would allow Oneida Business Committee members to be banned from attending Oneida Business Committee meetings.

### *LOC Consideration*

The LOC debated the merits of whether or not an Oneida Business Committee member should be allowed to be permanently banned from attending an Oneida Business Committee meeting

and the LOC determined that if the behavior of the Oneida Business Committee member reaches the level that a ban is considered, other consequences such as removal, or sanctions and penalties would be administered.

The LOC determined there is no revision necessary based on this comment.

#### **Comment 6 – Removal of a Disorderly or Disruptive Person:**

**Bonnie Pigman (written):** In section 117.91 feel it should be stated "in the event the OBC would lose quorum as a result of OBC members being removed, the OBC meeting will continue until the next scheduled break. This way tribal business can still get accomplished.

#### ***Response***

The enforcement section of this Law states that the "law shall be enforced according to Robert's Rules of Order." [see *OBC Meetings law section 117.10*]. Robert's Rules of Order Article XI section 64 states that a quorum of an assembly is such a number as must be present in order that business can be legally transacted. Article III Section 3 of the Constitution of the Oneida Nation states that "a majority of the Business Committee including the chairman or vice-chairman shall constitute a quorum of the body." If an Oneida Business Committee member is removed from the meeting and quorum is lost, then the Oneida Business Committee meeting would not be able to continue on with business.

There is no recommended revision based on this comment.

#### ***LOC Consideration***

The LOC agrees that Oneida Business Committee meetings are operated under Robert's Rules of Order and that a quorum has been presented as five (5) members by the Oneida Nation Constitution. The LOC discussed the fact that although discussion on agenda items might be allowed to continue if a quorum is lost, any motions or official business would be prohibited from occurring. The LOC determined the Oneida Business Committee would be out of order if they continued conducting official business when a quorum is lost.

The LOC determined there is no revision necessary based on this comment.

#### **Comment 7 – General Comment Regarding Laws:**

**Barbara Cornelius (oral):** Hi, I'm Barbara Cornelius, enrollment number 753. I just think we're creating too, way too many laws. I don't know if we need a law for the Business Committee meetings or should it just be a policy. And that's true with a lot of stuff I see coming up. We're creating too many laws, and the laws really that I see and how they're written really should be policy because once you do that law, it's hard to one, usually it's hard to change that law, and two, it's a little easier to say you give yourself more flexibility when you put it into policy. Because then in the policy you can change and do what you need to do when situations might change and stuff. But it just seems like the tribe is getting way too law oriented. And so I don't know if the Business Committee meeting has to have law. That's just my thoughts.

### ***Response***

The commenter states that the Nation is too oriented on the development of laws and instead should focus on the creation of more policies. The LOC has directed that moving forward all legislation would be categorized as laws, and not codes, policies, ordinances, etc. due to the fact that all legislation must follow the Legislative Procedures Act. The Legislative Procedures Act (LPA) was adopted by the Oneida General Tribal Council by resolution GTC-01-07-13-A. The purpose of the LPA is to provide a process for the adoption of laws of the Nation, and to set forth lawmaking requirements that will apply to all legislation considered by the Oneida Business Committee and Oneida General Tribal Council. [see LPA section 109.1-1]. The LPA requires both a financial and legislative analysis to be completed for all proposed legislation. [see LPA section 109.6 and 109.7]. The LPA also requires the Legislative Operating Committee to provide a public meeting and public comment period to garner opinion and input from the community. [see LPA section 109.8]. The LOC must then fully review and consider every comment that was received, both oral testimony and written comments, during the public comment period. [see LPA section 109.8-4].

There is no recommended revision based on this comment. It is a policy determination for the LOC to decide if policies or laws should be utilized.

### ***LOC Consideration***

The LOC discussed the fact that the Oneida Business Committee has focused more on the development of laws than policies because laws help maintain consistency between administrations. The Legislative Procedures Act sets out a detailed process that the creation of amendment of all laws must follow. The development of laws requires the LOC to gather and consider public comments, which provides the community with an opportunity to be involved in the legislative process and provide input.

The LOC determined there is no revision necessary based on this comment.

### **Comment 8 – General Comment Regarding the Use of the Term Attendees:**

**Ed Delgado (oral):** I’ve had my eye on this little thing for quite some time. On the plus side, you do call people who are coming to speak at BC meetings attendees, and we are attendees when we are there, its just you’re correct there. I just wish you would think about revising your GTC meeting rules because on that resolution you called the General Tribal Council attendees, and that’s incorrect.

### ***Response***

In the Business Committee Meetings law “attendees” refers to a person who attends the Business Committee meeting. The term attendees has the same use and meaning in the General Tribal Council Meetings law, except for the people attending the General Tribal Council meetings are the people who comprise the General Tribal Council, or the governing body of the Oneida



Nation. The use of the term attendees in this law has no bearing on the use of the term attendees in the proposed General Tribal Council Meetings law.

There is no recommended revision based on this comment.

***LOC Consideration***

The LOC determined that the use of the term “attendees” is proper in the Law, and that this memorandum is not the proper place to discuss the use of the term “attendees” in the proposed General Tribal Council Meetings law.

The LOC determined there is no revision necessary based on this comment.

## **Title 1. Government and Finances – Chapter 117**

### **ONEIDA BUSINESS COMMITTEE MEETINGS**

117.1.	Purpose and Policy	117.7.	Agenda
117.2.	Adoption, Amendment, Repeal	117.8.	Responsibilities of Oneida Business Committee
117.3.	Definitions		Meeting Attendees
117.4.	Rules of Order	117.9.	Removal of a Disorderly or Disruptive Person
117.5.	Public Comment and Discussion of Individuals	117.10.	Enforcement
117.6.	Oneida Business Committee Meetings Schedule		

#### **117.1. Purpose and Policy**

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation.

117.1-2. *Policy.* It is the policy of the Nation that the Oneida Business Committee be clear and consistent in its actions and be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views.

117.1-3. *Roles and Responsibilities.* The Oneida Business Committee is elected by the membership of the Nation and is delegated legislative responsibility under Article IV of the Constitution of the Oneida Nation, General Tribal Council resolution # GTC-2-15-82, adoption of job descriptions in July of 1990, and a motion at the October 1998 General Tribal Council meeting. The work associated with this legislative responsibility is carried out through various subcommittees ~~such as~~ including, but not limited to, the Legislative Operating Committee, Community Development and Planning Committee, and the Quality of Life Committee, in order to obtain the broadest and most informed discussion. The action regarding this legislative responsibility is taken at a regular, special, or emergency Oneida Business Committee meeting, or when necessary, by e-poll in accordance with approved processes. The goal of this law is to formalize the action of legislative responsibility taking place at Oneida Business Committee meetings and the work of legislative responsibility within subcommittees.

#### **117.2. Adoption, Amendment, Repeal**

117.2-1. This law was adopted by the Oneida Business Committee by resolution BC -\_\_\_\_\_.

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

117.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-08-14-91-A *BC Meeting – Executive Session for Employee Complaints.*

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**117.3. Definitions**

117.3-1. This section shall govern the definitions of words or phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Board, Committee or Commission” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.

(b) “Constitution” means the Constitution and By-laws of the Oneida Nation, as amended.

(c) “Corporation” means a business that is chartered by the Nation.

(d) “Employee” means anyone employed by the Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis. For purposes of this law the term employee also includes political appointees.

(e) “Entities” means all boards, committees, commissions, departments, and programs of the Nation.

(f) “Executive session” means a meeting which is held to discuss matters that require confidentiality and are not open to the public.

(g) “Kalihwi-ȳ%” means the good mind principle which represents “the use of the good words about ourselves, our Nation, and our future.”

(h) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(i) “Nation” means the Oneida Nation.

(j) “Officer” means an individual holding the position of chairperson, vice-chairperson, secretary or treasurer on a board, committee or commission.

(k) “Open session” means a meeting which is held in a place reasonably accessible to the public at all times.

(l) “Roberts Rules of Order” means a handbook for running meetings effectively and efficiently that sets the guidelines for such issues as leading debates; recognizing speakers; defining the role of the chair and other officers; proposing, seconding, and voting on motions; and writing and amending constitutions and bylaws.

**117.4. Rules of Order**

117.4-1. The Oneida Business Committee shall use Robert’s Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution.

117.4-2. The Oneida Business Committee may:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

**117.5. Public Comment and Discussion of Individuals**

117.5-1. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee. Such discussions often include personal observations, evaluations, and judgments of other employees and members of the Nation. The negative or disrespectful discussion of individuals in open session undermines the morale and trust of employees and members of the Nation.

(a) It is the policy of the Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All discussion relevant to an agenda item regarding a member of the Nation or an employee and the actions, activities, and/or performance responsibilities of that individual may be respectfully discussed during the open session of the Oneida Business Committee meeting.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a member of the Nation or an employee, such discussion shall be immediately stopped. The presiding Chairperson shall regulate the discussion to ensure the integrity, honesty or morality of an individual is not implicated during any discussions.

(d) The Oneida Business Committee shall have the authority to -redact any statements made during open session regarding improper discussion of an individual from all video and audio recordings of the Oneida Business Committee meetings.

#### 117.5-2. *Public Comment.*

(a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Oneida Nation Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) Individuals shall be allowed to make public comments at the beginning of each agenda item only. All public comments made shall be relevant to the current agenda item. Each individual shall be allowed to give public comment one time per agenda item. Each individual shall be limited to speaking for a maximum of three (3) minutes each per agenda item. The time limitation may be extended by request of the individual with approval of the Oneida Business Committee.

(c) All comments are subject to the limitations of section 117.5-1 when discussing individuals or groups of individuals.

(d) No action is required to accept or otherwise take action regarding a comment being made. Oneida Business Committee meeting attendees may ask questions while providing public comment. If an Oneida Business Committee meeting attendee can provide a proper response to a posed question then that individual may answer the question.

(e) Public comments shall be relevant to the current agenda item and may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action;
2. A comment on an item on the agenda;
3. Praise regarding an entity, an individual or an employee;
4. A public notice about an activity or fundraising event; and/or
5. Other comments deemed pertinent by the presiding Chairperson.

(f) The Oneida Business Committee shall proceed with conducting official business related to the agenda item once all public comments are received.

#### **117.6. Oneida Business Committee Meetings Schedule**

117.6-1. *Annual Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.

117.6-2. *Reporting Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for presentation of reports by entities at regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.

#### **117.7. Agenda**

117.7-1. *Agenda.* The agenda for Oneida Business Committee meetings shall contain the following sections. The general characteristics of each section are defined below. The Oneida Business Committee agenda shall only contain sections that contain business that must be addressed during that meeting. Not all sections of the agenda will be addressed at every meeting of the Oneida Business Committee.

(a) *Call to Order.* The presiding Chairperson shall call the meeting to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *Opening.* This section of the agenda shall be used to present any opening statements.

(bc) *Adopt the Agenda.* The agenda for the meeting shall contain necessary subsections so as to identify each section of the agenda that will be used during that meeting. If there are amendments to the agenda, they should be made during this section, but are not required to be done under this section of the agenda.

(ed) *Oath of Office.* Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken shall be given the oath of office,

(de) *Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section of the agenda.

(ef) *Resolutions.* This section shall be used to present all resolutions to the Oneida Business Committee for adoption.

(fg) *Appointments.* Actions regarding appointments to boards, committees, commissions, corporations, and other memberships of the Nation shall be taken in this section of the agenda in accordance with the Nation's laws, policies and rules, specifically those governing boards, committees and commissions of the Nation.

(gh) *Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section of the agenda shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(hi) *General Tribal Council.* This section of the agenda shall only be open to members of the Nation and shall address issues related to General Tribal Council meetings including, but not limited to, scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings. The Oneida Business Committee may allow individuals who are not members of the Nation to attend this section of the agenda if the attendance of the individual is required for official purposes.

(ij) *Standing Items.* This section of the agenda shall be used to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.



(~~j~~k) *Unfinished Business*. This section of the agenda shall be used when agenda items from prior meetings were unable to be completed.

(~~k~~l) *Tabled Business*. This section of the agenda shall be used when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(~~l~~m) *New Business*. Any business brought before the Oneida Business Committee that does not otherwise fit in any of the other agenda categories shall be placed in this section of the agenda.

(~~m~~n) *Travel Reports*. This section of the agenda shall be used to present reports regarding approved travel that is required to be presented to or approved by the Oneida Business Committee.

(~~n~~o) *Travel Requests*. This section of the agenda shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(~~o~~p) *Reports*. This section of the agenda shall be used to present quarterly reports as directed by the Oneida Business Committee.

(~~p~~q) *Executive Session*. This section of the agenda shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section of the agenda may be organized to meet the needs of the Oneida Business Committee.

117.7-2. *Requests to Present Agenda Items*. In general, the following individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members*. Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.

(b) *Chairpersons of Boards, Committees or Commissions*. Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

- (1) quarterly reports;
- (2) contracts for the board, committee or commission requiring Oneida Business Committee approval; and
- (3) any other item that must be placed on the Oneida Business Committee agenda.

(c) *Direct Reports*. Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

- (1) quarterly reports;
- (2) contracts of the entity requiring Oneida Business Committee approval; and
- (3) requests for actions under the section of the agenda containing new business as described in section 117.7-1(l).

(d) *Corporations*. All chairpersons, presidents, agents or other authorized representatives of a corporation shall be authorized to submit reports of the corporation and other items on the agenda on behalf of the corporation, as directed by the corporate charter, operating agreement or other governing document.

**117.8. Responsibilities of Oneida Business Committee Meeting Attendees**

117.8-1. *Behavior of Oneida Business Committee Meeting Attendees.* Keeping in line with the Oneida principle of Kalihwi-ya%, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

- (a) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees;
- (b) Be under the influence of alcohol or illegal drugs;
- (c) Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation unless the Oneida Business Committee meeting attendee is required to carry a weapon when acting in the official capacity of his or her employment; and
- (d) Take action that violates any laws, rules or policies of the Nation.

117.8-2. *Recording and Photographing.* Any Oneida Business Committee meeting attendee may photograph, tape-record, or otherwise reproduce any part of a meeting required to be open as long as the device:

- (a) Is operated openly so that it is obvious to those in attendance that the meeting is being recorded;
- (b) Does not create an excessive noise or light that disturbs any individual attending the meeting; and
- (c) Does not otherwise interfere with an individual's observation or participation in the meeting.

**117.9. Removal of a Disorderly or Disruptive Person**

117.9-1. *Sergeant-at-Arms.* The presiding Chairperson may designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.9-2. *Removal of a Disorderly or Disruptive Person.* If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.8-1 regarding behavior of Oneida Business Committee attendees and/or section 117.5-1 regarding the discussion of individuals, the Oneida Business Committee shall decide if the individual shall be removed from the meeting. The Oneida Business Committee's decision to remove a person shall be final and not appealable. At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove the person from the meeting. No person shall be removed from a meeting except for an actual breach of the peace committed at the meeting. An individual removed from an Oneida Business Committee meeting shall not be allowed to return for the duration of the meeting.

117.9-3. *Emergency Removal of a Disorderly or Disruptive Person.* If the disorderly or disruptive behavior of an individual results in an immediate danger to the health and safety of any Oneida Business Committee meeting attendee the presiding Chairperson may take immediate action to remove the disorderly or disruptive person.

117.9-4. *Banning a Disorderly or Disruptive Person.* The Oneida Business Committee may permanently ban a person from attending Oneida Business Committee meetings for any of the following:

- (a) A person is repeatedly removed from Oneida Business Committee meetings for disorderly or disruptive behavior; or

(b) The behavior of a person reaches such a severe level that an automatic ban from attending Oneida Business Committee meetings is necessary for the protection of the health and safety of all other Oneida Business Committee meeting attendees.

**117.10. Enforcement**

117.10-1. This law shall be enforced according to Robert's Rules of Order.

117.10-2. *Enforcement by the Oneida Business Committee Chairperson.* At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove any disorderly or disruptive person from the meeting.

117.10-3. *Enforcement by an Oneida Business Committee Officer or Member.* Officers and members of the Oneida Business Committee are authorized, under Robert's Rules of Order, to request a point of order to direct compliance with Robert's Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee.

*End.*

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Adopted - BC-



## Legislative Operating Committee June 21, 2017

# Workplace Violence

<b>Submission Date:</b> 12/18/12	<b>Public Meeting:</b> 5/18/17
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was originally submitted to the LOC on December 18, 2012 and carried over into the current term by the LOC. The proposed Policy provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threat of violence.*

**9/17/14 LOC:** Motion by Fawn Billie to not add Workplace Violence Policy to the Active Files List, and to provide notice to the Oneida Business Committee. Motion withdrawn.

Motion by Tehassi Hill to add the Workplace Violence Policy to the Active Files List with Tehassi Hill as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**11/23/15:** *Work meeting held.* Attendees include: Geraldine Danforth, Matthew J. Denny, Bob Keck, James Bittorf, Kaylynn Gresham, Robert Fresen, Eric Boulanger, Douglass McIntyre.

**1/22/16:** *Work meeting held.* Attendees include: Matthew J. Denny, James Bittorf, Kaylynn Gresham, Robert Fresen, Richard VanBoxtel, Jennifer Webster, Douglass McIntyre.

**3/2/16 LOC:** Motion by Jennifer Webster to accept the draft of the Workplace Violence Policy and forward to the Legislative Reference Office for a legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**8/12/16:** *Work meeting held.* Tehassi Hill, Geraldine Danforth, Matt Denny, Jim Bittorf, Jen Falck. Group decided to ask Terry Hetzel to run the current draft through a "table top" exercise with other HRD staff. After that happens, Matt will contact Jen Falck to schedule another work meeting. At that meeting- we will learn what happened at the table top and decide on how to move forward.

**10/10/16:** *Quarterly Sponsor Update Meeting held.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John.

**3/20/17:** *Work meeting held.* Attendees include: Jennifer Webster, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Geraldine Danforth, Matthew J. Denny, and Kaylynn Gresham. Drafter will update draft to reflect changes made during meeting, and schedule another work meeting.

**4/10/17:** *Work meeting held.* Attendees include: Tehassi Hill, Jennifer Webster, David P. Jordan, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Danelle Wilson, Geraldine Danforth, Matthew J. Denny, Richard VanBoxtel, Kaylynn Gresham, and Jeffrey M. Mears. Drafter will update draft, send draft for review by email to meeting attendees, and begin preparing a public meeting packet.

**4/19/17 LOC:** Motion by Jennifer Webster to approve the public meeting packet and to forward the Workplace Violence law to a public meeting to be held on May 18, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward the Workplace Violence law to the Finance Department for a fiscal analysis due to the Legislative Reference Office by May 17, 2017; seconded by Jennifer Webster. Motion carried unanimously.

**5/18/17:** Public Meeting Held.

**6/7/17 LOC:** Motion by David P. Jordan to accept the Workplace Violence public meeting comments and to defer to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

**6/7/17:** *Work Meeting Held.* Present: Brandon Stevens, Tehassi Hill, Jennifer Webster, David P. Jordan, Fawn Billie, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Cathy Bachhuber. LOC reviewed and considered all public comments.

#### **Next Steps:**

- Accept the public meeting comment response memorandum and updated draft;
- Approve the adoption packet and forward the Workplace Violence law to the Oneida Business Committee for consideration.





TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 21, 2017  
RE: Workplace Violence Law: Public Meeting Comment Review

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On May 18, 2017, a public meeting was held regarding the proposed Workplace Violence law. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

On June 7, 2017, the Legislative Operating Committee (LOC) accepted the public comments and held a work meeting to review and consider each comment. This memorandum reflects the considerations and decisions made by the LOC.

#### **Comments 1 through 2 – General Comments Regarding Prevention:**

**Rae M. Skenandore (written):** I would like to emphasize the comment on the lack of preventative planning.

SHRM has excellent resources that should be considered in the development of this policy/law. At a minimum, some consideration should be given for industry standard definitions.

<https://www.shrm.org/ResourcesAndTools/tools-and-samples/policies/Documents/WVPI%20ST.pdf>

**Robert Keck – Risk Management (written):** The law as proposed provides for steps and/or processes addressing real or alleged incidents of workplace violence. It does not include anything from a Nation-wide perspective of prevention, such as a threatening customer, a domestic dispute spilling into the workplace, immediate alarm/notification steps for employees such as Reception. In my opinion, those measures should be requirements in the law (ex: training as appropriate) and should be implemented;

#### ***Response***

The Law focuses on how instances of workplace violence or potential instances of workplace violence should be handled. The adoption of the Law does not negate the necessity for preventative action and planning.

The following revision is recommended for clarification purposes:

### 223.1. Purpose and Policy

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which instances of workplace violence shall be addressed.

The LOC may address this comment in the following manner:

1. The LOC may consider if the recommended revision in the response should be included in the Law.
2. The LOC may consider whether the Law should include a focus on preventative planning and methods.

### *LOC Consideration*

The LOC decided to add the language in the recommended revision to the Law. The LOC devoted some time to a discussion regarding what preventative measures and policies would be. It was determined that prevention of workplace violence is an organizational responsibility, one which is already happening and can continue to occur in the future in conjunction with the Law. The LOC clarified that this Law does not address preventative measures because the Law governs how the Nation will address and handle instances of workplace violence.

### **Comments 3 through 6 – Applicability of Law:**

#### 223.4. Applicability

**223.4-1. This law applies to all employees in any of the Nation’s workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.**

**Wendy M. Alvarez (written):** Good afternoon, I just have a few questions: 223.4 What about Tribal entities? Radisson or Thornberry, does this count? Oneida Nation employees do not work there.

### *Response*

The Law defines workplace as “*all of the Nation’s facilities, job sites, and any location where an employee represents the Nation, including over-the-road travel in the Nation’s owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.*”

According to the definition all facilities, job sites and locations owned by the Nation where an employee represents the Nation would constitute a workplace of the Nation, so this would include tribal enterprises such as the Radisson hotel or Thornberry Creek. The Workplace Violence law would only apply to employees of the Nation representing the Nation in those facilities of a tribal enterprise, and not employees of the tribal enterprise that are not employees of the Nation.

The LOC can consider whether tribal entities such as the Radisson or Thornberry should be included under the applicability of this Law.

### ***LOC Consideration***

The LOC discussed whether or not tribal entities should be included in the applicability of this Law, and discussed what the motivation and intent of this Law is. The LOC discussed the fact that the intent of the Law is to provide employees with the standards they will be held to, and that the Nation wants to prevent any form of violence from occurring on property of the Nation. The LOC determined that although it is a high standard, employees should be prohibited from engaging in violent behavior anytime they are on property of the Nation.

The LOC determined that tribal entities should be included in the applicability of the Law, but that it should be clarified that this Law will apply to any property that is *owned and operated* by the Nation. The LOC determined that the following revision should be made to the definition for workplace:

(b) “Workplace” means ~~all any of the Nation’s facilities, job sites, and any~~ location owned and operated by the Nation, and any location where an employee represents the Nation, including over-the-road travel in the Nation’s owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

**Rae M. Skenandore (written):** We think of just protecting employees, but the law should include others such as customers, clients, and business associates.

### ***Response***

The Law states that workplace violence means any intentional act committed by an employee in a workplace that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property. [see *Workplace Violence law section 223.3-1(k)*]. The Law then goes on to list examples of behaviors that constitute workplace violence in section 223.5. The Law does not specify that the act of workplace violence has to occur against another employee. If an employee’s behavior inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm, or damage to property against a customer, client, or business associate then the employee has still violated this Law.

Discussion occurred during the various work meetings regarding if the Law should apply to those individuals such as customers, clients, meeting attendees, and business associates, and therefore they could be found to have committed acts of workplace violence. The inclusion of individuals not employed by the Nation in the applicability of the Law was not pursued because the Nation would have no mechanism to enforce this Law against customers, clients, or business associates. Additionally, this Law governs how instances of workplace violence will be addressed from a personnel standpoint within the employment structure of the Nation., so any act

or threat of violence by a customer, client, or business associate would be handled through investigative methods of local law enforcement agencies.

There is no recommended revision based on this comment. The LOC may consider if customers, clients, and business associates should be further included in the Law.

### ***LOC Consideration***

The LOC determined that at this point in time customers, clients, and business associates cannot be included in the applicability of the Law as someone we can make claims of workplace violence against because we do not have a criminal court to handle the acts of violence, therefore the Nation does not have any enforcement mechanisms against a customer, client, or business associate. The Law specifically governs workplace violence that occurs in a workplace of the Nation and how that incident will be handled from an employment outlook. If a customer, client, or business associate is behaving in a violent manner then the Oneida Police Department or other local law enforcement agency should be notified to handle the matter.

The LOC determined there is no revision necessary based on this comment.

**Barbara Cornelius (oral):** My concern is that your first bullet, where it says it applies to all employees of the Nation in any workplace of the Nation, whether or not the employee is operating within the course of his or her employment. So are we trying to control the employees at GTC? Is that what we are trying to do?

So if we're trying to go and curtail what happens at GTC, I think it's very inappropriate but it's also inappropriate because, I don't know who you got your guidance from, but you can't tell people what they can do when they are not working for you

### ***Response***

The Law was not intended to serve as a mechanism to control the behavior of employees at General Tribal Council meetings. The Nation is currently developing a law governing General Tribal Council meetings which will detail expectations for how the meetings will be held, and the behavior expectations for those individuals in attendance. The intent of the Law is to provide employees of the Nation an environment that is free of violence and the threat of violence by establishing a process to address incidents of workplace violence.

There is no recommended revision based on this comment. The LOC may consider whether the Law should apply to employees of the Nation when they are in attending Oneida General Tribal Council meetings.

### ***LOC Consideration***

The LOC discussed the fact that although the law is not intended to serve as a mechanism to control the behavior of employees at General Tribal Council meetings, the LOC has made the

determination that this Law will apply to employees in any location owned and operated by the Nation, which would include the Radisson where General Tribal Council meetings occur. Holding employees to a high standard of behavior to deter employees from behaving in a manner that constitutes workplace violence is not a bad thing. Whenever an employee is on property that is owned and operated by the Nation the employee is serving as an extension of the Nation's values and should be held accountable for any violent actions.

The LOC also wanted to clarify that this Law only prohibits employees from engaging in behavior that is violent, so an employee is still allowed and encouraged to participate in General Tribal Council meetings and voice their opinions as long as it is done in a respectful and nonviolent manner.

The LOC determined there is no revision necessary based on this comment.

**Barbara Cornelius (oral):** Because it seems to me, having a HRD background, you're overstepping the boundaries of employer vs the employee, as if you are an employee all the time. The only ones that would be employees all the time would be your exempt employees. So that would be management, the Business Committee, those types of individuals. But your hourly employee, once they get off the clock, they should no longer be held to the workplace violence standard, because they are no longer your employee. You are an individual citizen.

Whether they are at a function or not, you can't tell them how to act if they are not working for you. Now if they are working for you, then that's another thing and there might be a group of individual employees that you might be able to do this to like maybe your police officers, your lawyers, your top level officials--you can say hey, you have to act appropriately because no matter where you are at, they know you are an Oneida official. But just your regular cashier, loan officers, just your regular everyday employee I don't think you can make that as part of that law. So you are either going to have to exempt them from law or at least research, if you don't believe me, research it so that you know that I think you're overstepping the boundaries of that workplace violence law. And then the other one is, that's all I had was just that one, where I think you're overstepping your authority when you say no matter where they are at, if they are on the clock or not, they can be called to task for their behavior. Thank you.

### ***Response***

The LOC has made the policy determination that every employee, no matter what position they hold within the Nation, represents the values and standards of the Nation. For that reason the LOC determined that all employees should be held to the highest standards, and that violence of any nature cannot be tolerated. Whenever an employee of the Nation is in a workplace of the Nation, even if it is not their particular workplace, they are serving as a representative and extension of the Nation's values, and it is for that reason they will be held accountable for their actions under this Law.

### ***LOC Consideration***



The LOC has made this policy determination based on their efforts to practice the Four Strategic Directions and core values of the Oneida Nation, since the prevention of violence is a part of the Nation's goals and values. The intent of the Law is to hold employees of the Nation accountable for any violent actions when they are on any property owned and operated by the Nation, or anywhere in which they represent that Nation.

The LOC determined there is no revision necessary based on this comment.

#### **Comment 7 – General Comment Regarding Term “Designee”:**

**Rae M. Skenandore (written):** Anywhere it's "or designee", there should be a training requirement for that person serving in that designee capacity.

#### ***Response***

The use of the term “or designee” is used in the law to reference that the Equal Employment Opportunity (EEO) Department Director, or an individual assigned as a designee by the EEO Department Director, shall be responsible for investigating alleged instances of workplace violence. [see *Workplace Violence law section 223.9-1*]. Currently, the law leaves the decision to assign a designee, or whom that designee might be, up to the discretion of the EEO Department Director.

The LOC may consider whether flexibility and discretion should be left to the EEO Department Director to appoint a designee that is qualified and trained to take over the investigative duties, or if a training requirement should be included in the Law for that individual assigned to be the designee for the EEO Department Director.

#### ***LOC Consideration***

The LOC determined that the Law should remain as it is currently stated, with no reference to any training requirement that the designee must have. The qualifications of the EEO Department Director are not described in the Law, so it is not necessary to state what qualifications or training the individual the EEO Department Director appoints as designee must have. The appointment of an individual as designee of the EEO Department Director should be guided by internal policies and standard operating procedures which further detail that the EEO Department Director's designee should be qualified and properly trained.

The LOC determined there is no revision necessary based on this comment.

#### **Comments 8 through 11 – Prohibited Behavior:**

##### **223.5. Prohibited Behavior**

**223.5-1. *Prohibited Behaviors.*** Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

- (a) intentionally causing physical injury to another person;

- (b) hitting or shoving;
- (c) fighting or "horseplay" that may be dangerous to others;
- (d) direct threats or physical intimidation;
- (e) implications or suggestions of violence;
- (f) stalking;
- (g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;
- (h) physical restraint, confinement;
- (i) loud, disruptive or angry behavior or abusive language;
- (j) sending of threatening, harassing or abusive e-mails, faxes, phone calls, text messages or other form of electronic media;
- (k) using the workplace to violate protective orders;
- (l) intentionally damaging property of the Nation or property of another;
- (m) any other act that a reasonable person would perceive as constituting a threat of violence;
- (n) throwing an object at an individual; and
- (o) any threat or act of violence that is a direct result of the victim's employment duties or responsibilities with the Nation.

(i) loud, disruptive or angry behavior or abusive language;

**Rae M. Skenandore (written):** Prohibited Behavior I- loud- So, if I shout BINGO! Can I be written up? This possibly needs some more descriptive language.

### *Response*

If an employee is engaging in loud, disruptive, or angry behavior or abusive language then that behavior may constitute workplace violence. The purpose of this section is to illustrate examples of workplace violence so that an employee of the Nation can be aware of what standards the employee's behavior will be held to. Not every instance an employee is loud will result in an alleged act of workplace violence, or will be considered workplace violence. This section illustrates that loud, disruptive, angry or abusive language can be determined to constitute workplace violence in some situations. This Law holds employees of the Nation to the highest of standards.

The following revision is recommended to clarify this subsection:

- (i) loud, disruptive, ~~or angry~~ or abusive language or behavior ~~or abusive language~~;

The LOC can consider whether to include the recommended revision provided in the response. The LOC can also consider whether more descriptive language should be used in this section.

### *LOC Consideration*

The LOC made the determination to include the recommended revision from the response in the Law as it provides more clarity. The LOC had a lengthy discussion on the merits of providing examples of workplace violence and if this section served its intended purpose, if it needed more

description and clarification, or if it was confusing to the reader. The LOC determined that section 223.5-1(a)-(o) of the Law provides examples of what behaviors may constitute workplace violence, but those behaviors might not constitute workplace violence in every situation. The LOC determined that section 223.5-1(a)-(o) can be used as a tool for supervisors when performing the initial assessment to determine if an incident constitutes workplace violence.

**(j) sending of threatening, harassing or abusive e-mails, faxes, phone calls, text messages or other form of electronic media;**

**Rae M. Skenandore (written):** Prohibited Behavior J- Would it be more helpful to say written or verbal...

***Response***

The commenter suggests using the phrase “written or verbal.” The language used in section 223.5-1(j) demonstrates the various forms of communication that could be considered threatening or harassing. This provides more information and clarity to the reader of the Law so they are aware of the standard for workplace violence all employees of the Nation will be held to.

There is no recommended revision based on this comment, but the following revision is recommended to provide for more clarity.

| (j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;

The LOC can consider whether or not to include the recommended revision from the response.

***LOC Consideration***

The LOC determined that the recommended revision from the response should be included in the Law as it provides more clarity to what forms of communications could be considered threatening or harassing, and the intent of this subsection is to provide examples of behavior.

**(n) throwing an object at an individual; and**

**Rae M. Skenandore (written):** Prohibited Behavior N- should be more descriptive. Example is throwing a piece of paper.

***Response***

The commenter states that this subsection should be more descriptive because throwing a piece of paper could constitute workplace violence under this subsection. The purpose of this section is to illustrate examples of workplace violence so that an employee of the Nation can be aware of what standards the employee's behavior will be held to. This Law holds employees of the Nation to the highest standards. Throwing an object at an individual was included because it was determined that this behavior should be prohibited because it does constitute workplace violence. The LOC determined that there is no circumstance in which an employee of the Nation should throw any object at another individual.

There is no recommended revision based on this comment. The LOC can consider whether this section should be revised.

### ***LOC Consideration***

The LOC determined that this section does not need to be revised because throwing an object serves as an example for what behaviors may constitute workplace violence.

**(o) any threat or act of violence that is a direct result of the victim's employment duties or responsibilities with the Nation.**

**Rae M. Skenandore (written):** Prohibited Behavior O- I have no idea what this is supposed to mean. It does not make any sense.

### ***Response***

Section 223.5-1(o) was included to serve as a catch-all provision for any threat or act of violence that occurs as a direct result of any duty and/or responsibility of the victim, whether or not this threat or act of violence occurs in a workplace of the Nation.

There is no recommended revision based on this comment. The LOC can consider whether this section needs clarification.

### ***LOC Consideration***

The LOC discussed the intent of this subsection and that it was requested to be included in the Law to prevent any situation where one employee violently retaliates against another employee for an action that was the result of their job duties, no matter where the incident of workplace violence occurred. The LOC realized that this subsection is confusing and contradictory to the definition of workplace violence.

The LOC determined that section 223.5-1(o) should be removed from the Law.

## Comment 12 – Reporting Workplace Violence and Future Workplace Violence:

**Robert Keck – Risk Management (written):** 223.6 and 223.7 -I don't really see a difference between current and future workplace violence WV. WV is WV;

### *Response*

The commenter states that there should be no differentiation between current and future workplace violence. Section 223.6 of the Law discusses the requirements for reporting workplace violence, while section 223.7 of the Law discusses how potential instances of workplace violence should be handled. The difference between these two sections is that if there has been an *actual occurrence* of workplace violence that the supervisor should be made aware, or if there is the *potential* for a workplace violence incident.

It is recommended that sections 223.7-2 be moved to section 223.6 of the Law, because the subsection discusses obtaining a restraining order against another employee. Although it is possible that the restraining order is not related to a workplace violence incident, obtaining a restraining order is an actual event that should be reported, so it would be placed better in section 223.6 as follows:

### **223.6. Reporting Workplace Violence**

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

223.6-4. *Reporting Restraining Orders.* An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.



(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

Additionally, upon further review it is determined that section 223.7-3 of the Law, which discusses anonymous threats or letters does not make mention of the Nation's Anonymous Letters Policy, so the following revision is recommended:

223.7-3. *Anonymous threats or letters*s. In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and ensure that ~~notify the~~ Oneida Police Department was notified, and notify ~~or~~ local law enforcement and facility security if determined appropriate.

The LOC may consider whether the recommended revisions should be included in the Law.

### *LOC Consideration*

The LOC determined that the recommended revisions from the response should be included in the Law because they provide clarity to the Law and reflect the Nation's Anonymous Letter Policy.

### **Comments 13 through 16 – Qualifications of Supervisors:**

#### **223.6. Reporting Workplace Violence**

**223.6-1. *Reporting by a Non-Employee.*** Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

**Robert Keck – Risk Management (written):** 223.6-1. Supervisor perform an initial assessment. Supervisors should be trained to conduct this type of assessment to be qualified to do so. It would seem more reasonable to get the information in the hands of qualified people such as EEO (if qualified) or OPD;

#### **223.8. Supervisor Responsibilities**

**223.8-1.** Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

**Robert Keck – Risk Management (written):** 223.8-1 Same comment as made for 223.6-1 above;

## 223.8. Supervisor Responsibilities

**223.8-3. Non-Emergency Situation.** If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

**Robert Keck – Risk Management (written):** 223.8-3 Again, Supervisors assessing. Will a Supervisor be qualified and will they be objective?;

**Robert Keck – Risk Management (written):** It would seem that real or alleged incidents of WV would be better addressed with immediate, objective assessment/investigation by trained, qualified personnel. After that, responsibility could be pushed down to Supervisory level. My opinion.

### *Response*

The commenter states that the if the supervisor is to be conducting an initial investigation then the supervisor should have training and be qualified to do so, or the EEO Department or Oneida Police Department should be conducting the initial investigation.

The intent of the Law is to have the supervisor screen non-emergency situations that may be instances of workplace violence and need further investigation by the EEO Department Director. The Law states a definition for workplace violence in section 223.3-1(k) and lists examples of prohibited behaviors that may constitute workplace violence in 223.5-1 that may be used as guidelines for the supervisor to follow when making the decision if the incident meets the qualifications of workplace violence. When the supervisor is notified of the workplace violence incident it is an emergency situation, the supervisor will contact the Oneida Police Department or local law enforcement, and facility security if appropriate and available. Additionally, when an incident meets the qualifications of workplace violence, the supervisor informs the EEO Department Director so an investigation may begin.

The Law is currently unclear if a supervisor is alerted to the workplace violence incident in emergency situations, so the following revision is recommended for clarification purposes:

**223.6-3. Mandatory Reporting by an Employee.** An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law

enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. ~~If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.~~

223.6-4. Reporting the Behavior of a Supervisor. If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

The LOC may consider the comment in the following ways:

1. The LOC may consider if the recommended revision should be included in the Law.
2. The LOC may consider whether the supervisor should be the individual conducting the initial investigation to determine if a workplace violence incident occurred, or if the Law should be amended so that the EEO Department Director or OPD should be conducting the initial investigation.

### ***LOC Consideration***

The LOC determined that the recommended revisions in the response should be included in the Law. The LOC had a lengthy discussion surrounding whether the supervisor should be the individual conducting the initial investigation to determine if a workplace violence incident occurred, or if the Law should be amended so that the EEO Department Director or OPD should be conducting the initial investigation. The LOC determined that the supervisor should be the one doing the initial assessment of whether the incident arises to workplace violence and should be forwarded to the EEO Department Director for investigation. The supervisor will be able to use the Law and any other reports as a guideline for determining if an incident meets the qualifications of workplace violence and should be further investigated.

### **Comment 17 –Mandatory Reporting by an Employee:**

**223.6-3. Mandatory Reporting by an Employee.** An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) **Emergency Situation.** If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm.

(b) **Non-Emergency Situation.** If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. If the incident

**involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.**

**Robert Keck – Risk Management (written):** 223.6-3 Mandatory?;

***Response***

Currently, the Law has a mandatory requirement that any employee that witnesses an act or threat of workplace violence towards any other person must report the workplace violence.

There is no recommended revision based on this comment. The LOC may consider whether the mandatory reporting requirement should remain as it is stated in the Law.

***LOC Consideration***

The LOC had a lengthy discussion on whether or not reporting a perceived incident of workplace violence should be a mandatory requirement for every employee. The LOC determined that it indeed should be a mandatory requirement for every employee because then you are pulling the decision of whether to report workplace violence from the employee. There might be some situations, like instances of bullying, where an employee might be afraid to report workplace violence and would choose not to report it if it were not for the mandatory requirement. An employee might not want to feel as if they are “snitching” on or reporting a fellow employee, but if it is a requirement of the Law then the reporter is simply following their duties as an employee. The intent of this Law to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which instances of workplace violence shall be addressed, but the Nation cannot address instances of workplace violence if they are not reported.

The LOC determined there is no revision necessary based on this comment.

**Comment 18 – General Comment about the Application of the Law:**

**Rae M. Skenandore (written):** Not everything is going to be victim specific. Who files a report if someone is just shouting at a room of people? Or in the reception area of a building?

***Response***

The Law requires an employee to report workplace violence in all instances where the employee witnesses an act or threat of workplace violence towards another person. *[see Workplace Violence law section 223.6-3]*. The requirement to report the perceived instance of workplace violence still could apply if that violence is not directed as a specific individual and instead is directed at a room filled with people or the reception area of a building.

There is no recommended revision based on this comment. The LOC may consider if this comment needs more consideration.

### *LOC Consideration*

The LOC determined that the Law is clear on when workplace violence instances are reported. The LOC determined there is no revision necessary based on this comment.

### **Comment 19 – Future Workplace Violence:**

#### **223.7. Future Workplace Violence**

**223.7-1.** Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor or the EEO Department Director or designee for an initial assessment pursuant to section 223.8-1.

(a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.

(b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

**Robert Keck – Risk Management (written):** 223.7-1.Report to supervisor or EEO- it should be one or the other so it is clear to employees;

### *Response*

The following revision is recommended to provide clarity:

#### **223.7. Future Workplace Violence**

**223.7-1.** Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor ~~or the EEO Department Director or designee~~ for an initial assessment pursuant to section 223.8-1.

(c) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.

(d) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

The LOC may consider if the recommended revision should be included in the Law.

### *LOC Consideration*

The LOC agreed to include the recommended revision in the Law because it provides more clarity and specificity to the employee on who to report a potential incident of workplace violence to.



## Comments 20 through 22 – Future Workplace Violence – Restraining Orders:

### 223.7. Future Workplace Violence

**223.7-2. Restraining Order.** An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.

- (a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

**Robert Keck – Risk Management (written):** 223.7-2. Same as above.

### *Response*

The following revision is recommended to provide clarity to the employee regarding who to report to:

### 223.7. Future Workplace Violence

**223.7-2. Restraining Order.** An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her- supervisor ~~or to the EEO Department Director or designee.~~

- (a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

### *LOC Consideration*

The LOC agreed to include the recommended revision in the Law because it provides more clarity and specificity to the employee on who to report the possession of a restraining order to.

**Robert Keck – Risk Management (written):** 223.7-2. Also, what steps would be taken if a restraining order is given to an employee who works alongside the employee they took the RO out against?;

### *Response*

The Law does not provide detail on what specific steps will be taken if an employee obtains a restraining order against another employee who works alongside the employee who obtained the restraining order. The decision on how that specific situation will be handled will be up to the discretion of the EEO Department Director and the supervisor of the employees.

There is no recommended revision. The LOC may determine if more consideration of this comment is necessary, and if the Law should address a situation when an employee obtains a restraining order against another employee who works alongside the employee who obtained the restraining order.

### ***LOC Consideration***

The LOC determined that the Law should remain as written and there is no revision necessary based on this comment. The LOC determined that if an employee obtains a restraining order against another employee who works alongside the employee who obtained the restraining order, it is up to the EEO Department and the supervisor of the employees to determine how the situation will be handled. The EEO Department shall advise the supervisor on options to handle the situation or recommendations.

**Rae M. Skenandore (written):** Line 124 the language is awkward. "who has or obtains a current restraining order' How about If an employee obtains a restraining order against another employee, they shall immediately ..

### ***Response***

The following revision is recommended to provide further clarity:

223.7-2. *Restraining Order.* An employee who ~~has or obtains~~ possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.

The LOC may consider whether the recommended revision from the response should be included in the Law.

### ***LOC Consideration***

The LOC decided to add the recommended language to the Law.

## **Comment 23 – Comment Regarding the Responsibility of the Supervisor and the EEO:**

**Rae M. Skenandore (written):** There seems to be a blurring of responsibilities between what a supervisor should do and what EEO does?

### ***Response***

When an alleged incident of workplace violence occurs, both the supervisor of the employee and the EEO Department Director are involved in how the situation is handled, although the Law differentiates between the role of the supervisor and the role of the EEO Department Director.

The responsibilities of the supervisor are contained in section 223.8 of the Law, and include conducting the initial assessment of the alleged workplace violence incident to determine if the EEO Department Director should be notified to begin an investigation, place an employee alleged to be involved in a workplace violence incident on investigative leave, and execute any disciplinary actions that result from a workplace violence incident.

The responsibilities of the EEO Department Director are contained in section 223.9 of Law, and include investigating the alleged workplace violence incident, implement preventative factors, provide a recommendation for disciplinary action, and provide further assistance to employees. The roles of the supervisor and EEO Department Director are meant to work in conjunction with one another.

The LOC may consider whether the differentiation between the roles of the supervisor and EEO Department Director are clear, or if more clarification is needed in the Law.

### ***LOC Consideration***

The LOC disagrees that there is a blurring of responsibilities between the EEO Department Director and the supervisor. The LOC had a discussion on the role of each the EEO Department Director and the supervisor and feels the Law is clear on the differentiation between the roles.

The LOC determined there is no revision necessary based on the comment.

### **Comment 24 – Supervisor Responsibilities:**

#### **223.8. Supervisor Responsibilities**

**223.8-4. A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave if the supervisor deems the investigative leave necessary and appropriate, except that an employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination.**

**Robert Keck – Risk Management (written):** 223.8-4 Supervisors have authority to put someone on investigative leave?;

### ***Response***

The Law states that a supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave. This does not grant the supervisor the sole authority to place an employee on investigative leave. The supervisor will have to follow all guidelines of the current Investigative Leave Policy, such as obtaining prior approval from the Human Resources Department Manager or his or her designee and their Division Director or if there is no Division Director, the person at the highest level of the chain of command. *[see Investigative Leave Policy section 208.5-1]*.

While reviewing this comment, it was discovered that the Law might conflict with the Investigative Leave Policy because the Investigative Leave Policy requires the employee's supervisor to complete the investigation while the Law has the EEO Department Director completing the investigation. [see *Investigative Leave Policy* section 208.7-1]. The Investigative Leave Policy does appear to allow an individual other than the employee's supervisor to complete the investigation as long as a copy of the written report is provided to the employee's supervisor. [see *Investigative Leave Policy* section 208.7-3]. The following revision is recommended to address the issue:

223.8-4. A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave ~~if the supervisor deems the investigative leave necessary and appropriate~~, except ~~that for~~ the following:

- (a) ~~an~~ An employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination; ~~and~~.
- (b) The EEO Department Director, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except ~~that for~~ the following:

- (a) ~~A~~ An employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination; ~~and~~.
- (b) The EEO Department Director, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

- (b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;

The LOC may consider if the recommended revisions should be included in the Law. The LOC may also consider if the Law address the Investigative Leave Policy properly, or if a conflict between the two laws exist.

### ***LOC Consideration***

The LOC decided to include the recommended language in the Law, and determined that the Law will not conflict with the Investigative Leave Policy.

While reviewing this comment the LOC wanted to make the following clarification to the Law:

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee as a result of an incident of workplace violence, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except ~~that~~ for the following:

**Comments 25 through 27 – Equal Employment Opportunity Department Responsibilities – During the Investigation:**

**223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.**

**Robert Keck – Risk Management (written):** 223.9-1 Conflicts with earlier clauses where Supervisors are tasked with investigating

***Response***

The requirement of the EEO Department Director, or a designee, to investigate alleged instances of workplace violence does not conflict with prior requirements of the Law involving a supervisor investigation because the supervisor only does an initial investigation to determine if a potential act of workplace violence occurred. The supervisor is not conducting an investigation into the alleged act of workplace violence, the supervisor is only screening if an incident meets the qualifications of workplace violence and then forwarding that information to the EEO Department Director.

There is no recommended revision based on this comment. The LOC may consider whether more clarification is needed for the roles of the supervisor and EEO Department Director and what investigations each role does.

***LOC Consideration***

The LOC determined that there is no conflict and the Law is clear. The supervisor conducts the initial assessment to determine if the incident meets the standard of workplace violence [see *Workplace Violence law section 223.8-1*], and then the EEO Department Director or designee conducts the investigation into the incident of workplace violence [see *Workplace Violence law section 223.9-1*].

The LOC determined there is no revision necessary based on this comment.

**Rae M. Skenandore (written):** What's the protocol for requesting/reviewing video footage if available? It's not listed that it should even be reviewed.

***Response***



The EEO director would have to follow the current policies and procedures for requesting and/or reviewing video footage if necessary and available.

The following revision is recommended to provide clarity:

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation which may include ~~by performing~~ the following duties:

- (a) Personally visit the scene of an incident as soon as possible;
- (b) Interview employees and other witnesses;
- (c) Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; ~~and~~
- (g) Contact the Oneida Police Department and any other appropriate law enforcement agency.:-
- (h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (i) Any other investigative methods necessary for a thorough investigation.

The LOC may consider the following when addressing this comment:

1. If the recommended revision should be included in the Law.
2. Whether a process for requesting and reviewing video surveillance footage should be included in the Law.

### ***LOC Consideration***

The LOC determined that the recommended revision should be included in the Law. The LOC discussed the fact that a process for reviewing video surveillance footage does not need to be included in the Law because there are already processes and procedures in place for making requests to review video surveillance footage so the EEO Department Director would have to comply with those processes and procedures.

### **223.9. Equal Employment Opportunity Department Responsibilities**

- (g) Contact the Oneida Police Department and any other appropriate law enforcement agency.**

**Rae M. Skenandore (written):** Line 178 reads like a required action. Perhaps it should state, if necessary, contact OPD ...

## ***Response***

Currently, the Law requires that the EEO Department Director contact the Oneida Police Department or other law enforcement agency during every investigation of alleged workplace violence. The LOC may consider whether this should be a mandatory requirement. The LOC can address this comment in the following ways:

1. The LOC can make the policy consideration that the Oneida Police Department and any other appropriate law enforcement agency should be contacted during every investigation of workplace violence, and leave the Law as drafted.
2. The LOC can make the policy consideration that there should be more discretion and flexibility included in the Law and make the following revision:

### **223.9. Equal Employment Opportunity Department Responsibilities**

(g) Contact the Oneida Police Department and or any other appropriate law enforcement agency when necessary;

## ***LOC Consideration***

The LOC determined that there should be more discretion and flexibility included in the Law for the EEO Department Director to decide when the Oneida Police Department or other appropriate law enforcement agency should be contacted. The LOC determined that the recommended revision found in the second option of the response should be included in the Law.

## **Comments 28 through 30 – Equal Employment Opportunity Department Responsibilities - At the Completion of the Investigation:**

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred;
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance; and
- (e) offer to provide information on filing a restraining order.

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred;

**Rae M. Skenandore (written):** Shouldn't Line 191 include security?

***Response***

No, security should not be included in the requirement that at the end of an investigation the EEO Department Director must notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred. The intent of this requirement is to inform the proper agencies of the occurrence of a potential criminal act so that those agencies can begin their own investigation if necessary. The inclusion of the Nation's security department is not necessary to serve the intended purpose of this section.

There is no recommended revision based on this comment. The LOC may consider if security should be included in this requirement.

***LOC Consideration***

The LOC determined that security does not need to be included in 223.9-4(c) because security does not do post-incident investigations or write citations. The LOC determined that no revisions are necessary based on this comment.

**223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (d) refer employees to post-event trauma counseling for those employees desiring such assistance; and**

**Rae M. Skenandore (written):** Line 193 should be an automatic offering to employees by the supervisor. Not wait for EEO to be involved.

***Response***

The Law has the EEO Department Director refer employees to post-event trauma counseling for those employees desiring such assistance due to the fact that it is the EEO Department Director that will have coordinated with all the involved agencies or departments and conducted the investigation. Additionally, since the Law states that the EEO Department Director will be making the referral to post-event trauma counseling, the EEO Department Director must have the knowledge and skills necessary to provide referrals on this topic, while the supervisor of the employee might not have that knowledge of post-event trauma counseling.

There is no recommended revision based on this comment. The LOC may consider if the supervisor of the employee should be the individual to refer employees to post-event trauma counseling and not the EEO Department Director, or if the Law should remain as written.

***LOC Consideration***

The LOC determined that the Law is appropriate as it is because it is the EEO Department Director that is completing the investigation and making recommendations to the supervisor for disciplinary action, for the referral to post-event trauma counseling can be included in that recommendation to the supervisor.

The LOC determined that there is no revision necessary based on this comment.

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (e) offer to provide information on filing a restraining order.**

**Rae M. Skenandore (written):** Is line 195 a standard practice?

#### ***Response***

The LOC made the policy consideration that the EEO Department Director will be offering this assistance to employees with the adoption of this Law.

There is no recommended revision based on this comment. The LOC may consider if the EEO Director should offer information on filing a restraining order as the Law is currently written, or if more information should be gathered on whether this is a standard practice.

#### ***LOC Consideration***

The LOC made the determination that 223.9-4(e) should be removed from the Law. The LOC discussed the fact that if this provision were to remain in the Law then the restraining order process for multiple counties would have to be known, and this service would be outside of the scope of the role of the EEO Department Director. Additionally, the LOC discussed the fact that usually restraining orders are obtained in emergency situations, so if an employee waits until after an investigation takes place to seek out information on filing a restraining order then that emergency situation might have already passed.

### **Comments 31 through 32 – Resignation during Investigations:**

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-6. The Nation shall not accept a resignation from an employee when there is an ongoing investigation or in lieu of a termination.**

**Rae M. Skenandore (written):** Line 196 should be consistent with other related laws. I don't believe it is.

**Robert Keck – Risk Management (written):** 223.8-4 Why can't someone resign when they want to? I doubt that would hold up in any court and could result in an Employment Practices liability claim;

### ***Response***

The commenter is correct that forbidding an individual to resign when there is an ongoing investigation is inconsistent with other laws because the Investigative Leave Policy does allow an employee to resign or retire during an investigation. [see *Investigative Leave Policy* section 208.8-2]. The intent of this provision is to prevent an individual accused of workplace violence from resigning from one position before the investigation is completed and then immediately applying for another position within the Nation. If this provision was included to prevent a potentially violent employee from working within the Nation, or at least rapidly reapplying for employment with the Nation, the following revision is recommended:

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-6. ~~The Nation shall not accept a resignation from an~~ An employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for (#) days from the date of the resignation.-

If this revision is made then other areas in the law, such as section 223.9-3 and 223.8-4 will have to be amended to reflect the revision.

The LOC may consider whether the recommended revision should be included in the Law. If the LOC determines the recommended revision should be included in the Law then the LOC should make a determination for how long an employee shall be prohibited from hiring consideration if they resign during an open workplace violence investigation.

### ***LOC Consideration***

The LOC discussed the intent behind preventing an individual from resigning when there is an ongoing investigation. The LOC determined the intent behind this provision was to prevent an individual from resigning during an open investigation and immediately applying for another position within the Nation before it is determined that they have or have not committed an act of workplace violence. The LOC discussed the fact that if a person is potentially violent then the Nation may not want to prevent the individual from resigning, so the intent of the Law can be achieved by other means. Some discussion was spent on motivations behind the choice to resign during an open investigation and the fact that it leads to the perception of guilt of the individual making the decision to resign. The LOC determined that the recommended revision prevents an individual from resigning and reapplying to another position within the Nation. The LOC also decided to use a period of three years in the recommended revision. Additionally, the LOC directed that a provision stating that the ongoing investigation will be completed even if the employee resigns be added to the Law.



### Comments 33 through 34 – Confidentiality:

#### 223.11. Confidentiality

**223.11-1. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:**

- (a) the prior written consent of the alleged victim is obtained;**
- (b) the release of information is in compliance with a court order; and/or**
- (c) the release of information is pursuant to applicable laws and/or policies.**

**Rae M. Skenandore (written):** Shouldn't the confidentiality section include what's necessary for the investigation?, OPD, Security?

#### *Response*

Section 223.11-1 of the Law discusses confidentiality in terms of the release of information to third parties. Although it might be necessary for the EEO Department Director to notify the Oneida Police Department or other law enforcement agency, or facility security during the investigation, the EEO Department Director is not allowed to share confidential information related to the application of this Law unless the qualifications in section 223.11-1(a)-(c) are met.

There is no recommended revision based on this comment. The LOC may consider whether any more information should be included in the Law regarding confidentiality.

#### *LOC Consideration*

The LOC considered the comment and determined that the EEO Department will be responsible for knowing how to handle an investigation, and what information they are allowing to share with third parties, and when the EEO Department is allowed to release that information.

The LOC determined that no revision is necessary based on this comment.

#### 223.9. Equal Employment Opportunity Department Responsibilities

**223.9-7. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation. To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.**

**Rae M. Skenandore (written):** Sentence starting on line 199 should go with the confidentiality section.

#### *Response*

The following revision is recommended:

### 223.9. Equal Employment Opportunity Department Responsibilities

223.9-7. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person. ~~To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.~~

### 223.11. Confidentiality

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of the reporting employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

223.11-42. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

### *LOC Consideration*

The LOC considered the comments and the recommended revision, and determined that the recommended revision included in the response should be included in the Law.

### Comments 35 through 37 – Enforcement:

#### 223.12. Enforcement

**223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment until the individual is pardoned by the Nation.**

**Wendy M. Alvarez (written):** 223.12-2 Even with a pardon the individual may not be eligible for a Gaming license – does this need to be in here?

**Rae M. Skenandore (written):** Line 222 states "until the individual is pardoned" ... A pardon is not automatic. Shouldn't it read unless, not until.

### *Response*

The commenters are correct in stating that a pardon by the Nation is not guaranteed, and that even with a pardon of criminal conviction, the individual is not eligible for future employment unless the individual can meet all necessary requirements of employment.

The following revision is recommended:

### 223.12. Enforcement

223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment ~~until~~unless the individual receives a ~~is~~ pardoned by the Nation, and can meet all employment qualifications.

The LOC can consider whether the recommended revision in the response should be included in the Law.

### *LOC Consideration*

The LOC discussed the enforcement section and at first determined that this section of the Law should include more detail, especially surrounding what happens if you are terminated due to an incident of workplace violence. The LOC discussed the fact that it is in the best interests of the Nation to not allow an individual who was found to have exhibited behaviors that constitute workplace violence to return to employment with the Nation in the future. The LOC discussed what qualifications exist in the Nation's Personnel Policies and Procedures, and what requirements exist in the proposed Employment law and proposed Employment law Rule Handbook. The LOC directed that more research be done to look at how the Workplace Violence law can be consistent with the laws, policies, and rules governing employment. When review of both the Personnel Policies and Procedures and the proposed Employment law and Rule Handbook was completed, it was discovered that the Workplace Violence law could not state provisions that would be consistent with both the current policy, and the proposed future policy. For this reason the LOC determined that the detail should be removed from the Law, and only language stating that the "Nation's laws, policies and rules governing employment" will be followed because then the Law could remain consistent with current practice even when that current practice evolves. The detail on how situations shall be handled will be found in the Nation's laws, policies and rules governing employment. The following revision will be included in the Law:

### 223.12. Enforcement

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment, up to and including termination.

~~223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment until the individual is pardoned by the Nation.~~

223.12-~~3~~2. An employee who violates this law may be subject to removal from a workplace of the Nation.

### 223.12. Enforcement

223.12-3. An employee who violates this law may be subject to removal from a workplace of the Nation.

**Rae M. Skenandore (written):** Enforcement lists removal of the employee from a workplace. Shouldn't that have been an immediate part of the process?

***Response***

Removal of an individual from a workplace of the Nation is included in section 223.12-3 of the Law because it is a mechanism for enforcement. It is not an immediate part of the process because the removal of an employee from a workplace does not have to occur in every situation of alleged workplace violence. This allows flexibility when determining if an employee should be removed from a workplace of the Nation.

There is no recommended revision based on this comment. The LOC can consider whether removal of an employee should be an immediate part of the process.

***LOC Consideration***

The LOC discussed the comment and determined that the removal of an individual from a workplace of the Nation is not automatic because it allows for flexibility and discretion. Every alleged instance of workplace violence can have a multitude of variables that will take precedence, meaning that not every alleged instance of workplace violence of an employee from a workplace of the Nation. The LOC also discussed the fact that until the investigation is completed by the EEO Department Director, the workplace violence incident is alleged, so the LOC does not want to have removal automatic when it might not be necessary in every situation, and when it has not been concluded that the employee committed the act of workplace violence.

The LOC determined there is no revision necessary based on this comment.

**Comment 38 – General Comment Regarding Private Security:**

**Rae M. Skenandore (written):** I've worked in a building that a security guard was assigned for the safety of a specific employee. Without anything on prevention, what's the protocol? Who determines the criteria and who would have to approve it? How long would they be there? Who pays for it?

***Response***

The commenter discusses a situation in which a security guard is assigned for the safety of a specific employee. The Law does not address a situation in which a security guard would be assigned to a specific employee, nor does the Law necessarily allow this to occur, so the Law does not address the criteria or approval requirements for this situation. The situation described in the comment is outside the scope of the Law.

There is no recommended revision based on this comment. The LOC may determine if more consideration is needed based on this comment.

### ***LOC Consideration***

The LOC determined that the situation described in the comment is outside the scope of the Law. The EEO Department will be responsible for making recommendations on how incidents of workplace violence should be handled.

The LOC determined there is no revision necessary based on this comment.

### **Comment 39 – General Comment Regarding Organization:**

**Rae M. Skenandore (written):** The organization seems very awkward. Format for laws says general to specific.

### ***Response***

The commenter is correct in stating that the Legislative Procedures Act (LPA) states that all other sections within any law shall be in order from general to specific. *[see LPA section 109.11-1(d)]*. The LPA also states that sections shall be broken into logical areas, and this Law logically flows through the workplace violence process. *[see LPA section 109.11-1(d)]*.

There is no recommended revision based on this comment. The LOC can consider whether the organization is proper under the LPA, or if the format of the Law should be altered.

### ***LOC Consideration***

After considering the comment, the LOC determined that the development and organization of the Law is consistent with the legislative process required by the Legislative Procedures Act so there is no revision necessary based on this comment.



## **Title 2. Employment – Chapter 223**

### **WORKPLACE VIOLENCE**

223.1.	Purpose and Policy	223.8.	Supervisor Responsibilities
223.2.	Adoption, Amendment, Appeal	223.9.	Equal Employment Opportunity Department Responsibilities
223.3.	Definitions	223.10.	Fraudulent Report
223.4.	Applicability	223.11.	Confidentiality
223.5.	Prohibited Behavior	223.12.	Enforcement
223.6.	Reporting Workplace Violence		
223.7.	Future Workplace Violence		

#### **223.1. Purpose and Policy**

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which incidents of workplace violence shall be addressed.

#### **223.2. Adoption, Amendment, Repeal**

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_\_\_\_.

223.2-2. 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.

223.2-3. 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.

223.2-4. 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.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **223.3. Definitions**

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the person two (2) levels of supervision in the chain of command above an employee, or an individual designated to be the Area Manager by the Division Director.

(b) “EEO Department” means the Equal Employment Opportunity Department within the Nation’s Human Resource Department.

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

(d) “Intimidation” means making others feel afraid or fearful through threatening behavior.

(e) “Nation” means the Oneida Nation.

(f) “Stalking” means unwanted or obsessive attention by an individual or group toward another person. Stalking includes a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal,

written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

(g) "Supervisor" means the person or entity responsible for directly overseeing the employee.

(h) "Threat" means the implication or expression of intent to inflict physical harm or actions that a reasonable person would interpret as a threat to physical safety or property.

(i) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

(j) "Workplace" means ~~all of the Nation's facilities, job sites~~ any location owned and operated by the Nation, and any location where an employee represents the Nation, including over-the-road travel in the Nation's owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

(k) "Workplace Violence" means any intentional act committed by an employee in a workplace that:

(1) inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person; or

(2) inflicts, attempts to inflict, or threatens to inflict, damage to property.

#### 223.4. Applicability

223.4-1. This law applies to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.

#### 223.5. Prohibited Behavior

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

(a) intentionally causing physical injury to another person;

(b) hitting or shoving;

(c) fighting or "horseplay" that may be dangerous to others;

(d) direct threats or physical intimidation;

(e) implications or suggestions of violence;

(f) stalking;

(g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;

(h) physical restraint, confinement;

(i) loud, disruptive, ~~or angry~~ or abusive language or behavior ~~or abusive language~~;

(j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;

(k) using the workplace to violate protective orders;

(l) intentionally damaging property of the Nation or property of another;

(m) throwing an object at an individual; and

(n) any other act that a reasonable person would perceive as constituting a threat of violence;

~~(n) throwing an object at an individual; and~~

~~(o) any threat or act of violence that is a direct result of the victim's employment duties or responsibilities with the Nation.~~

223.5-2. *Exceptions to Prohibited Behavior.* The following shall be exempt from this law:

- (a) Law enforcement officials and security staff are not considered to be in violation of this law when acting in their official capacity;
- (b) Employees required to use knives or other tools owned by the Nation that could potentially be used as weapons are not considered to be in violation of this law as long as the tools are used within the normal scope of employment and not used in a way to intimidate, threaten or otherwise harm another person within the workplace; and
- (c) Any other action that is consistent with laws of the Nation.

#### **223.6. Reporting Workplace Violence**

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. -The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. -If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

223.6-4. Reporting the Behavior of a Supervisor. If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists, to the area manager.

223.6-5. Reporting Restraining Orders. An employee who possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.

(a) The supervisor shall provide copies of the restraining order to the area manager and the EEO Department Director or designee.

#### **223.7. Future Workplace Violence**

223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor ~~or the EEO Department Director or designee~~ for an initial assessment pursuant to section 223.8-1.

(a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.

(b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

~~223.7-2. Restraining Order. An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.~~

~~(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.~~

223.7-3~~2~~. *Anonymous threats or letters*. In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and notify ensure that the Oneida Police Department as notified, and ~~notify~~ local law enforcement and/or facility security if determined appropriate.

## 223.8. Supervisor Responsibilities

223.8-1. Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

223.8-2. *Emergency Situation*. If an emergency situation exists and if possible without causing themselves to be in danger, a supervisor shall immediately contact the Oneida Police Department or local law enforcement, and facility security if appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself, employees and others from immediate harm.

223.8-3. *Non-Emergency Situation*. If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

223.8-4. *Investigative Leave*. A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave ~~if the supervisor deems the investigative leave necessary and appropriate~~, except ~~for that an employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination~~ the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.8-5. A supervisor shall consider the recommendation for disciplinary action provided by the EEO Department Director or designee pursuant to section 223.9-4(b) when carrying out a disciplinary action of an employee. The supervisor shall carry out any disciplinary action of an employee within five (5) days of receiving the recommendation. If the supervisor does not follow the disciplinary action recommendation provided by the EEO Department Director or

designee, the supervisor shall provide justification for the deviation from the recommendation to the EEO Department Director and the supervisor's Area Manager.

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation by performing which may include the following duties:

- (a) Personally visit the scene of an incident as soon as possible;
- (b) Interview employees and other witnesses;
- (c) ~~Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;~~
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; and
- (g) Contact the Oneida Police Department and or any other appropriate law enforcement agency when necessary;

(h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and

(i) Any other investigative methods necessary for a thorough investigation.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee as a result of an incident of workplace violence, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except ~~that for the an employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination~~ EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred; and
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance; and
- ~~(e) offer to provide information on filing a restraining order.~~

~~223.9-65. Employee Resignation. The Nation shall not accept a resignation from an An~~  
employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for three (3) years from the date of the resignation. The EEO Department Director or designee shall remain responsible for completing the investigation in the event an employee resigns during an investigation.



223.9-~~7~~6. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person. ~~To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.~~

#### **223.10. Fraudulent Report**

223.10-1. If at any time the EEO Department Director or designee, or supervisor is made aware that an employee or supervisor has made a report other than in good faith, the employee or supervisor may be disciplined according to the Nation's laws, policies and rules governing employment, up to and including termination.

#### **223.11. Confidentiality**

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

223.11-2. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

#### **223.12. Enforcement**

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment, up to and including termination.

~~223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment until the individual is pardoned by the Nation.~~

223.12-~~3~~2. An employee who violates this law may be subject to removal from a workplace of the Nation.

*End*


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Adopted – BC-



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   
DATE: June 28, 2017  
RE: Workplace Violence Law

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Please find the following attached backup documentation for your consideration of the proposed Workplace Violence law:

1. Resolution: Workplace Violence Law
2. Statement of Effect: Workplace Violence Law
3. Workplace Violence Law Legislative Analysis
4. Workplace Violence Law Draft
5. Workplace Violence Law Fiscal Impact Statement

#### *Overview*

This resolution adopts the proposed Workplace Violence law. The proposed Workplace Violence law provides all Oneida Nation employees and visitors a safe and secure environment free of violence and the threat of violence by establishing the procedures by which incidents of workplace violence shall be addressed.

The proposed Workplace Violence law will:

- Apply to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs *[see section 223.4]*;
- Provide examples of what behaviors and actions by an employee may constitute workplace violence so an employee is aware of the standards he or she will be held to *[see section 223.5]*;
- Provide the processes and requirements for reporting workplace violence by a non-employee, permissive reporting by an employee, mandatory reporting by an employee, reporting the behavior of a supervisor, and reporting restraining orders *[see section 223.6]*;
- Establish how the potential for instances of future workplace violence will be addressed *[see section 223.7]*;
- Describe the responsibilities of the supervisor and the Equal Employment Opportunity Department Director when addressing and investigating incidents of workplace violence *[see section 223.8 and 223.9]*;

- Provide for confidentiality requirements, and how fraudulent reports of workplace violence will be addressed *[see section 223.10 and 223.11]*; and
- Establish the means by which the Law shall be enforced *[see section 223.12]*.

In accordance with the Legislative Procedures Act, a public meeting on the proposed law was held on May 18, 2017, with a comment period closing on May 25, 2017. All comments received during the public comment period were reviewed and accepted by the Legislative Operating Committee on June 7, 2017. Any changes made based on those comments have been incorporated into this draft.

**Requested Action**

Approve the Resolution: Workplace Violence Law

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Workplace Violence Law

- 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 Workplace Violence law ("the Law) provides all Oneida Nation employees and visitors a safe and secure environment free of violence and the threat of violence by establishing the procedures by which incidents of workplace violence shall be addressed; and
- WHEREAS,** the Law applies to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs; and
- WHEREAS,** the Law provides examples of what behaviors and actions by an employee may constitute workplace violence so an employee is aware of the standards he or she will be held to; and
- WHEREAS,** the Law provides the processes and requirements for reporting workplace violence by a non-employee, permissive reporting by an employee, mandatory reporting by an employee, reporting the behavior of a supervisor, and reporting restraining orders; and
- WHEREAS,** the Law sets forth how the potential for instances of future workplace violence will be addressed; and
- WHEREAS,** the Law describes the responsibilities of the supervisor and the Equal Employment Opportunity Department Director when addressing and investigating incidents of workplace violence; and
- WHEREAS,** the Law discusses confidentiality requirements, and how fraudulent reports of workplace violence will be addressed; and
- WHEREAS,** the Law establishes the means by which the Law shall be enforced; and
- WHEREAS,** a public meeting on the proposed law was held on May 18, 2017, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on June 7, 2017.

**NOW THEREFORE BE IT RESOLVED,** that the Workplace Violence law is hereby adopted and shall become effective immediately.



## **Statement of Effect**

### *Workplace Violence Law*

#### ***Summary***

This resolution adopts the Workplace Violence law.

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

#### ***Analysis by the Legislative Reference Office***

This resolution adopts a new Workplace Violence law which provides all Oneida Nation employees and visitors a safe and secure environment free of violence and the threat of violence by establishing the procedures by which incidents of workplace violence shall be addressed.

The Workplace Violence law:

- Applies to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs;
- Provides examples of what behaviors and actions by an employee may constitute workplace violence so an employee is aware of the standards he or she will be held to;
- Provides the processes and requirements for reporting workplace violence by a non-employee, permissive reporting by an employee, mandatory reporting by an employee, reporting the behavior of a supervisor, and reporting restraining orders;
- Establishes how the potential for instances of future workplace violence will be addressed;
- Describes the responsibilities of the supervisor and the Equal Employment Opportunity Department Director when addressing and investigating incidents of workplace violence;
- Provides for confidentiality requirements, and how fraudulent reports of workplace violence will be addressed; and
- Establishes the means by which the Law shall be enforced.

The public meeting on the proposed Law was held on May 18, 2017, and comments received were reviewed and accepted by the Legislative Operating Committee on June 7, 2017.

#### ***Conclusion***

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





## Workplace Violence Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Matthew J. Denny, Sr.	SPONSOR: Tehassi Hill	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
<b>Intent</b>	Create penalties for incidents of violence in the workplace.		
<b>Purpose</b>	The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence by establishing procedures by which incidents of workplace violence shall be addressed [see 223.1-2].		
<b>Affected Entities</b>	Oneida Nation employees and supervisors, Oneida Police Department (OPD), non-employees who visit the Nation's workplaces, Oneida Internal Security Department, Human Resources Department (HRD), Equal Employment Opportunity Department (EEO)		
<b>Affected Legislation</b>	Oneida Personal Policies and Procedures, Investigative Leave Policy, Anonymous Letters Policy		
<b>Enforcement/Due Process</b>	An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment up to and including termination [see 223.12-1]. An employee who violates this law may be subject to removal from a workplace of the Nation [see 223.12-2]. An employee must report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else [see 223.6-3]. An employee who resigns when there is an ongoing investigation or in lieu of a termination will not be eligible for employment for three (3) years from the date of the resignation [see 223.9-5].		
<b>Public Meeting</b>	A public meeting was held 5/18/17.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This legislation provides the Nation with accountability measures regarding incidents of violence and threats of violence in the workplace.
- B. This legislation benefits the community by providing a means to discourage violence in the workplace by providing clear consequences to those that violate this law including but not limited to termination from employment with the Nation and removal from the Nation's workplaces.

### SECTION 3. CONSULTATION

- A. The Human Resources Department, Equal Employment Opportunity Department, Oneida Police Department, Environmental Health and Safety Division and Emergency Management were consulted about the contents of the legislation.
- B. The Ho-Chunk Nation Workplace Violence Prevention law was reviewed in the development of this law.

### SECTION 4. PROCESS

- A. The correct legislative process been followed.

B. This item was originally proposed on December 18, 2012 and carried over to the current Active Files List on September 17, 2014. A public meeting was held May 18, 2017.

## SECTION 5. CONTENTS OF THE LEGISLATION

A. This is a new law that defines a process for dealing with violence in the workplace. The law includes both threats of violence and acts of violence.

- Prohibited behaviors are outlined to include both physical threats and acts of violence, stalking, possession or use of weapons, physical restraint, loud disruptive or angry behavior, abusive language, threatening or harassing emails, phone calls, faxes, text messages or other forms of electronic media, violating protective orders, throwing objects and any threat or act of violence as a direct result of the victim's employment duties or responsibilities with the Nation [see 223.5-1(a) – (n)].
- Law enforcement officials and other employees of the Nation as well as any other action that is consistent with the laws of the Nation are exempt when acting in their official capacity [see 223.5-2].
- Non-employees are encouraged to report threats or observed workplace violence. Employees who experience workplace violence are also encouraged to report the incident and employees who witness an act of workplace violence are required to report the incident in writing to the appropriate supervisor [see 223.6].
- Anonymous threats or letters shall forward a summary of the information in a confidential manner to the Chief of the Oneida Police Department [see 223.7-2 and Anonymous Letters Policy O.C. 307.4-1]. The employee shall also notify the employee's supervisor. The supervisor is responsible for informing the target of the threat, as well as OPD and local law enforcement or facility security if appropriate [see 223.7-2].
- Supervisors are responsible for immediately investigating all reports of workplace violence and if deemed a workplace violence episode, supervisor must send a written workplace violence incident report to the Human Resources Department (HRD) [see 223.8].
- A supervisor may place an employee on investigative leave if the supervisor deems it to be appropriate, in accordance with the Investigative Leave Policy [see O.C. 208] except for that the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation [see 223.8-4].
- An employee will be placed on investigative leave if criminal charges are brought and HRD will suspend their investigation until the investigation into criminal charges is complete, except that the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation [see 223.9-3].
- The Equal Employment Opportunity Department is responsible for conducting an investigation for all allegations of workplace violence with all affected agencies and departments and following up with preventive factors if necessary, as well as contacting the Oneida Police Department if criminal acts have occurred. Additionally, EEO will recommend disciplinary action to the supervisor of the employee found to be in violation of this law [see 223.9].

B. The proposed legislation is clearly written so employees of the Nation and Oneida Members can understand the expectations established through this law.

## SECTION 6. INTENT

- A. The purpose of the law is to provide employees and visitors of the Nation an environment that is free from violence and the threat of violence. The law creates a means to discipline employees for their participation in incidents of workplace violence.
- B. This legislation applies to employees of the Nation; both during regularly scheduled hours and when in any of the Nation's workplaces at any time *[see 223.4-1]*.

## SECTION 7. EFFECT ON EXISTING LEGISLATION

- A. This law works in conjunction with the existing Personnel Policies and Procedures and the Investigative Leave Policy.

## SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. No existing rights will be infringed upon by this legislation.
- B. Due process is addressed in the law in that an investigation will be conducted to confirm that the incident reported was in fact an incident of workplace violence *[see 223.9]*. Additionally, those who fraudulently report workplace violence may be disciplined according to the Nation's laws governing employment *[see 223.10]*.
- C. No terms of office are affected by this legislation.
- D. No agreements are affected by this legislation.
- E. The law will not affect any processes currently in place.

## SECTION 9. ENFORCEMENT

- A. The following is a list of enforcement mechanisms within the law:
- An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment up to and including termination *[see 223.12-1]*.
  - An employee who violates this law may be subject to removal from a workplace of the Nation *[see 223.12-2]*.
  - An employee must report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else *[see 223.6-3]*.
- B. Enforcement of this law is dependent upon supervisor discretion.

## SECTION 10. ACCOUNTABILITY

- A. The Equal Employment Opportunity Director or designee is responsible for investigations under this law *[see 223.9]*. The supervisor is responsible for following through with the disciplinary action recommended by the EEO Director or designee following the investigation or for justifying why the recommended disciplinary action was not carried out *[see 223.8-5]*.
- B. There are no reporting requirements to the BC or the GTC in this law.

## **Title 2. Employment – Chapter 223**

### **WORKPLACE VIOLENCE**

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223.7.	Future Workplace Violence		

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#### **223.1. Purpose and Policy**

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which incidents of workplace violence shall be addressed.

#### **223.2. Adoption, Amendment, Repeal**

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_\_\_\_.

223.2-2. 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.

223.2-3. 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.

223.2-4. 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.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **223.3. Definitions**

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the person two (2) levels of supervision in the chain of command above an employee, or an individual designated to be the Area Manager by the Division Director.

(b) “EEO Department” means the Equal Employment Opportunity Department within the Nation’s Human Resource Department.

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

(d) “Intimidation” means making others feel afraid or fearful through threatening behavior.

(e) “Nation” means the Oneida Nation.

(f) “Stalking” means unwanted or obsessive attention by an individual or group toward another person. Stalking includes a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal,

written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

(g) "Supervisor" means the person or entity responsible for directly overseeing the employee.

(h) "Threat" means the implication or expression of intent to inflict physical harm or actions that a reasonable person would interpret as a threat to physical safety or property.

(i) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

(j) "Workplace" means any location owned and operated by the Nation, and any location where an employee represents the Nation, including over-the-road travel in the Nation's owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

(k) "Workplace Violence" means any intentional act committed by an employee in a workplace that:

(1) inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person; or

(2) inflicts, attempts to inflict, or threatens to inflict, damage to property.

#### **223.4. Applicability**

223.4-1. This law applies to all employees in any of the Nation's workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.

#### **223.5. Prohibited Behavior**

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

(a) intentionally causing physical injury to another person;

(b) hitting or shoving;

(c) fighting or "horseplay" that may be dangerous to others;

(d) direct threats or physical intimidation;

(e) implications or suggestions of violence;

(f) stalking;

(g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;

(h) physical restraint, confinement;

(i) loud, disruptive, angry or abusive language or behavior;

(j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;

(k) using the workplace to violate protective orders;

(l) intentionally damaging property of the Nation or property of another;

(m) throwing an object at an individual; and

(n) any other act that a reasonable person would perceive as constituting a threat of violence.

223.5-2. *Exceptions to Prohibited Behavior.* The following shall be exempt from this law:

(a) Law enforcement officials and security staff are not considered to be in violation of this law when acting in their official capacity;



- (b) Employees required to use knives or other tools owned by the Nation that could potentially be used as weapons are not considered to be in violation of this law as long as the tools are used within the normal scope of employment and not used in a way to intimidate, threaten or otherwise harm another person within the workplace; and  
(c) Any other action that is consistent with laws of the Nation.

#### **223.6. Reporting Workplace Violence**

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety.

223.6-4. *Reporting the Behavior of a Supervisor.* If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists, to the area manager.

223.6-5. *Reporting Restraining Orders.* An employee who possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.

- (a) The supervisor shall provide copies of the restraining order to the area manager and the EEO Department Director or designee.

#### **223.7. Future Workplace Violence**

223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor for an initial assessment pursuant to section 223.8-1.

(a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.

(b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

223.7-2. *Anonymous threats or letters.* In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and ensure that the Oneida Police Department as notified, and notify local law enforcement and/or facility security if determined appropriate.

### **223.8. Supervisor Responsibilities**

223.8-1. Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

223.8-2. *Emergency Situation.* If an emergency situation exists and if possible without causing themselves to be in danger, a supervisor shall immediately contact the Oneida Police Department or local law enforcement, and facility security if appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself, employees and others from immediate harm.

223.8-3. *Non-Emergency Situation.* If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

223.8-4. *Investigative Leave.* A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.8-5. A supervisor shall consider the recommendation for disciplinary action provided by the EEO Department Director or designee pursuant to section 223.9-4(b) when carrying out a disciplinary action of an employee. The supervisor shall carry out any disciplinary action of an employee within five (5) days of receiving the recommendation. If the supervisor does not follow the disciplinary action recommendation provided by the EEO Department Director or designee, the supervisor shall provide justification for the deviation from the recommendation to the EEO Department Director and the supervisor's Area Manager.

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation which may include the following duties:

(a) Personally visit the scene of an incident as soon as possible;

- (b) Interview employees and other witnesses;
- (c) Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; and
- (g) Contact the Oneida Police Department and/or any other appropriate law enforcement agency when necessary;
- (h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (i) Any other investigative methods necessary for a thorough investigation.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee as a result of an incident of workplace violence, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except for the EEO Department Director or designee, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred; and
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance.

223.9-5. *Employee Resignation.* An employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for three (3) years from the date of the resignation. The EEO Department Director or designee shall remain responsible for completing the investigation in the event an employee resigns during an investigation.

223.9-6. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person.

## **223.10. Fraudulent Report**

223.10-1. If at any time the EEO Department Director or designee, or supervisor is made aware that an employee or supervisor has made a report other than in good faith, the employee or supervisor may be disciplined according to the Nation's laws, policies and rules governing employment, up to and including termination.

## **223.11. Confidentiality**

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of employees and the investigation. However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

223.11-2. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

**223.12. Enforcement**

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment, up to and including termination.

223.12-2. An employee who violates this law may be subject to removal from a workplace of the Nation.

*End*

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Adopted – BC-

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

DATE: May 15, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the Workplace Violence Law**

## I. Estimated Fiscal Impact Summary

Law: Workplace Violence		Draft 8
Implementing Agency                      Equal Employment Opportunity Department		
Estimated time to comply		
Estimated Impact	Current Fiscal Year	10 Year Estimate
Start up	\$0	
Personnel	\$0	
Office	\$0	
Documentation Costs	\$0	
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations                      None		
Uncertainties and Unknowns                      None		

## II. Background

### A. Legislative History

This is a new Law.



**B. Summary of the Content of the Law**

1. Applies to all employees in any workplace of the Nation regardless of whether the employee is working at the time the incident.
2. Lists examples of prohibited behaviors.
3. Assigns responsibilities for supervisors and Equal Employment Opportunity employees and provides procedures for reporting and investigating potential and current workplace violence incidents.
4. Describes enforcement mechanisms for a violation of this Law.

**C. Methodology and Assumptions**

1. A “Fiscal Impact Statement” means an estimate of the total identifiable 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.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

**II. Agency Response**

The Equal Employment Opportunity Department (EEO) within HRD does not anticipate any financial impact and the Law could be implemented immediately upon approval. The Human Resource Department (HRD) currently conducts training on a quarterly basis.

**III. Financial Impact**

No impact.

**IV. Recommendation**

Finance 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 the information with which to render a decision.




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**1.0 PURPOSE.** To formalize the public meeting process. Public meetings are required for all legislation except for emergency legislation.

## **2.0 DEFINITIONS**

**2.1 “LOC” means the Legislative Operating Committee.**

**2.2 “LRO” means the Oneida Legislative Reference Office.**

**2.3 “OBC” means the Oneida Business Committee.**

## **3.0 REQUIREMENTS**

**3.1** The Legislative Procedures Act contains requirements related to public meetings.

**3.1.1** The public meeting notice, legislation, legislative analysis and fiscal analysis, if available, shall be made publically available for a minimum of 10 business days before a public meeting is held.

**3.1.1.1** On the Oneida Register

**3.1.1.2** Electronically provided to all managers and directors

**3.1.1.3** The public meeting notice only shall be published in the Kalihwisaks or other Tribal publication of similar distribution.

**3.1.2** The public meeting shall presided over by at least one LOC member.

**3.1.3** All persons who present oral testimony at a public meeting shall register.

**3.1.4** The presiding LOC member may impose a time limit of no less than five (5) minutes for oral testimony. If a time limit is imposed, it must be identified prior to the start of the public meeting and shall be imposed consistently.

**3.1.5** The public comment period shall remain open for no less than five (5) business days after the public meeting is held.

## **4.0 LOC ACCEPTANCE**

**4.1** LOC officially ~~accepts~~ approves the public meeting packet through formal motion at an

LOC meeting.

**4.1.1** The LOC shall approve the contents of the public meeting packet as they will appear:

**4.1.1.1** On the Oneida Register

**4.1.1.2** Electronically provided to all managers and directors

4.1.1.3 Published in the Kalihwisaks or other Tribal publication of similar distribution.

4.2 LOC directs the LRO to schedule a public meeting.

## **5.0 PUBLIC MEETING NOTICE AND PACKET**

5.1 The drafting attorney shall be responsible for preparing the public meeting notice and assembling the public meeting packet; unless the LRO Director assigns a different staff member.

5.2 The drafting attorney shall obtain review of the public meeting packet from the LRO staff before the public meeting packet is presented to the LOC.

5.23 Each item in the public meeting packet shall be saved in the specific active file folder for the item (G:\LOC\WP\Active Files) as well as the public meeting folder (G:\LOC\WP\Public Meetings).

## **6.0 ONEIDA REGISTER**

6.1 The drafting attorney shall be responsible for ensuring the public meeting packet is posted to the Oneida Register once the packet is approved by the LOC. The drafting attorney shall ensure the packet is posted at least ten (10) business days prior to the scheduled public meeting to meet the requirements set out in the Legislative Procedures Act.

6.2 The drafting attorney shall verify that the public meeting packet was accurately posted to the Oneida Register in time to meet the ten (10) business day notice requirement.

## **7.0 KALIHWISAKS**

7.1 The drafting attorney shall ensure the public meeting notice only is received and verified by Kalihwisaks staff for print in the specific issue to meet the ten (10) business day notice requirement.

7.2 After publication of the Kalihwisaks, the drafting attorney shall verify the public meeting notice was included in the specific edition of the Kalihwisaks needed to meet the ten (10) business day notice requirement.

## **8.0 ELECTRONIC NOTICE TO MANAGERS AND DIRECTORS**

8.1 The drafting attorney will electronically send the public meeting packet to the LOC meeting packet list (G:\LOC\WP\2014-2017 Active Files List\Contacts) and any individuals listed as contacts under the particular item identified in the active files list as an appointment at least ten (10) business days prior to the public meeting.

8.2 The appointment notice shall include language that identifies why the recipient is receiving the notice and direct that the manager or director forward the notice to any employee that may have special knowledge or expertise on the legislation.

8.2.1 For example, “The Legislative Procedures Act requires that all managers or directors shall be electronically provided notice at least ten business days prior to a public meeting. The Legislative Procedures Act requires all appropriate managers or directors to direct employees who have special knowledge or expertise on legislation to provide comments during the public comment period [See Legislative Procedures Act 16.8-2 (a) & 16.8-4 (a)].”

**9.0 PUBLIC MEETING COMMENT MEMO**

9.1 The drafting attorney shall compile all comments received orally and in writing in a public meeting comment memo. The memo shall provide responses and objective recommendations and alternatives, when pertinent, for changes to the law for the LOC to consider. Public comments shall:

9.1.1 Be accepted by the LOC for at least five (5) business days after the public meeting is held.

9.1.2 Be formally presented to and accepted by official motion at an LOC meeting.

9.1.3 Be fully considered by the LOC in an LOC meeting or work meeting.

**10.0 DIRECTED CHANGES**

10.1 The drafting attorney shall make appropriate changes to the law as directed by the LOC.

**11.0 SUBSTANTIAL CHANGE**

11.1 Changes deemed to be substantial by the LOC will require an additional public meeting. In this case, the law cycles back through the public meeting process beginning at 4.0 of this SOP.

**12.0 LAW CONSIDERATION**

12.1 Once all changes have been made and accepted by LOC with no additional public meeting requirements, the LOC directs the LRO to prepare an adoption packet. The adoption packet is formally accepted by the LOC in an LOC meeting and forwarded to the Oneida Business Committee for consideration.

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**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: June 28, 2017  
 RE: Second Extension of the Effective Date of the Community Support Fund Law

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Please find the following attached backup documentation for your consideration:

1. Resolution: Second Extension of the Effective Date of the Community Support Fund Law
2. Statement of Effect: Second Extension of the Effective Date of the Community Support Fund Law

#### *Overview*

The Community Support Fund law (“the Law”) was adopted by the Oneida Business Committee pursuant to resolution BC-05-15-96-A, and amended by resolution BC-01-08-97-G, BC-12-01-13-D, and most recently with BC-01-11-17-B. The most recent amendments to the Law were set to become effective on May 11, 2017.

The Law states that the Social Services Area of Governmental Services Division is responsible for operation of the Community Support Fund (“the Fund”) but that the Social Services Area may designate the operation of the Fund to a department within its control. The Law also delegates rulemaking authority to the operators of the Fund to create rules to manage the Fund including the list of categories the Fund covers and funding caps.

The Fund operator did not create and prepare rules regarding the management of the Fund in time for the Law to become effective. The Fund operator needed additional time to develop and make effective the rules regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law. Due to the fact that the Law is so dependent on the development and use of Community Support Fund Rules, the Law cannot become effective until the rules are created and prepared.

The Oneida Business Committee extended the effective date of the law, as stated in resolution BC-01-11-17-B, an additional one hundred and twenty (120) calendar days from May 11, 2017, to September 8, 2017. The Oneida Business Committee also provided the Fund operator until September 8, 2017, when the law becomes effective to create and make effective rules in accordance with the Law.

The extension of the effective date of the Community Support law is soon after the general elections, so it is necessary to extend the timeline for the rules and effective date of the Law to allow the incoming Oneida Business Committee enough time to become familiar with the legislation. Therefore, the Fund operator again needs additional time to make effective the rules



regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law.

This resolution provides for a second extension of the effective date of the law, extending the effective date of the law until October 26, 2017. This resolution also allows the Fund operator until October 26, 2017, when the law becomes effective to create and make effective rules in accordance with the Law.

**Requested Action**

Approve the Resolution: Second Extension of the Effective Date of the Community Support Fund Law

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Second Extension of the Effective Date of the Community Support Fund Law

- 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 Oneida Business Committee originally adopted the Community Support Fund law ("the Law") pursuant to resolution BC-05-15-96-A, and made amendments pursuant to resolution BC-01-08-97-G, BC-12-01-13-D, and most recently with BC-01-11-17-B; and
- WHEREAS,** the most recent amendments were originally set to become effective on May 11, 2017; and
- WHEREAS,** the Law states that the Social Services Area of Governmental Services Division is responsible for operation of the Community Support Fund ("the Fund") but may designate the operation of the Fund to a department within its control; and
- WHEREAS,** the Law delegates rulemaking authority to the operators of the Fund to create rules to manage the Fund including the list of categories the Fund covers and funding caps; and
- WHEREAS,** the Fund operator needed additional time to develop and make effective the rules regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law; and
- WHEREAS,** the Law is so dependent on the development and use of Community Support Fund rules that the Law cannot become effective until the rules are created and prepared; and
- WHEREAS,** the Oneida Business Committee extended the effective date of the Law in resolution BC-04-12-17-B to September 8, 2017, to allow for the rules to be promulgated and become effective; and
- WHEREAS,** the extended effective date of the Law lands soon after the transition of the incoming newly elected Oneida Business Committee, so it is necessary to allow time for the new Oneida Business Committee to become familiar with the Law and the process set forth in the Administrative Rulemaking law; and
- WHEREAS,** the Fund operator again needs additional time to make effective the rules regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law.

51 **NOW THEREFORE BE IT RESOLVED**, the effective date of the Community Support Fund law as stated  
52 in resolution BC-01-11-17-B, and extended in resolution BC-04-12-17-B, is again extended until October  
53 26, 2017.  
54

55 **NOW THEREFORE BE IT FURTHER RESOLVED**, that the Fund operator shall have until October 26,  
56 2017, when the law becomes effective to create and make effective rules in accordance with the Law.



## **Statement of Effect**

### *Second Extension of the Effective Date of the Community Support Fund Law*

#### **Summary**

This resolution further extends the effective date of the Community Support Fund law.

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

#### **Analysis by the Legislative Reference Office**

This resolution provides a second extension of the effective date of the Community Support Fund law. The most recent amendments to the Community Support Fund law were originally set to become effective on May 11, 2017, as stated in resolution BC-01-11-17-B. The Oneida Business Committee extended the effective date of the Law an additional one hundred and twenty (120) days in resolution BC-04-12-17-B, so that the Community Support Fund law would become effective on September 8, 2017. This resolution again extends the effective date of the Community Support Fund law until October 26, 2017.

This Resolution also requires that the Fund operator shall have until the law becomes effective on October 26, 2017, to create and make effective rules in accordance with the Community Support Fund law.

#### **Conclusion**

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



## **Statement of Effect**

### *Petition: Delgado - Trust Land Distribution*

#### **Summary**

This petition finds that the Nation has “thousands of vacant acres of trust land”; and is asking GTC to direct that at least 25 parcels of Oneida trust land be made available for individual home building initiatives by the end of Fiscal Year 2018.

Adult Oneida Tribal member applicants would be given 50-year leases for the parcels, on a first-come, first-serve basis. After an applicant is granted a parcel, s/he must be given 18 months to acquire the financing, if needed, and an additional 6 months to be “scheduled for construction” for his/her contractor.

The petition/resolution also states that the underlying spirit of this request is to ensure that the granting of trust land will not be determined by how rich or how poor an applicant is, but instead depends on when s/he applies and whether s/he can acquire the necessary financing in a reasonable amount of time.

*Submitted by: Tani Thurner, Staff Attorney, Legislative Reference Office*

#### **Analysis by the Legislative Reference Office**

This resolution is requesting “for the GTC to approve the attached ‘Trust Land Distribution Petition’ or a variation thereof,” and states that all signatories have had an opportunity to read the dated and signed petition.

Attached to the petition is a document titled the “Trust Land Distribution Petition.” This petition/resolution makes various findings relating to the history of the Nation’s land base, ultimately finding that the Nation now owns approximately 25,000 acres of Reservation land, of which roughly 5,000 are in held in federal trust “and therefore tax exempt.”

The petition/resolution makes the following findings:

- In 2016 the GTC was told there was a home building program with land made available, but the “vast majority” of Oneida people applying for land to build their homes on, have been denied.
- Most Oneida people are left with very limited and unnecessarily overly expensive home ownership options, “in spite of the Nation owning thousands of vacant acres of trust land”, and
- The Oneida people deserve better.

The petition is asking for GTC to direct that at least 25 “parcels” of trust land be made available for adult Tribal members, for 50-year leases, by the end of Fiscal Year 2018 (which ends September 30, 2018) for individual home building initiatives. The following requirements would apply for those parcels:

- Only one application accepted per “immediate nuclear family.”
- After receiving a parcel, the applicant must be given 18 months to acquire any needed financing, and then 6 more months to be “scheduled for construction.”



- Applications cannot be accepted until after the “date and time for applicant filing for” available trust lands has been published in at least 3 issues of the Kalihwisaks.
- Applications must be accepted on a first-come first-serve basis.
- Every applicant must pay a \$250 refundable application fee to the Land Commission within 10 days after the application is filed – as long as it is paid within 10 days it will not interfere with the first-come first-serve status.
- If not granted trust land, the applicant may receive a refund of the application fee or may choose to let it stand and be “granted priority the next time trust land is available.”
- The Land Commission and OBC must “happily work together” to establish rules on how to make this petition work for the Oneida people.
- The underlying spirit is to ensure that the granting of trust land will not be determined by how rich or how poor an applicant is, but instead depends on when s/he applies and whether s/he can acquire the necessary financing in a reasonable amount of time

### ***Potential Conflicts with Oneida Law***

On May 13, 2015, the OBC adopted a Leasing law, which enables the Nation to enter into leases for its own trust lands, without requiring each lease to be individually approved by the US Department of the Interior. The Leasing law has not yet gone into effect, because it must first be approved by the Secretary of the US Department of the Interior for approval, and the law will go into effect 30 days after it is approved. [See OBC Resolution #10-26-16-C]

The Real Property law, section 67.11-1 states that “All leasing of tribal land shall be processed in accordance with the Tribe’s Leasing law” and the Leasing law states that it applies to all of the Nation’s trust land, and governs all residential leases executed by the Nation. In short, the Leasing law would govern the leases sought by the petitioner, which the petition/resolution refers to as “individual home building initiatives” (i.e. residential leases).

However, there are some provisions in the Leasing law which, once adopted, would conflict or overlap with the actions sought by this petition:

1. This petition/resolution states that the Land Commission and OBC must “happily work together” to establish rules on how to make this petition work for the Oneida people.
  - 604.3-1(q) of the Leasing law already delegates joint rulemaking authority to the Division of Land Management [DOLM] and the Oneida Land Commission. This directive would give the OBC, instead of DOLM, joint rulemaking authority with the Land Commission. This conflicts with the Leasing law.
  - The Leasing Law requires all leasing of tribal land to be processed through the Division of Land Management.” [see section 601.11-1] – meaning that DOLM is responsible for administering the Leasing law, and would be responsible for administering these leases, however the petition/resolution does not allow for DOLM to have any rulemaking authority for administering these leases.
  - The Administrative Rulemaking Law states that only agencies with rulemaking authority can promulgate rules. “Rulemaking Authority” is defined as the delegation of authority to Authorized Agencies found in the Tribe’s laws [...] which allows Authorized Agencies to implement, interpret and/or enforce a law of the Tribe. [106.3-1(g)] This petition/resolution appears to be delegating rulemaking authority to the OBC, but to satisfy the requirements of the Administrative Rulemaking law, that authority must be delegated through a law. This conflicts with the Administrative Rulemaking Law.

2. It appears that the intent of the petition is to grant these leases at no cost to applicants. The Leasing law states that DOLM may offer residential leases at reduced rates if it determines that doing so is in the best interest of the Nation, but otherwise, a residential lease may not be approved for less than the present fair annual lease value as set forth in a required appraisal. If the intent of the petition/resolution is to provide 50 year leases at no cost, then that may conflict with the Leasing Law.

### ***Conclusion***

There are various considerations that may need to be addressed to clarify the intent of the petition.

Adoption of this resolution may potentially conflict with the Leasing Law that is scheduled to go into effect 30 days after approval by the Secretary of the Interior. Specifically:

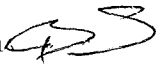
- This petition/resolution would delegate joint rulemaking authority to the OBC and the Land Commission, instead of the Land Commission and DOLM.
- The Leasing Law requires leases to be awarded at the appraised present fair annual lease value; except where DOLM determines that offering reduced rates is in the best interest of the Nation. This petition is silent as to lease rates, but it appears the intent is for these leases to be offered free of charge. This would conflict with the Leasing law.

Adoption of this resolution may also conflict with the Administrative Rulemaking Law. Specifically, this petition/resolution is delegating rulemaking authority; but to satisfy the requirements of the Administrative Rulemaking law, that authority must be delegated through a law, not a petition or resolution.



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 Chairman   
DATE: June 28, 2017  
RE: Oneida Health Board – GTC Directive

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## BACKGROUND

At the February 20, 2017 the General Tribal Council (GTC) considered Mr. Debraska's petition regarding an Oneida Health Care Board. A motion which directed that a new Health Care Board be created to oversee the Oneida Health Care Center, Oneida Behavioral Health, Oneida Community Health Center, Anna John Resident Centered Care Community, and Employee Health Nursing. This new board is to report directly to GTC.

An amendment was added to the motion and adopted;

**“to direct the OBC to dissolve the current Business Committee appointed health board.”**

The legal opinion provided the February 22, 2017 GTC meeting materials includes detail about the history of the existing Health Care board. A brief summary of that history includes;

- Originally, the Health Care Board was responsible for policymaking, and had hiring and supervisory responsibilities; but over time the Board had shifted to more of an oversight/guidance body.
- On October 29, 2008, the Oneida Business Committee (OBC) deferred appointments to the Health Board (i.e. they stopped filling the vacant seats on the board) and the Board has been vacant since that time.
- On May 25, 2011, the OBC, by motion, rescinded the last known version of the Board's bylaws.

## OPTIONS TO DISSOLVE THE HEALTH BOARD

At a May Oneida Business Committee (OBC) work meeting, the OBC asked that the Legislative Operating Committee (LOC) look into options to dissolve the current Health Board. This memorandum identifies how the existing Health Care Board can be dissolved.

The act of dissolving a board is set out in the Comprehensive Policy Governing Boards, Committees and Commissions (hereinafter: “Comprehensive Policy”). The requirements for dissolving an entity are:

- [The entity] must be dissolved by OBC or GTC motion

- Within two weeks after the entity is dissolved, the chairperson and secretary of the entity must forward any materials (i.e. records) of the former entity to the Tribal Secretary for proper disposal.
- The entity's chairperson and secretary are also responsible for closing out any open business of the entity. [See the Comprehensive Policy, Sections 105.10-3 and 105.10-4.]

The Health Care Board has not had any members in almost nine years, and has not had bylaws in six years. It is unlikely that there is any open business remaining to be closed out, or that any records remain that must be forwarded to the Tribal Secretary for proper disposal.

The Comprehensive Policy Governing Boards, Committees, and Commissions requires that the Health Care Board be dissolved by OBC or GTC motion. Historically, the OBC has opted to dissolve a board by resolution. Examples include; OBC Resolution #5-17-00-A – dissolving the Oneida Small Business Development Center and the OBC Resolution #8-29-07-B – dissolving the Child Care Parent Advisory Committee.

### **NEXT STEPS**

The OBC can formally dissolve the Health Board by motion, but may also do so by adopting a resolution. Regardless of which method is chosen, the only requirement is that the motion/resolution identify that the existing Board is being dissolved, and identify when the dissolution is effective.

In addition to making a formal statement to dissolve, the OBC may want to address whether or not the Health Care Board has open business or that it has records that could be forwarded to the Tribal Secretary.

Because the entity does not have a chairperson or secretary, the OBC may want to identify an individual or entity who would be responsible for performing those duties should it be necessary.

# June 2017

June 2017							July 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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4	5	6	7	8	9	10	2	3	4	5	6	7	8
11	12	13	14	15	16	17	9	10	11	12	13	14	15
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25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

Monday		Tuesday		Wednesday		Thursday		Friday	
<b>May 29</b>		<b>30</b>		<b>31</b>		<b>Jun 1</b>		<b>2</b>	
May 29 - Jun 2									
<b>5</b>		<b>6</b>		<b>7</b>		<b>8</b>		<b>9</b>	
Jun 5 - 9		12:15pm 2:00pm FW: Public Meetings (BCCR) - Jennifer A. Falck		3:00pm 4:00pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck		9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Tanique J. Thurner			
<b>12</b>		<b>13</b>		<b>14</b>		<b>15</b>		<b>16</b>	
Jun 12 - 16				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		12:15pm 2:00pm Public Meeting: Transfer ERB hearing authority to Judiciary (BC_Conf_Room) - Candice E. Skenandore			
<b>19</b>		<b>20</b>		<b>21</b>		<b>22</b>		<b>23</b>	
Jun 19 - 23		1:30pm 4:30pm FW: Comment Review Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck		9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Tanique J. Thurner  9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC					
<b>26</b>		<b>27</b>		<b>28</b>		<b>29</b>		<b>30</b>	
Jun 26 - 30				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		12:15pm 3:15pm Upcoming Public Meetings - Child Care Department Consumer Complaint law, Administrative Rulemaking law amendments, General			



# July 2017

July 2017						
Su	Mo	Tu	We	Th	Fr	Sa
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2	3	4	5	6	7	8
9	10	11	12	13	14	15
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23	24	25	26	27	28	29
30	31					

August 2017						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

	Monday	Tuesday	Wednesday	Thursday	Friday
	Jul 3	4	5	6	7
Jul 3 - 7		3:00pm 4:00pm Canceled: LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck			
	10	11	12	13	14
Jul 10 - 14			8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		
	17	18	19	20	21
Jul 17 - 21	6:00pm 10:00pm GTC Meeting (Radisson)	3:00pm 4:00pm LOC prep	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Turner  9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC		
	24	25	26	27	28
Jul 24 - 28			8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		
	31	Aug 1	2	3	4
Jul 31 - Aug 4					