



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

October 5, 2016 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. September 21, 2016 LOC Meeting Minutes
- III. Current Business**
 - 1. Eviction and Termination Law
 - 2. Landlord – Tenant Law
 - 3. Vendor Licensing Law Amendments
 - 4. Election Law Amendments
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 - 1. Open Records Request SOP
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

September 21, 2016 9:00 a.m.

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

Others Present: Jennifer Falck, Tani Thurner, Clorissa Santiago, Maureen Perkins, Jo Anne House, Krystal John, Dianne McLester-Heim, Trina Schuyler, Rhiannon Metoxen, Leyne Orosco, Kathy Metoxen, Nancy Barton, Mike Debraska (via SEOTS)

I. Call to Order and Approval of the Agenda

Brandon Stevens called the September 21, 2016 Legislative Operating Committee meeting to order at 9:07 a.m.

Motion by Fawn Billie to approve the agenda with the deletion of New Submission IV.1 (Continuing Budget Resolution SOE); seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be approved

1. August 17, 2016 LOC Meeting Minutes

Motion by Fawn Billie to approve the August 17, 2016 LOC meeting minutes; seconded by Tehassi Hill. Motion carried, with Jennifer Webster abstaining.

III. Current Business

1. Eviction and Termination Law

Motion by David Jordan to approve the Eviction and Termination law adoption packet and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

2. Landlord – Tenant Law

Motion by Jennifer Webster to approve the Landlord-Tenant law adoption packet and forward to the Oneida Business Committee for consideration, noting the two changes; seconded by Tehassi Hill. Motion carried unanimously.

Note: the two changes were 1) to correct a typo, and 2) to update the Purpose and Policy sections of the law.

3. Real Property Law Amendments

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

4. Business Committee Meetings Law

Motion by Jennifer Webster to accept the Oneida Business Committee Meetings law and send to the Legislative Reference Office for legislative and fiscal analyses; seconded by Tehassi Hill. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor for this item.

5. Community Support Fund (Handout)

Motion by David Jordan to accept the draft and legislative analysis and to forward the Community Support Fund to a November 3, 2016 public meeting; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

~~1. Continuing Budget Resolution SOE~~ (Deleted at the adoption of the agenda)

V. Additions

VI. Administrative Updates

1. Quarterly Report

Motion by Jennifer Webster to enter the e-poll results into the record, approving the FY 16 3rd Quarter report; seconded by David Jordan. Motion carried unanimously.

2. Law Drafting SOP and Stylebook

Motion by Jennifer Webster to accept the Law Drafting SOP and legislative stylebook as FYI; seconded by Fawn Billie. Motion carried unanimously.

VII. Executive Session

VIII. Recess/Adjourn

Motion by Fawn Billie to adjourn the September 21, 2016 Legislative Operating Committee meeting at 10:38 a.m.; seconded by David Jordan. Motion carried unanimously.



Legislative Operating Committee
October 5, 2016

Eviction and Termination

Submission Date: 01/06/16	Public Meeting: 8/4/16
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a Expires: n/a

Summary: *This is a new law that will create a streamlined eviction and termination process which provides the rights and responsibilities of all parties involved and applies to leases held pursuant to the Leasing law and rental agreements held pursuant to the Landlord-Tenant law.*

- 1/6/16 LOC:** Motion by Fawn Billie to add the Eviction law to the Active Files List with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.
- 3/2/16 LOC:** Motion by Jennifer Webster to accept the Eviction Law status update memorandum and defer to the sponsor to bring this item back when ready; seconded by Tehassi Hill. Motion carried unanimously.
- 4/19/16 LOC:** Work meeting held. Attendees include: Diane Wilson, Michelle Hill, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.
- 4/26/16 LOC:** Work meeting held. Attendees include: Brandon Stevens, Diane Wilson, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.
- 5/4/16 LOC:** Motion by David P. Jordan to accept the draft of the Eviction and Termination law and defer to the Legislative Reference Office for a legislative analysis; seconded by Jennifer Webster. Motion carried unanimously.
- 7/6/16 LOC:** Motion by Tehassi Hill to accept the legislative analysis for the Eviction and Termination law and to approve the public meeting packet which schedules a public meeting for August 4, 2016; seconded by David P. Jordan. Motion carried unanimously.
- 8/2/16:** Update meeting held with sponsor, drafter, analyst.
- 8/4/16:** Public meeting held.
- 8/17/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments and make directed changes to the law; seconded by David P. Jordan. Motion carried unanimously.

Note: Directed changes include accepting the recommendations in comment 2 of the memo and to insert "habitual" before "noise violations" in section 709.3-1(d).

Motion by David P. Jordan to direct the Legislative Reference Office to prepare an adoption packet for the Eviction and Termination Law, seconded by Tehassi Hill. Motion carried unanimously.

9/22/16 LOC: The LOC received an email from the Judiciary requesting language changes. The most recent draft includes these changes.

Next Steps:

- Approve the Landlord-Tenant law adoption packet.
- Forward to the Oneida Business Committee for consideration.

Title 7. Land and Property - Chapter 709
EVICITION AND TERMINATION
shakonato·líhe? okhale? washakonahtú·tha? Aolihwá·ke
they shoo them away – they vanished them – issues

709.1.	Purpose and Policy	709.6.	Failure to Vacate Following Notice of Eviction or
709.2.	Adoption, Amendment, Repeal	Contract Expiration	
709.3.	Definitions	709.7.	Withholding From and Return of Security Deposits
709.4.	Administrative Rulemaking Authority	709.8.	Eviction and Termination Actions
709.5.	Early Contract Termination		

709.1. Purpose and Policy

709.1-1. *Purpose.* The purpose of this law is to provide consistent procedures relating to the Nation's rental and leasing programs for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

709.1-2. *Policy.* Is it the Nation's policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

709.2. Adoption, Amendment, Repeal

709.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

709.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

709.2-3. 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.

709.2-4. 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.

709.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

709.3. Definitions

709.3-1. 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 contracts governed by this law as defined by Oneida Business Committee Resolution.¹

(b) "Contract" means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(c) "Eviction" means to expel an occupant from the premises.

(d) "Nation" means the Oneida Nation.

¹ See BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

(e) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) “Occupant” means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) “Premises” means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(i) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

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

(k) “Security Deposit” means a payment made to the owner by the occupant to ensure that payments will be made and other responsibilities of the contract performed.

(l) “Waste” means physical damage or deterioration caused to the premises, whether intentional or negligent.

709.4. Administrative Rulemaking Authority

709.4-1. *Residential Contracts.* The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

709.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

709.5. Early Contract Termination

709.5-1. *Causes for Early Contract Termination.* The owner may terminate the contract prior to the contract term and evict the occupant, if the occupant:

(a) Violates the terms of the contract;

(b) Is alleged to have violated any applicable law or rule; and/or

(c) Is alleged to have committed one or more nuisance activities.

709.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if he or she alleges that if not for the alleged domestic abuse, which is noticed to the owner with any of the following documentation, there would not be cause for eviction under section 709.5-1:

(a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;

- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation 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.

709.5-3. *Notice.* This section governs the amount of notice required to evict as well as the manner and form of notice required. When an owner provides notice in compliance with these requirements, the occupant is not entitled to possession or use of the premises after the date of the termination provided in the notice.

(a) *Eviction for Failure to Pay Rents.*

(1) If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.

(2) If an occupant has been given notice under 709.5-3(a)(1) and has paid the rent on or before the specified date, or been permitted by the owner to remain in possession contrary to such notice, and thereafter fails to pay a subsequent installment of rent on time within one (1) year of said notice, the occupant's contract is terminated if the owner, while the occupant is in default in payment of rent, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(b) *Eviction for Waste or Contract Breach other than Rent Payment.*

(1) If an occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent, the occupant's tenancy is terminated if the owner gives the occupant a notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and if the occupant fails to comply with such notice. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the owner and the occupant makes a bona fide and reasonable offer to pay the owner all damages for the occupant's breach.

(2) If within one (1) year from the giving of any notice under 709.5-3(b)(1), the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the

occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

(4) Despite an owner's satisfaction of the proof requirements in section 709.5(c)(3), the Judiciary may, at its discretion, stay an eviction by honoring any alternative agreement regarding pending actions entered into by the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement.

(d) *Content, Form and Manner of Giving Notice.*

(1) *Notice Content.* Notices required to be provided under this law shall include the following:

(A) The violation of law and/or rule, committing of nuisance and/or breach of the contract, with citations to the applicable law, rule and/or contract clause;

(B) If the notice is pursuant to section 709.5-3(a), the current delinquent balance due;

(C) If the notice is pursuant to section 709.5-3(a) or (b):

(i) A statement that the occupant has a thirty (30) day period to cure;

(ii) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and

(iii) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.

(D) If notice is pursuant to section 709.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

(2) *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use one of the following methods:

(A) Giving a copy of the notice personally to the occupant or by leaving a copy at the occupant's usual place of abode in the presence of some competent member of the occupant's family at least fourteen (14) years of age, who is informed of the contents of the notice, provided that the owner may request that the notice be personally served to the occupant by the Oneida Police Department;

(B) Leaving a copy with any competent person apparently in charge of the premises or occupying the premises or a part thereof, and by mailing a copy by first class mail to the occupant's last-known address;

(C) If notice cannot be given under subsection (A) or (B) with reasonable diligence, by affixing a copy of the notice on an entrance to the rented premises where it can be conveniently read and by mailing a copy by first class mail to the occupant's last-known address;

(D) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(E) By serving the occupant as prescribed in the Rules of Civil Procedure for the service of a summons.

(3) *Notice to Corporations or Partnerships.* If notice is to be given to a corporation notice may be given by any method provided in subsection (1) except that notice under subsection (1)(A) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in subsection (1) except that notice under subsection (1)(A) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least fourteen (14) years of age, who is informed of the contents of the notice.

(4) *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants of the same premises, notice given to one (1) is deemed to be given to the others also.

(5) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the owner alleging actual receipt to prove the fact by clear and convincing evidence.

(e) *Contrary Provision in the Contract.* Except for leases entered into pursuant to the Leasing law, any termination provisions in a contract that are contrary to those provided in this law are invalid.

709.6. Failure to Vacate Following Notice of Eviction or Contract Expiration

709.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

709.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

709.6-3. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property

276 maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering
277 any other damages to which the owner may be entitled.
278

279 **709.7. Withholding From and Return of Security Deposits**

280 709.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

281 709.7-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an
282 occupant after the occupant vacates the premises, the owner may withhold from the full amount
283 of the security deposit only amounts reasonably necessary to pay for any of the following:

- 284 (a) Occupant damage, waste, or neglect of the premises;
- 285 (b) Unpaid rent for which the occupant is legally responsible;
- 286 (c) Payment that the tenant owes under the contract for utility service provided by the
287 owner but not included in the rent;
- 288 (d) Payment that the tenant owes for direct utility service provided by a
289 government-owned utility, to the extent that the landlord becomes liable for the tenant's
290 nonpayment.
- 291 (e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit
292 of government, to the extent that the owner becomes liable for the occupant's
293 nonpayment; and
- 294 (f) Any other payment for a reason provided in a nonstandard provision document
295 described in 709.7-3.

296 709.7-3. *Nonstandard Withholding Provisions.* A contract may include one or more
297 nonstandard withholding provisions that authorize the owner to withhold amounts from the
298 occupant's security deposit for reasons not specified in 709.7-2(a) through (f). The owner shall
299 provide any such nonstandard withholding provisions to the occupant in a separate written
300 document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify
301 each nonstandard withholding provision with the occupant before the occupant enters into a
302 contract with the owner. If the occupant signs his or her name, or writes his or her initials, by a
303 nonstandard withholding provision, it is rebuttably presumed that the owner has specifically
304 identified the nonstandard withholding provision with the occupant and that the occupant has
305 agreed to it.

306 709.7-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any
307 amount from a security deposit for normal wear and tear, or for other damages or losses for
308 which the occupant cannot reasonably be held responsible under the terms of the contract, and
309 applicable laws and/or rules of the Nation.

310 709.7-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an
311 occupant the full amount of any security deposit paid by the occupant, less any amounts that may
312 be withheld under subsections 709.7-2 and 709.7-3, within thirty (30) calendar days after any of
313 the following:

- 314 (a) If the occupant vacates the premises on the original termination date of the contract,
315 the date on which the contract terminates.
- 316 (b) If the occupant vacates the premises or is evicted before the original termination date
317 of the contract, the date on which the occupant's rental agreement terminates or, if the
318 owner re-rents the premises before the occupant's rental agreement terminates, the date
319 on which the new occupant takes occupancy/use of the premises.

(c) If the occupant vacates the premises untimely or is removed from the premises pursuant to 709.6-1, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises under section 709.6-1.

709.8. Eviction and Termination Actions Appeals

709.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

709.8-2. 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.

709.8-3. The owner is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Judiciary shall name the Comprehensive Housing Division and the specific program.

~~709.8 1. Parties may appeal actions taken pursuant to this law to the Oneida Judiciary.~~

End.

Adopted – BC



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: October 5, 2016
RE: Eviction and Termination Law

Please find the following attached backup documentation for your consideration of the Eviction and Termination law:

1. Resolution: Eviction and Termination (Law)
2. Statement of Effect: Eviction and Termination (Law)
3. Eviction and Termination (Law) Legislative Analysis
4. Eviction and Termination (Law) Draft
5. Eviction and Termination (Law) Fiscal Impact Statement

Overview

This resolution adopts a new Eviction and Termination law. This is a new law which:

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts. *[see 709.4-1]*.
- Delegates joint rulemaking authority to the Division of Land Management and the Land Commission to develop rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2]*.
- Details early contract termination, including causes and notice requirements, and identifies domestic abuse as a defense to eviction *[see 709.6]*.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Details the withholding from and return of security deposits *[see 709.7]*.
- Provides an appeal process to the Oneida Judiciary *[see 709.8]*.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on August 4, 2016 with a comment period closing on August 11, 2016. Those comments were accepted and considered by the Legislative Operating Committee (LOC) at the August 17, 2016 LOC meeting.

Requested Action

Approve the resolution: Eviction and Termination (Law)

BC Resolution _____
Eviction and Termination 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 Nation has adopted the Leasing law, which covers residential land leases and agricultural and business leases (which may include land and improvements), and the Landlord-Tenant law, which governs rental agreements for residential land and improvements; and

WHEREAS, the Nation does not have any laws in its code that govern the eviction and termination process related to leases under the Leasing law or rental agreements under the Landlord-Tenant law; and

WHEREAS, currently the eviction process, including the appeal of eviction process, is included in various standard operating procedures from the Division of Land Management, the Oneida Housing Authority and Elder Services; and

WHEREAS, in order to provide consistency, this law contains the minimum framework required to terminate a lease or rental agreement (defined as a contract in the law), evict and withhold from a security deposit; and

WHEREAS, this law provides that the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts, and

WHEREAS, this law provides that the Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts; and

WHEREAS, this law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for all leases and Division of Land Management administered rental agreements); and

WHEREAS, a public meeting on the proposed Law was held on August 4, 2016 in accordance with the Legislative Procedures Act; and

46 **NOW THEREFORE BE IT RESOLVED**, that within 120 calendar days the Land
47 Commission and the Comprehensive Housing Division shall jointly create rules further
48 governing the disposition of personal property in relation to residential contracts and the Land
49 Commission and the Division of Land Management shall jointly create rules further governing
50 the disposition of personal property in relation to agricultural and business contracts; and

51
52 **NOW THEREFORE BE IT FURTHER RESOLVED**, that the Landlord-Tenant law is
53 hereby adopted and shall become effective in 120 calendar days; and

54
55 **NOW THEREFORE BE IT FINALLY RESOLVED**, that because the provision of this law
56 which names the Oneida Judiciary as the hearing body for appeals conflicts with section 67.11-
57 5 of the Real Property law adopted by resolution BC-02-25-15-C, this resolution repeals the
58 second sentence of that section which reads:

59
60 If the default is corrected under these circumstances the Lessee will be subject to further
61 proceedings under the Oneida Administrative Procedures Act, Section 10 Contested Cases, which
62 may lead to termination of Lessee's lease, loss of improvements, revised payment schedule
63 and/or Garnishment of Lessee's wages in order to pay the remainder of the default.
64

65



Statement of Effect

Resolution: Eviction and Termination Law

Summary

This resolution adopts a new Eviction and Termination law. This is a new law which:

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts. *[see 709.4-1]*.
- Delegates joint rulemaking authority to the Division of Land Management and the Land Commission to develop rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2]*.
- Details early contract termination, including causes and notice requirements, and names domestic abuse as defense to eviction *[see 709.6]*.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Details the withholding from and return of security deposits *[see 709.7]*.
- Provides an appeal process to the Oneida Judiciary *[see 709.8]*.

Submitted by Krystal L. John, Staff Attorney

Analysis

This resolution adopts the Eviction and Termination law which includes the provisions summarized above.

As noted in the resolution, currently the termination and eviction process, including the appeal of eviction process, is included in various standard operating procedures from the Division of Land Management, the Oneida Housing Authority and Elder Services.

In order to provide consistency, this law contains the minimum framework required to terminate a lease or rental agreement (defined as a contract in the law), evict and withhold from a security deposit. In regards to rulemaking authority, the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts. The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

Under this law, the Oneida Judiciary is the hearing body able to hear appeals (the Land Commission previously had hearing body authority for all leases and Division of Land Management administered rental agreements).

The only law that the Nation currently has in its code that mentions a termination and/or eviction, is the leasing portion of the Real Property law. That version of the Real Property law is only in effect until the Leasing law is approved by the Bureau of Indian Affairs (BIA). Upon approval of the Leasing law, an updated version of the Real Property law becomes effective which removes all detail related leases and references the Leasing law. Adoption of this law conflicts with the currently effective version of the Real Property law which was adopted by resolution BC-02-25-15-C, but does not conflict with the updated version of the Real Property law which was adopted by resolution BC-05-13-15-B.

In regards to the currently effective version of the Real Property law which was adopted by resolution BC-02-25-15-C, section 67.11-5 provides as follows:

In the event of default by the Lessee of the terms of an approved encumbrance, and the Lessee's assignment reaches the point of sale or foreclosure, the Division of Land Management shall have the right to correct the default. If the default is corrected under these circumstances the Lessee will be subject to further proceedings under the Oneida Administrative Procedures Act, Section 10 Contested Cases, which may lead to termination of Lessee's lease, loss of improvements, revised payment schedule and/or Garnishment of Lessee's wages in order to pay the remainder of the default.

The second sentence of that section conflicts with this law because this law names the Oneida Judiciary as the hearing body for all appeals arising out of this law and the Oneida Judiciary does not operate under the Oneida Administrative Procedures Act.

In regards to the updated version of the Real Property law which was adopted by resolution BC-05-13-15-B and is effective upon the BIA's approval of the Leasing law, section 67.11-1 provides as follows:

All leasing of tribal land shall be processed in accordance with the Tribe's Leasing law.

Nothing in the Leasing law adopted by resolution BC-05-13-15-C conflicts with the provisions of this law as it is silent as to terminations and evictions. The Leasing law adopted by resolution BC-05-13-15-C was not approved by the BIA and the Legislative Operating Committee has been working on revisions to comply with the BIA's requirements. The current draft of the revised Leasing law which is under review with the BIA specifically includes a reference to this Eviction and Termination law. Accordingly, should the revised version be approved by the BIA and adopted as a law, this Eviction and Termination law would be incorporated into the Leasing law by reference.

Conclusion

Provided that the adopting resolution repeals the second sentence of section 67.11-5 of the Real Property Law adopted by resolution BC-02-25-15-C, adoption of this resolution would not conflict with the Nation's laws.



Eviction and Termination

5

<i>Analysis by the Legislative Reference Office</i>					
Title	Eviction and Termination (law)				
Sponsor	Brandon Stevens	Drafter	Krystal L. John	Analyst	Maureen Perkins
Requester & Reason for Request	Land Commission and Legislative Operating Committee An eviction law separate from the Leasing law and the Landlord-Tenant law is required to apply to leases and rental agreements under both laws.				
Purpose	The purpose of this law is to provide consistent procedures for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved [see 709.1-1].				
Authorized/ Affected Entities	Comprehensive Housing Division (Division of Land Management, Oneida Housing Authority, Elder Services), Land Commission, Oneida Judiciary, Oneida Police Department				
Related Legislation	Leasing law, Landlord-Tenant law, Real Property Law, Administrative Rulemaking law, Mortgage and Foreclosure law				
Enforcement & Due Process	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law [see 709.8-1-1].				
Public Meeting Status	A public meeting was held on August 4, 2016. This draft includes LOC directed changes based on comments received during the public comment period.				

6

7

Overview

8 This is a new law that details the current processes used by the Nation regarding terminating
 9 a contract which includes leases under the Leasing law (residential lease, agricultural lease or
 10 business lease) or rental agreements under the Landlord-Tenant law and evicting an occupant
 11 from the Nation's lands or housing resources. The law also details the process followed when a
 12 contract expires and is not renewed, including if the occupant fails to vacate or remove personal
 13 property. The law contains the minimum framework and requirements related to the termination
 14 and resulting eviction processes. The Comprehensive Housing Division (CHD), the Land
 15 Commission and the Division of Land Management have been delegated joint rulemaking
 16 authority under this law to develop rules which may contain more detailed requirements. This
 17 rulemaking authority is granted through the Administrative Rulemaking law.

18 The law applies to occupants of tribally owned property including rental agreements and
 19 leases that currently include residential leases (which cover homeowners who lease tribally
 20 owned land), agricultural leases and business leases. These leases are not detailed (there is no
 21 mention of residential, agricultural or business) in this law to allow for expansion of lease
 22 options without requiring this law to be updated. The law refers to the Leasing law which
 23 contains the detail regarding the types of leases the Nation offers. Termination means the
 24 contract is cancelled and eviction means the lessee (including property such as farm equipment

or household items) are expelled from the property. The process and requirements to terminate and/or evict for each of these different types of contracts is the same.

The law details the causes for eviction, which include violation of the terms of the contract, alleged violation of any applicable law or rule and alleged commitment of one or more nuisance activities. The basis for allowing for eviction based upon an alleged violation is to protect the community from unlawful or disruptive occupants who are alleged to have violated the law but have not yet been convicted as the conviction process can take years. Without this provision, the Nation would not be able to terminate or evict until a conviction was received, which could expose the community to continued unlawful activity and create unsafe conditions. Similar provisions have been recently added to state law. Community members who receive notice of termination or eviction based upon allegation may contest the termination or eviction to the Judiciary within the established timeline (detailed on the notice) which will automatically stop the eviction pending the Judiciary's determination. The Judiciary may, at its discretion, recognize alternative agreements regarding pending actions reached between the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement. Domestic abuse is listed as a valid defense against eviction under circumstances detailed in the law.

The notice requirements, including the contents of the notice and the manner the notice is given to occupants, are detailed for each cause of termination and eviction and the requirements must be followed in order for the eviction to be valid. The process the CHD will use in the case of a failure to vacate following a notice of eviction or contract expiration is detailed and requires that the Oneida Police Department be on scene while locks are changed, explains disposition of personal property left on the premises and the assessment of damages to the occupant for failure to vacate the premises following a notice of eviction or contract expiration. The CHD and Land Commission are required to create rules further detailing the disposition of personal property. Detail regarding security deposits, including withholding and timing for return, is provided.

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts *[see 709.4-1]*.
- Delegates joint rulemaking authority to the Land Commission and the Division of Land Management related to agricultural and business contracts *[see 709.4-2]*.
- Details early contract termination, including causes and notice requirements, and names domestic abuse as defense to eviction *[see 709.6]*.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Details the withholding from and return of security deposits *[see 709.7]*.
- Provides an appeal process to the Oneida Judiciary *[see 709.8-1]*.
- 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 *[see 709.8-2]*.
- The owner is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Judiciary shall name the Comprehensive Housing Division and the specific program *[see 709.8-3]*.

Administrative Rulemaking

- The Comprehensive Housing Division (CHD), the Land Commission and the Division of Land Management are delegated joint rulemaking authority under this law and are required to develop and implement the following rules prior to the implementation of this law:
 - The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts. *[see 709.6-1(b)(2)]*.
 - The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts *[see 709.4-1]*.
 - The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2]*.

Considerations

- The LOC may consider including the types of lease contracts currently covered under the law (residential, agricultural and business leases) while leaving room for additional leases without requiring the law to be updated. Under this law, you must refer to the Leasing law to find this detail.
 - Suggested language: “Contract” means either a lease document, including but not limited to residential, agricultural and business leases pursuant to the Leasing Law or a rental agreement pursuant to the Landlord-Tenant law.
- This law references the Comprehensive Housing Division (CHD). The CHD is scheduled for implementation October 1, 2016. The BC resolution adopting this law will be accompanied by second resolution that defines the CHD. Each department or division within the CHD (Oneida Housing Authority, Division of Land Management and Elder Services) will be required to create rules delegated under this law until the CHD is implemented.
- This law, the Real Property Law amendments, the Landlord-Tenant law and the Leasing Law are all inter-related. The Real Property Law currently in effect contains provisions relating to the termination of leases that conflict with this law *[see 67.11-5 of current Real Property Law]*. However, this Eviction and Termination law will govern upon adoption. The current proposed amendments to the Real Property Law pull the detail related to lease terminations out of the Real Property Law and reference this Eviction and Termination law instead.

Title 7. Land and Property - Chapter 709
EVICTION AND TERMINATION
shakonato·líhe? okhale? washakonahtú·tha? Aolihwá·ke
they shoo them away – they vanished them – issues

709.1.	Purpose and Policy	709.6.	Failure to Vacate Following Notice of Eviction or
709.2.	Adoption, Amendment, Repeal	Contract Expiration	
709.3.	Definitions	709.7.	Withholding From and Return of Security Deposits
709.4.	Administrative Rulemaking Authority	709.8.	Eviction and Termination Actions
709.5.	Early Contract Termination		

709.1. Purpose and Policy

709.1-1. *Purpose.* The purpose of this law is to provide consistent procedures relating to the Nation's rental and leasing programs for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

709.1-2. *Policy.* Is it the Nation's policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

709.2. Adoption, Amendment, Repeal

709.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

709.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

709.2-3. 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.

709.2-4. 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.

709.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

709.3. Definitions

709.3-1. 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 contracts governed by this law as defined by Oneida Business Committee Resolution.¹

(b) "Contract" means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(c) "Eviction" means to expel an occupant from the premises.

(d) "Nation" means the Oneida Nation.

¹ See BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

(e) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) “Occupant” means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) “Premises” means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(i) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

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

(k) “Security Deposit” means a payment made to the owner by the occupant to ensure that payments will be made and other responsibilities of the contract performed.

(l) “Waste” means physical damage or deterioration caused to the premises, whether intentional or negligent.

709.4. Administrative Rulemaking Authority

709.4-1. *Residential Contracts.* The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

709.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

709.5. Early Contract Termination

709.5-1. *Causes for Early Contract Termination.* The owner may terminate the contract prior to the contract term and evict the occupant, if the occupant:

- (a) Violates the terms of the contract;
- (b) Is alleged to have violated any applicable law or rule; and/or
- (c) Is alleged to have committed one or more nuisance activities.

709.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if he or she alleges that if not for the alleged domestic abuse, which is noticed to the owner with any of the following documentation, there would not be cause for eviction under section 709.5-1:

- (a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;

- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation 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.

709.5-3. *Notice.* This section governs the amount of notice required to evict as well as the manner and form of notice required. When an owner provides notice in compliance with these requirements, the occupant is not entitled to possession or use of the premises after the date of the termination provided in the notice.

(a) *Eviction for Failure to Pay Rents.*

(1) If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.

(2) If an occupant has been given notice under 709.5-3(a)(1) and has paid the rent on or before the specified date, or been permitted by the owner to remain in possession contrary to such notice, and thereafter fails to pay a subsequent installment of rent on time within one (1) year of said notice, the occupant's contract is terminated if the owner, while the occupant is in default in payment of rent, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(b) *Eviction for Waste or Contract Breach other than Rent Payment.*

(1) If an occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent, the occupant's tenancy is terminated if the owner gives the occupant a notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and if the occupant fails to comply with such notice. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the owner and the occupant makes a bona fide and reasonable offer to pay the owner all damages for the occupant's breach.

(2) If within one (1) year from the giving of any notice under 709.5-3(b)(1), the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the

occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Oneida Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Oneida Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

(4) Despite an owner's satisfaction of the proof requirements in section 709.5(c)(3), the Oneida Judiciary may, at its discretion, stay an eviction by honoring any alternative agreement regarding pending actions entered into by the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement.

(d) *Content, Form and Manner of Giving Notice.*

(1) *Notice Content.* Notices required to be provided under this law shall include the following:

(A) The violation of law and/or rule, committing of nuisance and/or breach of the contract, with citations to the applicable law, rule and/or contract clause;

(B) If the notice is pursuant to section 709.5-3(a), the current delinquent balance due;

(C) If the notice is pursuant to section 709.5-3(a) or (b):

(i) A statement that the occupant has a thirty (30) day period to cure;

(ii) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and

(iii) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.

(D) If notice is pursuant to section 709.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

(2) *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use one of the following methods:

(A) Giving a copy of the notice personally to the occupant or by leaving a copy at the occupant's usual place of abode in the presence of some competent member of the occupant's family at least fourteen (14) years of age, who is informed of the contents of the notice, provided that the owner may request that the notice be personally served to the occupant by the Oneida Police Department;

(B) Leaving a copy with any competent person apparently in charge of the premises or occupying the premises or a part thereof, and by mailing a copy by first class mail to the occupant's last-known address;

(C) If notice cannot be given under subsection (A) or (B) with reasonable diligence, by affixing a copy of the notice on an entrance to the rented premises where it can be conveniently read and by mailing a copy by first class mail to the occupant's last-known address;

(D) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(E) By serving the occupant as prescribed in the Rules of Civil Procedure for the service of a summons.

(3) *Notice to Corporations or Partnerships.* If notice is to be given to a corporation notice may be given by any method provided in subsection (1) except that notice under subsection (1)(A) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in subsection (1) except that notice under subsection (1)(A) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least fourteen (14) years of age, who is informed of the contents of the notice.

(4) *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants of the same premises, notice given to one (1) is deemed to be given to the others also.

(5) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the owner alleging actual receipt to prove the fact by clear and convincing evidence.

(e) *Contrary Provision in the Contract.* Except for leases entered into pursuant to the Leasing law, any termination provisions in a contract that are contrary to those provided in this law are invalid.

709.6. Failure to Vacate Following Notice of Eviction or Contract Expiration

709.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

709.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

709.6-3. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property

276 maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering
277 any other damages to which the owner may be entitled.
278

279 **709.7. Withholding From and Return of Security Deposits**

280 709.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

281 709.7-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an
282 occupant after the occupant vacates the premises, the owner may withhold from the full amount
283 of the security deposit only amounts reasonably necessary to pay for any of the following:

- 284 (a) Occupant damage, waste, or neglect of the premises;
- 285 (b) Unpaid rent for which the occupant is legally responsible;
- 286 (c) Payment that the tenant owes under the contract for utility service provided by the
287 owner but not included in the rent;
- 288 (d) Payment that the tenant owes for direct utility service provided by a
289 government-owned utility, to the extent that the landlord becomes liable for the tenant's
290 nonpayment.
- 291 (e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit
292 of government, to the extent that the owner becomes liable for the occupant's
293 nonpayment; and
- 294 (f) Any other payment for a reason provided in a nonstandard provision document
295 described in 709.7-3.

296 709.7-3. *Nonstandard Withholding Provisions.* A contract may include one or more
297 nonstandard withholding provisions that authorize the owner to withhold amounts from the
298 occupant's security deposit for reasons not specified in 709.7-2(a) through (f). The owner shall
299 provide any such nonstandard withholding provisions to the occupant in a separate written
300 document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify
301 each nonstandard withholding provision with the occupant before the occupant enters into a
302 contract with the owner. If the occupant signs his or her name, or writes his or her initials, by a
303 nonstandard withholding provision, it is rebuttably presumed that the owner has specifically
304 identified the nonstandard withholding provision with the occupant and that the occupant has
305 agreed to it.

306 709.7-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any
307 amount from a security deposit for normal wear and tear, or for other damages or losses for
308 which the occupant cannot reasonably be held responsible under the terms of the contract, and
309 applicable laws and/or rules of the Nation.

310 709.7-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an
311 occupant the full amount of any security deposit paid by the occupant, less any amounts that may
312 be withheld under subsections 709.7-2 and 709.7-3, within thirty (30) calendar days after any of
313 the following:

- 314 (a) If the occupant vacates the premises on the original termination date of the contract,
315 the date on which the contract terminates.
- 316 (b) If the occupant vacates the premises or is evicted before the original termination date
317 of the contract, the date on which the occupant's rental agreement terminates or, if the
318 owner re-rents the premises before the occupant's rental agreement terminates, the date
319 on which the new occupant takes occupancy/use of the premises.

(c) If the occupant vacates the premises untimely or is removed from the premises pursuant to 709.6-1, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises under section 709.6-1.

709.8. Eviction and Termination Actions

709.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

709.8-2. 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.

709.8-3. The owner 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.

Adopted – BC



MEMORANDUM

To: Larry Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

From: Rae M. Skenandore

Date: August 23, 2016

Re: **Financial Impact of the Eviction and Termination Law**

I. Background

This is a new Law on Eviction and Termination that was requested by the Oneida Land Commission. The following summary was provided by the Legislative Reference Office.

- The proposed Law contains the minimum framework and requirements related to the termination of a contract and resulting eviction processes.
- The Division of Land Management and the Land Commission have jointly delegated rulemaking authority under this Law to develop and implement the following rules prior to the implementation of this Law:
 - Rules governing the disposition of personal property
 - The Comprehensive Housing Division (CHD) and the Land Commission may jointly create rules to further govern the processes contained in this Law; except where Federal funding is required in which case the CHD has sole authority
- The Law applies to occupants of Tribally owned property including rental agreements and leases.
- Termination means the contract is cancelled and eviction means the lessee (including property such as farm equipment or household items) are expelled from the property.
- The Law details early contract termination, including causes and notice requirements, and names specific defenses to eviction.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration.
- Details the withholding from and return of security deposits;
- Provides an appeal process to the Oneida Judiciary.

II. Executive Summary of Findings

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.

The new Law simply details the current processes used by the Nation in the termination of a contract, which includes leases, rental agreements, and evictions from the Nations lands or housing resources. The Oneida Land Commission currently acts as the original Hearing Body for evictions and three Commissioners are required to hold a hearing. The stipend paid for an eviction hearing is \$50.00 per commissioner. In Fiscal Year 2014-2015 only one foreclosure hearing was held for a cost of approximately \$150.00. Any savings from transferring the hearing body authority from the Oneida Land Commission to the Judiciary would be negligible due to their existing operating expenses.

According to DOLM and the Oneida Judiciary, there will be no additional startup, personnel, office, or documentation costs associated with implementing the Law.

With the Rulemaking Authority jointly delegated to the Division of Land Management and the Land Commission, a minimum of 60-90 days would be required to approve the Administrative Rules for this Law.

III. Financial Impact

No fiscal impact.

IV. Recommendation

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

BC Resolution _____*Defining Comprehensive Housing Division in the Eviction and Termination 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 Eviction and Termination law with resolution BC 09-14-16__; and

WHEREAS, the Eviction and Termination law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division; and

WHEREAS, the Eviction and Termination law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution; and

NOW THEREFORE BE IT RESOLVED, that for the purposes of the Eviction and Termination law the Oneida Business Committee hereby defines the Comprehensive Housing Division as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.



Statement of Effect

Resolution: Defining Comprehensive Housing Division in the Eviction and Termination Law

Summary

This resolution defines the Comprehensive Housing Division, for the purposes of the Eviction and Termination law, as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

Submitted by Krystal L. John, Staff Attorney

Analysis

The Eviction and Termination law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division. The Comprehensive Housing Division is under development as part of the Oneida Business Committee's reorganization; however, it has not yet been formally created.

The Eviction and Termination law assigns responsibilities and authorities to the Comprehensive Housing Division and provides that the Oneida Business Committee shall define that Division by resolution. This allows the law to be adopted now with reference to the Comprehensive Housing Division and prevents the need for amendments to the law at the time that the Comprehensive Housing Division is formally created. Accordingly, this resolution defines the Comprehensive Housing Division for the purposes of the Eviction and Termination law as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program. When the new Comprehensive Housing Division is created, the definition of Comprehensive Housing Division will be required to be updated by Oneida Business Committee resolution, and will not require the law to be amended using the process required by the Legislative Procedures Act.

Conclusion

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



Legislative Operating Committee October 5, 2016

Landlord – Tenant Law

Submission Date: 10/07/15	Public Meeting: 7/21/16
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *Is a new law that will explain the roles and responsibilities of the Landlord and Tenant. This law is being developed because the Land Commission's hearing authority is being transferred to the Judiciary.*

- 10/7/15 LOC:** Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- 12/16/15 LOC:** Motion by Fawn Billie to accept the memorandum update as FYI and to defer the Landlord-Tenant Law back to the sponsor and to bring back when ready; seconded by Jennifer Webster. Motion carried unanimously.
- 4/20/16 LOC:** Motion by Tehassi Hill to accept the draft Landlord-Tenant Law and forward it to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.
- 6/15/16 LOC:** Motion by David P. Jordan to accept the legislative analysis for Landlord-Tenant law and to approve the public meeting packet for a public meeting date on July 21, 2016; seconded by Fawn Billie. Motion carried unanimously.
- 8/2/16:** Update meeting held with sponsor, drafter, analyst, LRO Director.
- 8/17/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments and make directed change to the law, seconded by David P. Jordan. Motion carried unanimously.

Note: Directed changes include accepting the recommendation in comment 1 of the memo and to delete 710.4-3(a) and (b).

Motion by Tehassi Hill to direct the Legislative Reference Office to prepare an adoption packet for the Landlord-Tenant law; seconded by David P. Jordan. Motion carried unanimously.

- 9/22/16 LOC:** The LOC received an email from the Judiciary requesting language changes. The most recent draft includes these changes.

Next Steps:

- Approve the Landlord-Tenant law adoption packet.
- Forward to the Oneida Business Committee for consideration.

Title 7. Property - Chapter 710
LANDLORD-TENANT
Tsi? Yuhwatsyawá'ku Aolihwá'ke
where it bound to the earth - issues

6	710.1.	Purpose and Policy	11	710.6.	Rights and Duties of Landlords and Tenants
7	710.2.	Adoption, Amendment, Repeal	12	710.7.	Domestic Abuse Protections
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9	710.4.	Rental Programs	14	710.9.	Termination of Tenancy at Death of Tenant
10	710.5.	Rental Agreement Documents	15	710.10.	Appeals <u>Landlord or Tenant Actions</u>
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710.1. Purpose and Policy

710.1-1. *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.

710.1-2. *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.

710.2. Adoption, Amendment, Repeal

710.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

710.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

710.2-3. 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.

710.2-4. 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.

710.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

710.3. Definitions

710.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

¹ See BC Resolution _____ 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.

(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) “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.

710.4. Rental Programs

710.4-1. *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.

710.4-2. *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.

710.4-3. *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.

710.5. Rental Agreement Documents

710.5-1. *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.

710.5-2. *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 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 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 710.6-3(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 710.6-3(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.

710.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

710.6. Rights and Duties of Landlords and Tenants

710.6-1. 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.

710.6-2. *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.

710.6-3. *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 710.6-3(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 710.6-3(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 710.6-3(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 710.6-3(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 710.6-3(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.

710.7. Domestic Abuse Protections

710.7-1. 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.

710.7-2. 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.

710.7-3. The Eviction law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

710.8. Sex Offender Registry

710.8-1. 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.

710.9. Termination of Tenancy at Death of Tenant

710.9-1. 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.

710.9-2. 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.

710.9-3. 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.

710.9-4. 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.

~~710.10. Appeals~~

~~710.10-1. Parties may appeal actions taken pursuant to this law and/or a rental agreement to the Oneida Judiciary.~~

710.10. Landlord or Tenant Actions

710.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.


710.10-2. 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.

710.10-3. 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.

Adopted – BC



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: October 5, 2016
RE: Landlord-Tenant Law

Please find the following attached backup documentation for your consideration of the Landlord-Tenant law:

1. Resolution: Landlord-Tenant (Law)
2. Statement of Effect: Landlord-Tenant (Law)
3. Landlord-Tenant (Law) Legislative Analysis
4. Landlord-Tenant (Law) Draft
5. Landlord-Tenant (Law) Fiscal Impact Statement

Overview

This resolution adopts a new Landlord-Tenant law. This is a new law which:

- Provides rental programs offered to Tribal member by the Nation within the Reservation boundaries and includes eligibility requirements and tenant selection criteria *[see 710.4]*.
- Provides detail related to rental agreement provisions and terminations and specifies that assignments of rental agreements are not permitted *[see 710.5]*.
- Details the rights and responsibilities of the Nation as landlord and Tribal members as tenants including disposition of personal property, repairs, damage, pest control, check-in sheets, required notice to enter, and annual inspections *[see 710.6]*.
- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law *[see 710.10]*.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on July 21, 2016 with a comment period closing on July 28, 2016. Those comments were accepted and considered by the Legislative Operating Committee (LOC) at the August 17, 2016 LOC meeting.

Requested Action

Approve the Resolution: Landlord-Tenant (Law)

BC Resolution _____
Landlord-Tenant 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 Nation currently offers rental programs through the Division of Land Management, the Oneida Housing Authority and Elder Services; and

WHEREAS, the rental programs minimum requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants are not included in the Real Property law or any other law and are contained only in standard operating procedures of the Division of Land Management, the Oneida Housing Authority and Elder Services; and

WHEREAS, an assessment of the rental programs has determined that it would be beneficial to create a law that contains the minimum framework that is similar for all of the Nation's rental programs and to delegate rulemaking authority in the law which would allowing for specific more detailed requirements for each program in the rules; and

WHEREAS, this law contains minimum eligibility requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants and delegates joint rulemaking authority to the Land Commission and the Comprehensive Housing Division to create rules naming each rental program and the specific requirements related to each, and

WHEREAS, this law provides that, at a minimum, rental programs are required to be developed that functions to serve (1) the general population; (2) the low-income population; and (3) the elder population; and

WHEREAS, this law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for Division of Land Management administered rental agreements);

WHEREAS, a public meeting on the proposed Law was held on July 21, 2016 in accordance with the Legislative Procedures Act; and

Resolution _____

Page 2

36 **NOW THEREFORE BE IT RESOLVED**, that the Landlord-Tenant law is hereby adopted;
37 and shall become effective upon the adoption of the rental rules as required under section
38 710.4-1.

39



Statement of Effect
Resolution: Landlord-Tenant Law

Summary

This resolution adopts a new Landlord-Tenant law. This is a new law which:

- Provides rental programs offered to Tribal members by the Nation within the reservation boundaries and includes eligibility requirements and tenant selection criteria *[see 710.4]*.
- Provides detail related to rental agreement provisions and terminations and specifies that assignments of rental agreements are not permitted *[see 710.5]*.
- Details the rights and responsibilities of the Nation as landlord and Tribal members as tenants including disposition of personal property, repairs, damage, pest control, check-in sheet, required notice to enter, and annual inspections *[see 710.6]*.
- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law *[see 710.10]*.

Submitted by Krystal L. John, Staff Attorney

Analysis

This Resolution adopts the Landlord-Tenant law which includes the provisions summarized above.

As noted in the resolution, the rental programs minimum requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants are not included in the Real Property law or any other law and are contained only in standard operating procedures of the Division of Land Management, the Oneida Housing Authority and Elder Services.

This law contains minimum eligibility requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants and delegates joint rulemaking authority to the Land Commission and the Comprehensive Housing Division to create rules naming each rental program and the specific requirements related to each. Further, this law provides that, at a minimum, rental programs are required to be developed that functions to serve (1) the general population; (2) the low-income population; and (3) the elder population.

This law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for Division of Land Management administered rental agreements).

Conclusion

Because the subject matter of this law is not contained in any other laws of the Nation, adoption of this Resolution would not conflict with any of the Nation's laws.



5

LANDLORD-TENANT

<i>Analysis by the Legislative Reference Office</i>					
Title	Landlord-Tenant (law)				
Sponsor	David P. Jordan	Drafter	Krystal L. John	Analyst	Maureen Perkins
Requester & Reason for Request	Land Commission To transfer the Land Commissions' hearing body authority to the Judiciary.				
Purpose	The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants within the reservation [see 710.1-1].				
Authorized/ Affected Entities	Comprehensive Housing Division (Oneida Housing Authority, Division of Land Management and Elder Services), Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law				
Related Legislation	Eviction and Termination law, Administrative Rulemaking law, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness law, and Real Property law				
Enforcement & Due Process	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement. [see 710.10-1].				
Public Meeting Status	A public meeting was held on July 21, 2016. This draft includes LOC directed changes based on comments received during the public comment period.				

6

7

Overview

8 This is a new law that provides overarching guidance for landlords and tenants related to
 9 all Tribal departments and divisions that provide rental housing opportunities within the
 10 reservation. Currently, each department or division is operating under their own standard
 11 operating procedures related to the programs they offer. This law standardizes the core
 12 processes and delegates each department or division authority through the Comprehensive
 13 Housing Division (which is in the process of being developed) to create rules that provide the
 14 detail related to rental housing within their programs. This law provides the framework and the
 15 Comprehensive Housing Division and the Land Commission will provide the detail within rules
 16 developed jointly under the authority delegated under this law per the Administrative
 17 Rulemaking law.

18 The Landlord-Tenant law:

- 19 ■ Provides rental programs offered to Tribal members by the Nation within the reservation
- 20 boundaries and includes eligibility requirements and tenant selection criteria [see 710.4].
- 21 ■ Provides detail related to rental agreement provisions and terminations and specifies that
- 22 assignments of rental agreements are not permitted [see 710.5].
- 23 ■ Details the rights and responsibilities of the Nation as landlord and Tribal members as

tenants including disposition of personal property, repairs, damage, pest control, check-in sheet, required notice to enter, and annual inspections *[see 710.6]*.

- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement. *[see 710.10-1]*.
- 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 *[see 710.10-2]*.
- 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 *[see 710.10-3]*.

Administrative Rulemaking

- The CHD and the Land Commission have joint rulemaking authority under this law and are required to develop and implement the following rules prior to the implementation of this law:
 1. Establish rules naming residential rental programs and providing the specific requirements and regulations, including eligibility requirements, that apply to each program *[see 710.4-1 and 710.4-2(f)]*.
 2. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements *[see 710.4-3]*.
 3. Create rules further governing the disposition of personal property *[see 710.6-2(c)]*.
 4. Develop rules governing how and when rent is decreased due to untenability due to damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 710.6-3(a) materially affecting the health or safety of the tenant *[see 710.6-3(c)(2)]*.

Other

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

Considerations

- This law references the Comprehensive Housing Division (CHD). The CHD is scheduled for implementation October 1, 2016. The BC resolution adopting this law will be accompanied by second resolution that defines the CHD. Each department or division within the CHD (Oneida Housing Authority, Division of Land Management and Elder Services) will be required to create rules delegated under this law until the CHD is implemented.

Title 7. Property - Chapter 710
LANDLORD-TENANT
Tsi? Yuhwatsyawá·ku Aolihwá·ke
where it bound to the earth - issues

6	710.1.	Purpose and Policy	11	710.6.	Rights and Duties of Landlords and Tenants
7	710.2.	Adoption, Amendment, Repeal	12	710.7.	Domestic Abuse Protections
8	710.3.	Definitions	13	710.8.	Sex Offender Registry
9	710.4.	Rental Programs	14	710.9.	Termination of Tenancy at Death of Tenant
10	710.5.	Rental Agreement Documents	15	710.10.	Landlord or Tenant Actions
			16		

710.1. Purpose and Policy

710.1-1. *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.

710.1-2. *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.

710.2. Adoption, Amendment, Repeal

710.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

710.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

710.2-3. 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.

710.2-4. 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.

710.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

710.3. Definitions

710.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

¹ See BC Resolution _____ 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.

(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) “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.

710.4. Rental Programs

710.4-1. *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.

710.4-2. *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.

710.4-3. *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.

710.5. Rental Agreement Documents

710.5-1. *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.

710.5-2. *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 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 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 710.6-3(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 710.6-3(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.

710.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

710.6. Rights and Duties of Landlords and Tenants

710.6-1. 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.

710.6-2. *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.

710.6-3. *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 710.6-3(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 710.6-3(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 710.6-3(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 710.6-3(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 710.6-3(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.

710.7. Domestic Abuse Protections

710.7-1. 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.

710.7-2. 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.

710.7-3. The Eviction law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

710.8. Sex Offender Registry

710.8-1. 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.

710.9. Termination of Tenancy at Death of Tenant

710.9-1. 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.

710.9-2. 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.

710.9-3. 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.

710.9-4. 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.

710.10. Landlord or Tenant Actions

710.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

710.10-2. 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.

710.10-3. 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.

Adopted – BC



MEMORANDUM

To: Larry Barton, Chief Financial Officer
RaLinda R. Ninham-Lamberies, Assistant Chief Financial Officer

From: Rae M. Skenandore

Date: August 25, 2016

Re: **Financial Impact of the Landlord Tenant Law**

I. Background

This new proposed Law was requested by the Oneida Land Commission. The Law provides guidance for landlords and tenants and applies to all Tribal departments and divisions that provide rental housing opportunities within the Reservation. It also standardizes the core processes and delegates authority through the Comprehensive Housing Division (under development). The Law identifies the Comprehensive Housing Division (CHD) and the Land Commission as the entities delegated authority to jointly develop Rules under this Law; except where Federal funding is required in which case the CHD has sole authority. The following is a summary of the key aspects of the Law:

- Governs residential rental programs for the following types of tenants:
 - Elder Tribal members;
 - Low-income Oneida Tribal members and families; and
 - Tribal members in general.
- Applies to occupants of Nation owned property including rental agreements and leases.
- Includes the following eligibility requirements:
 - Be eighteen (18) years of age at the time of the application;
 - 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;
 - Meet the local government's laws requirements regarding residency restrictions for convicted sex offenders;
 - Meet the income requirements for entering the rental agreement as determined by the rental program's governing rules;
 - Not hold a current residential lease with the Nation; and
 - 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.

- Sets forth the requirements of Rental Agreements.
- Sets forth the rights and responsibilities of the Nation as landlord and Tribal members as tenants.
- Provides provisions to protect tenants that are victims of domestic abuse.
- Includes a provision to provide information on sex offenders through the registry.
- Details the process required in the event of a tenant's death.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law.

II. Executive Summary of Findings

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.

The intent of the new Law is to standardize requirements, operations, and procedures of the various Tribal entities engaged in residential rental agreements and leases. Currently, Elder Services, Housing, and the Division of Land Management provide rental opportunities to Tribal Members.

The following two issues raised do not have a direct Fiscal impact. However, they may impact future revenue or potential services provided by the Oneida Nation if the Law is implemented.

First, the Law is restricted to serving three populations. Tribal elders, Tribal members and families that qualify for low income housing under Federal guidelines, and Tribal members in general. Under this Law, no Tribal entity could rent to non-Oneida Tribal member or individuals that are not Tribal. It should be noted that any development opportunities that would include rentals for individuals that are not Oneida members are prohibited under this Law

Second, again the intent of the Law is to standardize requirements, operations, procedures, and due process of the various Tribal entities engaged in residential rental agreements and leases. However, the eligibility requirements of one program are listed as a requirement for all rentals. This Law would prohibit any Tribal entity from providing transitional or independent housing for ex-offenders regardless of the type of felony. For example, a fourth Operating While Intoxicated (OWI) is an automatic felony under Wisconsin State Law. Individuals convicted of a fourth OWI would be prohibited from entering into a lease or rental agreement with any Tribal entity for the period of two years.

The Oneida Land Commission currently acts as the original Hearing Body for disputes under leases or rental agreements. The stipend paid for a hearing is \$50.00 per commissioner and three Commissioners are required for a hearing. Any savings from transferring the hearing

body authority from the Oneida Land Commission to the Judiciary would be negligible due to their existing operating expenses.

According to Division Of Land Management and the Oneida Judiciary, there will be no additional startup, personnel, office, or documentation costs associated with implementing the Law.

Rulemaking Authority is jointly delegated to the Division of Land Management and the Land Commission. The Administrative Rules for this Law will be completed within 120 days. Upon the approval of the Rules, the Law can be implemented.

III. Financial Impact

No fiscal impact.

IV. Recommendation

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

BC Resolution _____*Defining Comprehensive Housing Division in the Landlord-Tenant 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 Landlord-Tenant law with resolution BC 09-14-16__; and

WHEREAS, the Landlord-Tenant law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division; and

WHEREAS, the Landlord-Tenant law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution; and

NOW THEREFORE BE IT RESOLVED, that for the purposes of the Landlord-Tenant law the Oneida Business Committee hereby defines the Comprehensive Housing Division as 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.



Statement of Effect

Resolution: Defining Comprehensive Housing Division in the Landlord-Tenant Law

Summary

This resolution defines the Comprehensive Housing Division, for the purposes of the Landlord-Tenant law, 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.

Submitted by Krystal L. John, Staff Attorney

Analysis

The Landlord-Tenant law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division. The Comprehensive Housing Division is under development as part of the Oneida Business Committee's reorganization; however, it has not yet been formally created.

The Landlord-Tenant law assigns responsibilities and authorities to the Comprehensive Housing Division and provides that the Oneida Business Committee shall define that Division by resolution. This allows the law to be adopted now with reference to the Comprehensive Housing Division and prevents the need for amendments to the law at the time that the Comprehensive Housing Division is formally created. Accordingly, this resolution defines the Comprehensive Housing Division for the purposes of the Landlord-Tenant law as 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. When the new Comprehensive Housing Division is created, the definition of Comprehensive Housing Division will be required to be updated by Oneida Business Committee resolution, and will not require the law to be amended using the process required by the Legislative Procedures Act.

Conclusion

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



Legislative Operating Committee
October 5, 2016

Vendor Licensing Amendments

Submission Date: 11/18/15	Public Meeting: 7/21/16
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *A request was made to amend the law after SEOTS staff ran into issues while trying to obtain a new vendor. Additional changes are made to update the law and to remove various administrative requirements; and to clearly identify the Licensing Department's administrative rulemaking authority.*


- 11/18/15 LOC:** Motion by Fawn Billie to add the Vendor Licensing Law Amendments to the active files list with either Jennifer Webster or Brandon Stevens as the sponsor; seconded by David P. Jordan. Motion carried unanimously.
- 12/2/15 LOC:** Motion by Jennifer Webster to identify Jennifer Webster as the sponsor for the Vendor Licensing Law; seconded by Fawn Billie. Motion carried unanimously.
- 1/4/16:** *Work meeting held.* Attendees include Jennifer Webster, Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Nicolas Reynolds, Mark Powless, Tonya Webster, Douglass McIntyre.
- 1/20/16 LOC:** Motion by David P. Jordan to defer the draft of the Vendor Licensing Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.
- 2/8/16:** *Work meeting held.* Attendees include Jennifer Webster, Tehassi Hill, Fawn Billie, Patrick Stensloff, Tonya Webster, Douglass McIntyre.
- 3/28/16:** *Work meeting held.* Attendees include Jennifer Webster, Brandon Stevens, Tehassi Hill, David P. Jordan, Lisa Summers, Nicolas Reynolds, Tonya Webster, Douglass McIntyre, Tani Thurner.
- 6/15/16 LOC:** Motion by David P. Jordan to accept the legislative analysis for Vendor Licensing Law Amendments and to approve the public meeting packet for a public meeting date on July 21, 2016; seconded by Fawn Billie. Motion carried unanimously.
- 7/21/16:** *Public Meeting held.*
- 8/17/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments and defer them to a work meeting; seconded by David P. Jordan. Motion carried unanimously.
- 9/19/16** *Work Meeting held.* Jenny Webster, Pat Garvey, Clorissa Santiago, Tony Webster, Jen Falck attended. PG will make final changes to draft. When sponsor approves of draft, LRO will update the analysis. May be on the 10/5 LOC agenda- asking to send it for BC adoption.

Next Steps: Review the draft and analysis, approve adoption packet and forward to the OBC for consideration of adoption.



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: October 12, 2016
RE: Vendor Licensing Law Amendments

Please find the following attached backup documentation for your consideration of the Vendor Licensing Law Amendments:

1. Resolution: Vendor Licensing Law Amendments
2. Statement of Effect: Vendor Licensing Law Amendments
3. Vendor Licensing Law Amendments Legislative Analysis
4. Vendor Licensing Law Amendments Redline Draft
5. Vendor Licensing Law Amendments Clean Draft
6. Vendor Licensing Law Amendments Fiscal Impact Statement

Overview

This resolution adopts amendments to the Vendor Licensing law (the law) which are summarized as follows:

- Specific provisions addressing vendor licensing fees, including late fees and requirements for prorating fees; are deleted from the law. Instead, the Licensing Department is delegated rulemaking authority to establish these fees and related requirements by rule.
- The Law no longer identifies specific entities that are exempt from the licensing requirements of this law, or that are exempt from the licensing fee. Instead, the Licensing Department is delegated rulemaking authority to establish these by rule.
- The current law delegates various authorities to a License Commission, including the authority to hear appeals of licensing decisions. However, there is currently no License Commission; so the references to that Commission are deleted. Instead, the law states that the Licensing Department's decisions can be appealed to the Judiciary.
- The current law provides that the Licensing Department is under the Compliance Division, in the organizational structure. However, there is no such division, so references to the Compliance Division are replaced with references to the Department, which already handles the responsibilities the law currently delegates to the Compliance Division.
- Various procedural and administrative requirements are deleted, as these would be more appropriate in a rule or internal operating procedure.
- The format and language of the law are revised to reflect standard drafting practices and to update the law, which has not been updated since 1997.

In accordance with the Legislative Procedures Act, a public meeting was held regarding these amendments on July 21, 2016 with a comment period closing on July 28, 2016. The comments

BC Resolution _____
Vendor Licensing 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 Vendor Licensing law delegated hearing body authority and oversight authority to a License Commission which does not presently exist; and

WHEREAS, the amendments to the law remove obsolete references to a License Commission and make Licensing Department decisions appealable to the Judiciary; and

WHEREAS, the amendments to the law remove various provisions addressing fees and licensing requirements, including exemptions and deferments; and specifically delegate rulemaking authority to the Licensing Department so that those requirements can instead be established by rule; and

WHEREAS, the amendments to the law delete various procedural and administrative requirements, as these are more appropriate in a rule or internal operating procedure; and

WHEREAS, the Vendor Licensing law has not been comprehensively updated since 1997, and amendments update the law to reflect current drafting and formatting requirements; and improve the organization of the provisions; and

WHEREAS, a public meeting was held on July 21, 2016, and the Legislative Operating Committee has reviewed and considered all comments received during the public meeting and public comment period.

NOW THEREFORE BE IT RESOLVED, that the amendments to the Vendor Licensing law are hereby adopted.



Statement of Effect

Resolution: Vendor Licensing Law Amendments

Summary

This resolution adopts amendments to the Vendor Licensing Law. The amendments can be summarized as follows:

- Various provisions identifying vendor licensing fees, including late fees and requirements for prorating fees; are deleted from the law. Instead, the Licensing Department is delegated rulemaking authority to establish these fees and related requirements by rule.
- The Law no longer identifies specific entities that are exempt from the licensing requirements of this law, or that are exempt from the licensing fee. The Law also no longer identifies whether or how fees could be deferred. Instead, the Licensing Department is delegated rulemaking authority to establish exemptions and deferments by rule.
- The current law delegates various authorities to a License Commission, including the authority to hear appeals of licensing decisions. However, there is currently no License Commission; so the references to that Commission are deleted. Instead, the law states that the Licensing Department's decisions can be appealed to the Judiciary.
- The current law provides that the Licensing Department is under the Compliance Division, in the organizational structure. However, there is no such division, so references to the Compliance Division are replaced with references to the Department, which already handles the responsibilities the law currently delegates to the Compliance Division.
- Various procedural and administrative requirements are deleted, as these would be more appropriate in a rule or internal operating procedure.
- The format and language of the law are revised to reflect standard drafting practices and to update the law.

Submitted by Patricia Garvey, Oneida Law Office

Analysis from Legislative Reference Office

This resolution adopts amendments to the Vendor Licensing Law (the law), including the provisions summarized above. The law had not been comprehensively reviewed since 1997; so in addition to changing requirements, various revisions were also made to update the law to reflect current drafting standards and to streamline the law.

These amendments remove references to two non-existent entities – a License Commission and a Compliance Division; clarifying that the Licensing Department's decisions can be appealed to the Judiciary, instead of a nonexistent License Commission; and removing references to the Compliance Division altogether, since the Licensing Department already performs most of the responsibilities delegated to the nonexistent Compliance Division.

Various provisions related to fees and licensing requirements are removed from the law (including an “attached” fee schedule, which set the annual vendors license fee at \$100 for 1996). Instead, the law instead delegates rulemaking authority to the Licensing Department, to establish those requirements by rule, in accordance with the Administrative Rulemaking law. This will enable the Licensing Department to change the fees/requirements as necessary, without needing to amend the entire law each time.

Although most of the provisions establishing exemptions from the licensing/fee requirements are deleted, two specific exemptions remain in the law: services and products provided by another government, and by other federally-recognized tribes, are still exempt from the licensing requirement; subject to all the laws and rules of the Oneida Nation.

Various procedural requirements are also removed from the Law, as these govern internal processes and procedures followed by the Licensing Department. Those operational requirements are more appropriately set out in an SOP or departmental process; instead of in a law.

Conclusion

Adoption of this resolution would not conflict with Oneida law.



Vendor Licensing Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Oneida Vendor Licensing Law (the Law)				
Sponsor	Jennifer Webster	Drafter	Doug McIntyre, Pat Garvey	Analyst	Tani Thurner
Requester & Reason for Request	Initially, the Licensing Department submitted a request for amendments to include a specialized provision for SEOTS; however, that change was not made. Instead, other amendments were made to update the Law.				
Purpose	This Law governs the licensing of vendors who do business with the Oneida Nation.				
Authorized/ Affected Entities	Oneida Licensing Department, entities conducting business with the Oneida Nation.				
Related Legislation	Oneida Gaming Commission Vendor Licensing and Permitting Regulations (OGC R#1), ONGO, Food Service Code, Indian Preference Law, various related resolutions and policies related to contracting, licensing, and/or vendors.				
Enforcement & Due Process	Denial/revocation of vendor licenses; Department decisions are appealable to the Judiciary.				
Public Meeting Status	A public meeting was held on July 21, 2016. The public comments submitted during the public meeting and public comment period have been reviewed by the LOC; and any changes have been incorporated into this draft.				

With the exception of minor technical amendments to reflect the adoption of the Judiciary, the Vendor Licensing Law (the Law) has not been amended since 1997. The proposed amendments update the Law and:

- Clarify that the Licensing Department (Department) is not under the Compliance Division (which does not exist). References to the Compliance Division are replaced with references to the Department, which already exercises the authorities and handles the responsibilities the Law delegates to the Compliance Division. [56.1-2, current law 56.3-5 thru 56.3-9]
- Provide that Department decisions can be appealed to the Judiciary. Currently, the Law authorizes a License Commission to hear appeals of licensing decisions, but that entity was never created. [56.9, current law 56.3-8 and 56.7]
- Delete various requirements, which would instead be established by rules promulgated by the Department; in accordance with the new Administrative Rulemaking Law. [56.3-1(g)] The amendments specifically delegate authority to the Department to enact rules for:
 - Additional exemptions and deferments from the license/fee requirements. [56.8-2]
 - Services/products provided by another federally-recognized tribe or by another government are still specifically not required to obtain a vendor's license) [56.8-1] but a list of license fee exemptions is deleted, as is a provision authorizing fee deferments in emergency situations. [Current law, 56.10-1]
 - Any other fees (besides license fees) that may be imposed under this Law. [56.6-1]
 - Each business entity's license fees are still determined and based upon the revenue generated by the entity over the previous year, and business entities

with no revenue history still pay a fee based upon a projected revenue figure; this fee would still be determined by the Department; although the Law does not specifically authorize the Department to establish the fee by Rule.

- Currently, the law requires the fee schedule to be reviewed annually by the License Commission, with recommendations from the Finance Committee and approval from the OBC [current 56.6-1(a)]. If the fee schedule is now established by Rule instead, it would instead be reviewed and approved as set out in the Rulemaking Law. This means for all proposed rules, the Department, is responsible for, among other things, publishing notice, conducting public meetings, reviewing all public comments received, preparing a fiscal analysis, etc. The amendments also require the Department to notify all new applicants of any applicable rules, instead of “procedures for application.” [56.5-1].
 - A vendors licensing fee schedule for 1996, which set the licensing fee at \$100 per year, is deleted from the Law. [Current “Attachment A”]
 - Provisions establishing a \$3/monthly late fee are deleted; the amended law only states that a late fee may be added to the cost of the annual license fee. [56.6-3(b) and the current law, 56.6-1(c)(3) and 56.5-1(b)(2)]
 - Requirements for prorating vendor fees are deleted. [56.5-2]
- Specific public records and records retention requirements are replaced with requirements that the Department retain certain records in accordance with applicable laws and rules of the Nation. [56.4-2(a) and 56.5-4]
 - The Risk Management Department is no longer solely required to determine whether an applicant has adequate insurance coverage; instead this will be determined by the Risk Management Department, in cooperation with the Department. [56.5-1]
 - Various procedural and administrative requirements are deleted, which would be more appropriate in a rule or internal operating procedure.

Other

The Law no longer requires all vendor licenses to be conspicuously placed on or in the premises of the place of business or service. However, it appears the Department could promulgate a rule related to the placement of licenses.. [Current law 56.6-1(d)]

Instead of identifying responsibilities for “licensing agents,” the Law identifies responsibilities for the Department (licensing agents are employees of the Department).

Additional licensing requirements for specific types of vendors are deleted as these just repeat requirements set out in other applicable laws and policies [current law, 56.9] and expired/redundant provisions are deleted. [*i.e.* current law 56.4-2 and 56.4-3]

The term “ordinance” is replaced with “law” and “Nation” is used instead of “Tribe”, to reflect the 2015 Constitutional amendments. [*See i.e.* 56.3-1(f) and the current law, 56.3-10.] Sections 56.2 and 56.3 are revised to incorporate the specific wording required by the Legislative Procedures Act. The Law no longer states that it can be amended or repealed by General Tribal Council; although GTC does have authority to do so. [56.2-2] Other minor language/formatting changes are made to improve the clarity of the law and to ensure compliance with standard drafting practices; these changes do not affect the content of the law.

Considerations

There are two issues the LOC may want to consider:

1. Under this law, the Department may suspend a vendor’s license for noncompliance with the

74 Law, but first must notify the business entity and allow the entity 30 days to rectify the
75 noncompliance. The only situation in which a license can be immediately revoked, is if the
76 business entity has inadequate insurance coverage. [56.7-1] By comparison, Oneida Gaming
77 Commission Regulation – Vendor Licensing and Permitting (OGC R#1) authorizes the Gaming
78 Commission to immediately suspend Gaming Services vendor license or permit at any time if,
79 “in the judgment of the Commission, the public interest, and the effective regulation and control
80 of gaming and others require the immediate exclusion of a vendor.” [OGC R#1, section 1.16-4.]
81

82 *Recommendation:* The LOC may want to consider whether the Law should allow for any other
83 situations where a license can be immediately suspended. This is a policy call.
84

85 2. This Law does not mention conditional licenses or permits. By comparison, OGC R#1 enables
86 the Gaming Commission to impose conditions on a gaming services vendor license or permit
87 (i.e. issue a conditional license or permit) if the Gaming Commission believes the conditions will
88 ensure compliance with the Oneida Nation Gaming Ordinance or with other applicable laws or
89 regulations. OGC R#1 also sets out what a conditional license or permit must include and what
90 happens if the vendor fails to adhere to the conditional license or permit requirements.
91

92 *Recommendation:* The LOC may want to consider whether the Law should allow for the
93 Department to impose conditions on a vendor license. This is a policy call.
94
95

Title 5. Business - Chapter 56506
ONEIDA-VENDOR LICENSING
Lonatkehluní kanaktótha?
they are permitted to sell to one

~~56.1-1. Purpose and Policy~~

~~56.2-1. Adoption, Amendment Repeal~~

~~56.3-1. Definitions~~

~~56.4-1. Scope of the Requirement~~

~~56.5-1. Application/Renewal Procedures~~

~~56.6-1. Fees for Licensure~~

~~56.7-1. Appeal of Agency and License Commission Decisions~~

~~56.8-1. Revocation of Vendor's License~~

~~56.9-1. Specific Requirements~~

~~56.10-1. Exempt Status~~

~~56.1. Purpose and Policy.~~

~~56.2. Adoption, Amendment Repeal.~~

~~56.3. Definitions~~

~~56.4. Scope~~

~~56.5. Application/Renewal Procedures~~

~~56.6. Fees for Licensure~~

~~56.7. Revocation of Vendor's License~~

~~56.8. Exemptions and Deferments~~

~~56.9. Appeals of Licensing Decisions~~

56.1-1. Purpose and Policy.

56.1-1. Purpose. The purpose of this ~~Ordinance~~law is to:

(a) regulate and license all vendors who provide a service for and do business with the Oneida ~~Tribe of Indians of Wisconsin~~Nation, and

(b)~~56.1-2.~~ Furthermore, it is the purpose of this ordinance to provide regulations, criteria and procedures for the issuance of licenses to all vendors who provide a service for or do business with the Tribe.

~~56.1-3.~~ It is also the purpose of this ordinance to generate revenue for the Oneida Tribe of Indians of WisconsinNation by implementing and enforcing a collection ofcollecting fees from vendors for a license to perform a service for or do business with the TribeNation.

~~56.1-4. 56.1-2. Policy.~~ It is the policy of the Oneida ~~Tribe of Indians of Wisconsin~~to utilize the Oneida Compliance Division as the authorityNation to establish a system to implement and enforce the issuance of vendor's licenses and forthe collection of fees.

56.2-1. Adoption, Amendment Repeal.

56.2-1. This ~~ordinance is~~law was adopted by the Oneida Business Committee by resolution # BC-3-5-97-E02-19-92-C and amended by ~~resolution~~resolutions BC-3-5-97-E, BC-02-25-15-C: and_____.

~~56.2-2.-~~ This ~~ordinance~~law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the ~~Oneida Administrative~~Legislative Procedures Actby the Oneida Business Committee or the Oneida General Tribal Council.

~~56.2-3.-~~ Should a provision of this ~~ordinance~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~ordinance~~law which are considered to have legal force without the invalid portions.

~~56.2-4.~~ All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this ordinance as related to the licensing of vendors

by the Compliance Division are hereby repealed unless specifically re-enacted after adoption of this ordinance.

56.2-4. 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.

56.2-5. ~~This law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.~~

56.3-1. Definitions.

56.3-1. This ~~Article~~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.

~~56.3-2. "Emergency Situation" means an unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others, cause the loss of perishable goods, or create an economic hardship due to the unavoidable imminent nature of the circumstance.~~

56.3-3. (a) "Business Entityday" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(b) "Business entity" means that which exists as a particular and discrete unit, which may include, but is not limited to; any person, partnership, corporation, joint venture, franchise, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the jurisdiction of ~~the Oneida Vendor's Licensing Ordinance~~this law.

~~56.3-4. "Vendor's License" means a permit granted by an appropriate governmental body to a person, business, or corporation to pursue some occupation or to carry on some business or service, and which is subject to regulations of the Oneida Nation.~~

~~56.3-5. "License Fee" means that fee imposed upon all vendors who apply to perform a service for or do business with the Oneida Tribe of Indians of Wisconsin as established and calculated by the Compliance Division pursuant to the regulatory grant of power afforded them by this ordinance.~~

~~56.3-6. "Licensing Agent" means an employee of the Oneida Licensing Department of the Oneida Compliance Division with the delegated authority and responsibility to implement and enforce this ordinance.~~

~~56.3-7. "Oneida Compliance Division" means that division within the Oneida administration with the purpose and authority to oversee adherence to laws, ordinances, policies and procedures of the Oneida Tribe.~~

~~56.3-8. "Oneida License Commission" means the regulatory entity formed to conduct hearings and decide cases of licensing disputes as they relate to those licenses, certificates or permits issued by the Compliance Division.~~

~~56.3-9. "Oneida Licensing Department" means that department located within the organizational structure of the Compliance Division of the Oneida Tribe which is responsible for administering licensing programs on behalf of the Tribe, hereafter referred to as department.~~

~~56.3-10. "Oneida Nation" means the Oneida Tribe of Indians of Wisconsin.~~

~~56.3-11. "Training Session" means an educational experience contracted wholly for the education of tribal members or employees.~~

56.3 12. “Tribal Members” means persons who are enrolled with the Oneida Tribe of Indians of Wisconsin.

56.3 13. (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 TribeNation.

~~56.4 1. Scope of~~ (e) “License fee” means that fee charged for a vendor’s license issued in accordance with this law.

(f) “Nation” means the Requirement. The provisions and Oneida Nation.

(g) “Rule” means a set of requirements enacted in accordance with the Administrative Rulemaking law.

(h) “Vendor’s license” means a license issued by the Department to a business entity that provides a service for, or that does business with the Nation.

56.4. Scope

~~56.4 1. of these regulations~~ This law shall be adhered to by all business entities and shall apply to every ~~one and every~~ business entity that performs services and/or does business with the Oneida Nation separate from and in addition to those requirements imposed by other ~~Tribal entities, such as, the Oneida Gaming Commission and the Division of Land Management.~~

~~laws and rules of 56.4 2. A grace period of sixty (60) days from the date of the original passage of the Oneida Vendor’s Licensing Ordinance shall be granted in order that all business entities may be brought into compliance with this Ordinance~~ Nation.

~~56.4 2. 56.4 3. Notice shall be given for implementation of the Oneida Vendor’s Licensing Ordinance pursuant to the requirements of the Administrative Procedures Act adopted by resolution GTC-8-19-91 A.~~

56.4 4. All information given ~~information given for purposes of receiving a vendor’s license for doing business with the Oneida Nation, excluding financial information, is considered~~ the purpose of receiving a vendor’s license is:

(a) subject to a request for information and available for public inspection. ~~Provided further, that all information given for purposes of receiving a vendor’s license for doing business with the Oneida Nation, including financial information, is~~ as provided in applicable laws and rules of the Nation.

(b) subject to internal audit of the ~~Oneida~~ Nation.

~~56.5 1.~~ 56.5. Application/Renewal Procedures

~~56.5 1. (a) The department~~ Department shall notify all new applicants of the Oneida Vendor’s Licensing Ordinance requirements and procedures for application. Upon request of the licensing agent, the applicant shall be required to provide the requirements of this law; including any applicable rules and any necessary documentation ~~to verify that~~ the following information:

(1) ~~The name of~~ Department may ask the applicant to provide. All business entity, with proof of identification

(2) The type of business;

(3) The business address entities shall obtain and ~~the name of the agent for service of process,~~

(4) Verification of required maintain adequate; insurance coverage ~~or bonding,~~

(5) Federal I.D. number or Social Security number.

~~(6) Accounts Payable Vendor Number, this information may be provided, as determined by the licensing agent, Risk Management Department, in cooperation with the Department.~~

~~56.5-2. (7) Food vendor~~

~~(8) Name of buyer, buyer's address, items sold or services offered~~

~~(9) Signature of applicant and date of application~~

~~(b) The licensing agent Department shall deny, or approve the or deny an application based on compliance with the criteria set in this ordinance, verification of the requested information, and; whether or not the following exist: law, other Oneida laws and applicable rules.~~

~~(1) payment of the fee paid at the time of application; if the fee is not paid the vendor's license will not be issued. If a business entity is doing business with the Oneida Nation without a vendor's license the department 56.5-3. The Department shall notify the Accounting Department to recover the fee by retaining the amount from compensation for the product or services rendered by the vendor;~~

~~(2) first time vendor fees may be prorated per licensing agent's guidelines;~~

~~(3) any outstanding fees owed to the Oneida Nation, all outstanding fees must be paid before a vendor's license will be issued;~~

~~(4) inadequate insurance coverage; insurance verification must be provided to the agent before the vendor's license is issued, the licensing agent will forward the information to Oneida Risk Management for applicant of the approval; if the applicant/entity has inadequate insurance coverage, the vendor's license will not be issued;~~

~~(5) other factors which relate to the protection of Tribal and/or public health, safety, or welfare.~~

~~(c) The licensing agent shall notify the applicant of the approval, or denial of the application within ten (10) workingbusiness days, and:~~

~~(1) a) if approved, the licensing agent Department shall issue the vendor's license to the business entity; and or~~

~~(2) b) if the vendor's license is denied, the reasons Department shall provide the reason(s) for denial of the vendor's license; and~~

~~(3) notification of a notify the applicant of his or her right to request an appeal to the decision.~~

~~(d) A number shall be assigned to each vendor's license by the licensing agent for identification.~~

~~(e) 56.5-4. All applications for a vendor's license and a copy of each certificate of vendor's license shall be retained by the licensing agent for one (1) year from date of application; thereafter, said documents shall be retained by Oneida Records Management for seven years. Department in accordance with applicable laws and rules of the Nation.~~

~~56.5-5. 56.5-2. Renewal procedures shall be as follows:~~

~~(a) The vendor's license shall be applied for annually.~~

~~(b) Vendor's license renewal shall be on a yearly basis, from the date of issuance of the vendor's license.~~

56.6-1. Fees for Licensure

~~(a) The fee for a vendor's license shall be pursuant to an equitable fee schedule as established initially by the department, and as reviewed annually by the License~~

~~Commission, with recommendations from the Oneida Finance Committee and approval of the Oneida Business Committee.~~

~~(b) The department shall retain not more than 50% of the vendor's license fees collected; the balance of the fees collected will be transferred to the Trust Department to be placed in the Elderly Per Capita Fund.~~

~~(c) The vendor's license fee shall cover a twelve (12) month period, and~~

~~(1) The fee shall be paid annually at the time of the application. The fee shall be returned if application is denied.~~

~~(2) The licensing agent shall keep fee records.~~

~~(3) Late fee payment may be added to cost of annual license fee. If fee is due, the applicant/entity may be charged \$3 per month, see sec. 5-1(b)(1-3).~~

~~(d) The vendor's license shall be prepared and sent out by the licensing agent. All vendor's licenses shall be conspicuously placed on or in the premises of the place of business or service.~~

~~(e) The fee~~56.6-1. License fees shall be determined and based upon the revenue as generated by the business entity with the ~~Oneida~~-Nation the year directly preceding ~~that year and the~~ date ~~in upon~~ which the business entity applies for licensure. ~~Business'~~Business entities with no revenue history shall pay a fee determined by the ~~department~~Department based upon a projected revenue figure. The Department may establish, by rule, any other fees that may be imposed in accordance with this law.

56.6-2. The Department shall retain not more than fifty percent (50%) of the fees collected in accordance~~56.7-1. Appeal of Agency and License Commission Decisions~~

~~Oneida License Commission Hearings.~~

~~(a) Parties who disagree with this law; the decisions~~balance of the licensing agent on matters of dispute regarding issues of licensing, certification or permits issued by the Compliance Division, may request a hearing before the License Commission.

~~(b) Hearings before the License Commission will~~fees collected shall be ~~pursuant~~transferred to the ~~original hearing procedures as set out~~Trust Department to be placed in the ~~Administrative Procedures Act~~Elderly Per Capita Fund.

~~56.7-2. Appeal of License Commission Decisions. A party may appeal to the Judiciary for an appellate review and final determination of the License Commission decision.~~

~~56.8-1.~~56.6-3. The vendor's license fee shall cover a twelve (12) month period, and:

(a) The fee shall be paid annually at the time of the application. The Department shall return the fee if the application is denied.

(b) A late fee may be added to the cost of the annual license fee.

56.7. Revocation of Vendor's License

~~56.7-1.~~ A vendor's license issued by the Licensing Department may be revoked by the ~~licensing agent~~Department if the business entity is in non-compliance with this ~~ordinance, law, has~~ inadequate insurance coverage, or for any other reasons related to protection of ~~Tribal~~the Nation and/or public health, safety, or welfare, ~~pursuant. Prior to the following procedures:~~

~~(revoking a)~~ vendor's license, the Department shall notify the business entity ~~is notified~~of the effective date of the revocation ~~by the licensing agent~~ and the reasons for the revocation; and

(b) shall allow the business entity ~~is given~~ thirty (30) days in which to rectify the non-compliance, except in the case of inadequate insurance coverage, in which case the vendor's license ~~will~~shall be revoked ~~when the information~~immediately upon verification of inadequate coverage ~~is verified; and.~~

~~(c) should the business entity come into compliance or secure adequate insurance coverage, the vendor's license shall be reinstated;~~

~~(d) if compliance is unattainable, the business entity is notified of his/her right to appeal the licensing agent's decision to revoke the vendor's license.~~

56.8. Exemptions~~56.8-2. Procedures for non-compliance and revocation of a vendor's license after thirty (30) days shall be as follows:~~

~~(a) Notice will be given to the Oneida Accounting Department that vendor's license has been revoked, whereupon the Accounting Department shall suspend all future payment to said vendor for all services or goods.~~

~~(b) Upon revocation of the vendor's license, the business entity shall be prevented from doing business with the Oneida Nation until such time the former licensee is able to comply with the Ordinance and submits a new application.~~

and Deferments

~~56.8-1) Any fees owed shall be deducted from any potential compensation due to the provider.~~

~~(2) Verification and approval of required insurance coverage shall be provided by the Oneida Risk Management Department.~~

56.9-1. Specific Requirements

~~Applicants subject to approval must be in compliance with requirements as set forth in all related Tribal ordinances, including but not limited to, Oneida Indian Preference laws, Oneida Food Vendors Ordinance, Real Property Law, and Oneida gaming laws.~~

~~56.9-2. A food vendor shall be issued a vendor's license contingent upon the requirements of the Oneida Environmental Health Department which includes a certificate of training and written notice to the department. A certificate from the Oneida Environmental Health Department certifying completion of necessary requirements and instructions for safe food handling must be presented at time of application.~~

~~56.9-3 Applicants who are contracting for construction work must have their bid awarded by the Oneida Tribe in accordance with the Construction Improvement Process Policy.~~

~~56.9-4. Applicants who are selling, brokering, or leasing real estate must have approved real estate licenses as required by the Real Property Law.~~

~~56.9-5. Applicants who are contracting for electrical, plumbing, /air conditioning or building work must be licensed by the Oneida Zoning Department as required by the Building Code of the Oneida Reservation.~~

56.10-1. Exempt Status

. The following ~~must be licensed but~~ are exempt from ~~the required fee:~~

~~(a) Those individuals who receive stipend revenue for Oneida Nation as members of entities of the Oneida Nation.~~

~~(b) Vendors whose revenue from Tribe is less than \$1,000 per year.~~

(c) ~~Consultants, means all individuals, businesses or corporations who have a consultant relationship with the Oneida Nation for the purpose of providing professional advice, training or any other service for profit and whose revenue from the Oneida Nation is less than \$500 per year.~~

(d) ~~Training sessions where the focus is wholly upon the education and/or training of Tribal members or employees and where the amount contracted for does not exceed \$2,000. Those training sessions that exceed the \$2,000 limit will be subject to the usual fees assessed for licensure.~~

(e) ~~One time deferment for payment of vendor's license fees of up to thirty (30) days for emergency situations may be granted. Application for fee deferment must be made at the time of application with specific explanation of the emergency situation filed in writing by the applicant.~~

(f) ~~A failure to pay or payment after the deferment date has expired, may be grounds for denial of a vendor's license or assessment of late fee penalties.~~

~~56.10-2. The following are exempt from licensure:~~

(a) ~~(a)~~ Services or products provided by another federally recognized ~~Tribet~~tribe, subject to all the laws and ~~the Ordinances~~rules of the ~~Oneida Tribe~~Nation.

(b) ~~Services or products provided by another government, subject to all the laws and ordinances~~rules of the ~~Oneida Tribe~~Nation.

ATTACHMENT A
VENDORS LICENSING FEE SCHEDULE FOR 1996
FLAT FEE AMOUNT

Yearly Oneida Vendors Fee \$100.00

Approved by:

ONEIDA BUSINESS COMMITTEE:

Signature: _____ Date: _____
Debra Doxtator, Chairwoman

Signature: _____ Date: _____
Julie Barton, Secretary

56.8-2. The Department may promulgate rules that establish additional exemptions and
deferments from the licensing or fee requirements of this law.

56.9. Appeals of Licensing Decisions

56.9-1. Decisions of the Department may be appealed to the Judiciary in accordance with
applicable rules of procedure.

End.

Adopted- BC-2-~~47~~19-92-C
~~Adopted~~Amended- BC-3-5-97-E
Amended- BC-02-25-15-C
Amended- BC-

Title 5. Business - Chapter 506
VENDOR LICENSING
Lonatkehluní kanaktótha?
they are permitted to sell to one

56.1. Purpose and Policy.

56.2. Adoption, Amendment Repeal.

56.3. Definitions

56.4. Scope

56.5. Application/Renewal Procedures

56.6. Fees for Licensure

56.7. Revocation of Vendor's License

56.8. Exemptions and Deferments

56.9. Appeals of Licensing Decisions

56.1. Purpose and Policy.

56.1-1. *Purpose.* The purpose of this law is to:

(a) regulate and license all vendors who provide a service for and do business with the Oneida Nation, and

(b) provide revenue for the Nation by collecting fees from vendors for a license to perform a service for or do business with the Nation.

56.1-2. *Policy.* It is the policy of the Oneida Nation to establish a system to implement and enforce the issuance of vendor's licenses and collection of fees.

56.2. Adoption, Amendment Repeal.

56.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-19-92-C and amended by resolutions BC-3-5-97-E, BC-02-25-15-C and _____.

56.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

56.2-3. 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.

56.2-4. 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.

56.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

56.3. Definitions

56.3-1. 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 holidays recognized by the Nation.

(b) "Business entity" means that which exists as a particular and discrete unit, which may include, but is not limited to; any person, partnership, corporation, joint venture, franchise, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the jurisdiction of this law.

(c) "Department" means the Oneida Licensing Department.

(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.

(e) "License fee" means that fee charged for a vendor's license issued in accordance with this law.

(f) "Nation" means the Oneida Nation.

(g) "Rule" means a set of requirements enacted in accordance with the Administrative Rulemaking law.

(h) "Vendor's license" means a license issued by the Department to a business entity that provides a service for, or that does business with the Nation.

56.4. Scope

56.4-1. This law shall be adhered to by all business entities and shall apply to every business entity that performs services and/or does business with the Nation separate from and in addition to those requirements imposed by other laws and rules of the Nation.

56.4-2. All information given for the purpose of receiving a vendor's license is:

(a) subject to a request for information and available for public inspection as provided in applicable laws and rules of the Nation.

(b) subject to internal audit of the Nation.

56.5. Application/Renewal Procedures

56.5-1. The Department shall notify all new applicants of the requirements of this law; including any applicable rules and any necessary documentation that the Department may ask the applicant to provide. All business entities shall obtain and maintain adequate insurance coverage, as determined by the Risk Management Department, in cooperation with the Department.

56.5-2. The Department shall approve or deny an application based on compliance with the criteria set in this law, other Oneida laws and applicable rules.

56.5-3. The Department shall notify the applicant of the approval or denial of the application within ten (10) business days, and:

(a) if approved, the Department shall issue the vendor's license to the business entity; or

(b) if denied, the Department shall provide the reason(s) for denial of the vendor's license; and notify the applicant of his or her right to appeal the decision.

56.5-4. All applications for a vendor's license and a copy of each vendor's license shall be retained by the Department in accordance with applicable laws and rules of the Nation.

56.5-5. Vendor's license renewal shall be on a yearly basis, from the date of issuance of the vendor's license.

56.6. Fees for Licensure

56.6-1. License fees shall be determined and based upon the revenue as generated by the business entity with the Nation the year directly preceding the date upon which the business entity applies for licensure. Business entities with no revenue history shall pay a fee determined by the Department based upon a projected revenue figure. The Department may establish, by rule, any other fees that may be imposed in accordance with this law.

56.6-2. The Department shall retain not more than fifty percent (50%) of the fees collected in accordance with this law; the balance of the fees collected shall be transferred to the Trust Department to be placed in the Elderly Per Capita Fund.

56.6-3. The vendor's license fee shall cover a twelve (12) month period, and:

(a) The fee shall be paid annually at the time of the application. The Department shall return the fee if the application is denied.

(b) A late fee may be added to the cost of the annual license fee.

56.7. Revocation of Vendor's License

56.7-1. A vendor's license issued by the Licensing Department may be revoked by the Department if the business entity is in non-compliance with this law, has inadequate insurance coverage, or for any other reasons related to protection of the Nation and/or public health, safety, or welfare. Prior to revoking a vendor's license, the Department shall notify the business entity of the effective date of the revocation and the reasons for the revocation, and shall allow the business entity thirty (30) days in which to rectify the non-compliance, except in the case of inadequate insurance coverage, in which case the vendor's license shall be revoked immediately upon verification of inadequate coverage.

56.8. Exemptions and Deferments

56.8-1. The following are exempt from licensure:

(a) Services or products provided by another federally recognized tribe, subject to all the laws and rules of the Nation.

(b) Services or products provided by another government, subject to all the laws and rules of the Nation.

56.8-2. The Department may promulgate rules that establish additional exemptions and deferments from the licensing or fee requirements of this law.

56.9. Appeals of Licensing Decisions

56.9-1. Decisions of the Department may be appealed to the Judiciary in accordance with applicable rules of procedure.

End.

Adopted- BC-2-19-92-C

Amended- BC-3-5-97-E

Amended- BC-02-25-15-C

Amended- BC-_____



Legislative Operating Committee
October 5, 2016

Election Law Amendments

Submission Date: 4/20/16	Public Meeting: 9/15/16
LOC Sponsor: Tehassi Hill	Emergency Enacted: 4/27/16 Expires: 10/27/16

Summary: *This request was submitted to change the voting age from 21 to 18, and to create a process for changing the constitution and the Election Board by-laws.*

4/20/16 LOC: Motion by Fawn Billie to move the amendment lowering the voting age to 18 years old, to emergency status; seconded by Tehassi Hill. Motion carried unanimously.

Note: All other changes will continue to be processed through the regular process for permanent amendments.

Motion by Tehassi Hill to forward the Election Law Emergency Amendments packet to the Oneida Business Committee for emergency adoption; seconded by Fawn Billie. Motion carried unanimously.

4/27/16 OBC: Motion by Jennifer Webster to adopt resolution #4-27-16-B Election Law Emergency Amendments, seconded by Brandon Stevens. Motion carried unanimously.
Motion by Brandon Stevens to approve the draft letter to the 18-20 year old Tribal Members notifying them of their ability to participate in elections and General Tribal Council meetings, seconded by Trish King. Motion carried unanimously.

8/17/16 LOC: Motion by David P. Jordan to direct the Legislative Reference Office to prepare a public meeting packet for the Election Law permanent amendments; seconded by Tehassi Hill. Motion carried unanimously.

9/15/16: Public Meeting held.

Next Steps:

- Define “prominent posting” element of the law.
- Determine what to forward for adoption.
- Direct the LRO to prepare an adoption packet for consideration at the October 12, 2016 OBC meeting.



TO: Legislative Operating Committee
FROM: Jennifer Falck, LRO Director *JF*
DATE: October 5, 2016
RE: Election Law Amendments

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

1. Resolution
2. Statement of Effect
3. Legislative Analysis
4. Redline to current
5. Clean draft

Overview

On April 27, 2016, the OBC adopted Election Law Emergency Amendments that changed the voting age from 21 to 18. Those emergency amendments are due to expire on October 27, 2016.

Since April, language was added to the Election Law regarding how to change the constitution, at the Constitutional Implementation Team's request.

In accordance with the Legislative Procedures Act, a public meeting was held on September 15, 2016, and the public comment period was held open until September 22, 2016.

The LOC is working on additional amendments, which will be presented for consideration in the future.

Next Steps:

1. Define "prominent posting" element of the law, and identify what "Official Media Outlets" are.
2. Determine whether any changes need to be made to the draft, and direct the LRO to prepare an adoption packet for consideration at the October 12, 2016 OBC meeting, which shall include a separate resolution identifying official media outlets.

October 5, 2016



Election Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Election Law (the Law)				
Sponsor	Tehassi Hill	Drafter	Krystal John	Analyst	Tani Thurner
Requester & Reason for Request	The Constitutional Amendments Implementation Team has requested these changes to implement the Constitutional amendments approved by the May 2, 2015 Secretarial Election.				
Purpose	This Law governs the Nation's process for electing officials.				
Authorized/ Affected Entities	Election Board is created by this law, and delegated primary responsibilities. General Tribal Council (GTC), the Oneida Business Committee (OBC), Judiciary, Tribal Secretary, Trust Enrollment Department, Zoning Administrator, Records Management Department and Oneida Police Department are all delegated specific authorities or responsibilities in this Law. All elected entities are affected by this law – including boards, committees, commissions, and the Judiciary.				
Related Legislation	Election Board Bylaws; Comprehensive Policy Governing Boards, Committees and Commissions; Open Records and Open Meetings Law, Removal Law, Zoning Law; Oneida Nation Gaming Ordinance (ONGO) and various laws identifying responsibilities/authority for elected entities.				
Enforcement & Due Process	The Law allows for the Election Board to impose fines for violations of the law's contribution restrictions and campaign sign restrictions. The Zoning Administrator may remove noncompliant campaign signs. The Law provides appeal processes for applicants who are found to be ineligible to run for elected positions, for voters found to be ineligible to vote, and for challenging the results of an election.				
Public Meeting Status	A public meeting was held on September 15, 2016. No spoken comments were submitted at the Public Meeting, and no written comments were submitted during the public comment period.				

Overview

These proposed amendments permanently adopt changes made by emergency amendments adopted on April 24, 2016; and these proposed amendments also create an additional section in the law, which details one of the two processes established by the Nation's Constitution, for amending the Constitution in the future.

The emergency amendments will lapse on October 27, 2016, unless permanently adopted prior to that date, or unless the emergency adoption is extended for an additional six months, in accordance with the Legislative Procedures Act.

On May 2, 2015, the Oneida Nation voted in a Secretarial Election, approving five amendments to the Oneida Nation Constitution (hereinafter: "Constitution"):

- Lowering the minimum voting age for Tribal elections from 21 to 18 years old.
- Establishing a different process for making future amendments to the Constitution; and giving the Secretary of the US Department of the Interior less approval/oversight

authority over the Nation.

- Changing the name of the Oneida Tribe of Indians of Wisconsin to “Oneida Nation”.
- Formally establishing the Judiciary in the Constitution
- Allowing GTC Annual and Semi-Annual meetings to be held at any time during the months of January and July, instead of on the first Mondays of those months.

These proposed amendments to the Election Law (Law) are being submitted to update the Law to reflect the Constitutional amendments.

Lowering the minimum voting age for Oneida Nation elections from 21 to 18 years old; changing “Tribe” to “Nation” to reflect the new name.

After the Constitution was amended, provisions in the Election Law (Law) conflicted with the new requirements – specifically, the Law still defined “qualified voters” as persons who are at least 21 years old, but the voting age had been lowered to 18 by the Constitution.

On April 27, 2016, the OBC adopted emergency amendments to the Law which lowered the minimum voting age to 18 and replaced references to the “Tribe” with references to the “Nation.” [2.3-15]. Those amendments were adopted on an emergency basis in order to reconcile the different voting age requirements before a caucus that was scheduled for May 7, 2016.

Establishing a different process for making future amendments to the Constitution

Currently, the Law does not address how the Constitution can be amended; the only requirements addressing this are set out in the Constitution. In addition to permanently adopting the emergency amendments, these proposed changes create a new section in the Law, which sets out requirements relating to how the Constitution can be amended in the future.

The amended Constitution now identifies that there are out two different processes by which Constitutional amendments can be placed on a ballot for the membership to vote on:

1. **OBC Process.** Amendments may be proposed by the OBC
2. **Petition Process.** Amendments may be proposed by a petition signed by Oneida members.

OBC Process

The new section in the Law essentially repeats most of the requirements set out in the Constitution for the petition process; but for the OBC process, this Law does not repeat the requirements set out in the Constitution. Instead, the Law states that the requirements for the OBC process are “provided in the Constitution and as further detailed in the supporting standard operating procedures which the [OBC] shall adopt.” [2.13-1] The Constitution does not specifically authorize the OBC to adopt supporting SOPs for when they propose amendments; that language only appears in the proposed new language for the Election Law.

Petition Process

The Constitution sets out specific requirements for the petition process; and most of those requirements are repeated in the new language in the Election Law. The Constitution also identifies additional requirements that may/must be established by law. Most of those are also established in this new section:

Requirement in the Constitution	Provisions that would be added to the Election Law
On the ballot, proposed Constitutional amendments must be accompanied by purpose statement, prepared by “the person who is so authorized by law.”	Authorizes the Oneida Law Office to prepare the statement of purpose that will appear on the ballot. [2.13-4]

Petitions to amend the Constitution must be filed with the “person authorized by law” to receive them.	Authorizes the Office of the Nation’s Secretary (<i>i.e.</i> Tribal Secretary) to receive these petitions. [2.13-1]
After receiving a petition, the authorized person must, “as provided by law,”: <ul style="list-style-type: none"> 1. determine the validity and sufficiency of the signatures, and 2. at least 60 days before the election, make an official announcement about the <u>validity/sufficiency of the signatures</u>. 	The Law makes: <ul style="list-style-type: none"> 1. The Trust Enrollment Department responsible for verifying petition signatures, and 2. The Election Board responsible for making an official announcement <u>of the proposed amendments</u>, once signatures are verified. [2.13-1]
Petitions must be in the form, and signed and circulated in the manner prescribed by Oneida law.	Qualified voters may request a petition form from the Tribal Secretary: <ul style="list-style-type: none"> • Then, the Tribal Secretary/designee must direct the Trust Enrollment Department to calculate the number of signatures the petitioner must collect. (This will be calculated as of the date the petition form is requested.) • Then, the Secretary must give the petition form to the requester, and inform the requester of how many signatures they must collect. Petition forms must be circulated with all supporting materials (if any); each person signing the petition must also initial the form to acknowledge the supporting materials were available for review at the time s/he signed the petition. 2.13-1.
Publishing Notice: 3 things must be <u>published in full, as provided by Oneida Law</u> : <ul style="list-style-type: none"> • The proposed Constitutional amendment • The existing provision of the Constitution and Bylaws that would be changed/deleted. • The question as it shall appear on the ballot. 	Proposed amendments must be published by publishing a sample ballot. The Election Board is responsible for mass-mailing the sample ballot no less than 10 days before the election. The Election Board Chair must notify the Trust Enrollment Department no less than 20 days before the requested mailing. 2.13-3.
Notice must be “prominently posted at Tribal <u>administration</u> offices.”	The sample ballot must be prominently posted at Oneida <u>administrative</u> offices; defined as “the location where the [OBC] conducts business.” [2.13-3]
Notice must be “furnished to news media as provided [by] Oneida law.”	The sample ballot must be published <u>in official Oneida media outlets</u> , which must be identified by OBC resolution. [2.13-3]

62
63 Although not required by the Constitution, one other additional requirement is established
64 in this Law: The Constitution does not identify who is responsible for putting proposed
65 amendments on the ballot for an election. This Law adds that the Election Board is responsible
66 for doing so. [2.13-2]

67
68 **Other**

69 Various references to the “Enrollment Department” are changed to refer to the “Trust
70 Enrollment Department.” All other relevant references to the “Tribe” were changed to “Nation”
71 – including references to the “Tribal Secretary”, which were changed to the “Nation’s
72 Secretary”; and all references to the Constitution were revised to “Oneida Nation Constitution.”

73 Section 2.2 is updated to incorporate the language requirements set out in the Legislative
74 Procedures Act.

75 A public meeting has not been held.

Considerations

The following are issues that may need consideration:

Issue#1. The amended Law requires notice of an election for Constitutional Amendments to be published *“in official Oneida media outlets, which will be identified by Oneida Business Committee resolution.”* Currently, there is no OBC resolution which identifies “official media outlets”, so the OBC would need to adopt a resolution identifying “official Oneida media outlets.” This could be done in conjunction with these amendments.

Issue #2: OBC & Member Petition Process for Constitutional Amendments.

The new section in the Law identifies the two processes for bringing forward Constitutional amendments and having them placed on the ballot at an election:

- **Petition Process.** This is the process by which Oneida members submit a signed petition. The Law repeats nearly all of the Constitution’s requirements regarding the petition process, clearly spelling out all of the required steps.
- **OBC Process.** This is the process by which the OBC can initiate amendments to the Constitution. The Law does not spell out the steps for this process, stating only that the requirements for the OBC process are provided in the Constitution; and adding that the OBC must adopt SOPs to add further detail to this process.

Impact: Because the level of detail appears to be different for each process, this has the potential to confuse the reader. The Law does not clearly set out a step-by-step plan for the OBC process, like it does for the petition process.

Potential ways to address the disparity:

Option 1. Add the details for the OBC process, as set out in the Constitution. If this option is chosen, it may also be beneficial to separate this provision, creating two sections – one for the OBC process, and one for the petition process.

Note: The missing OBC process requirements are:

- That 8 members of the OBC, excluding the Chair, must agree to the proposed amendments.
- That once agreed upon, the issue will be put before GTC for a vote.
- That a majority of the voting GTC members must vote in favor of the proposed amendment; and that if they do, the amendment must be placed upon the ballot of the next General election, or Special election called for that purpose.

Option 2. Remove the details for the petition process which just repeat the provisions found in the Constitution.

Issue #3: Notice Requirements – Constitutional Amendments and Special Elections

The following are provisions in the Law, as proposed:

2.13-3: Notice for Constitutional Amendments must be published:	2.12-7: Notice for Special Elections must be published:
<ul style="list-style-type: none">• prominently posted in each polling place and at the location where the OBC conducts business• in official Oneida media outlets• <i>no timeline requirements</i>	<ul style="list-style-type: none">• prominent locations (polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations)• in the Nation’s newspaper• not less than 10 days prior to the Special Election.

Impact: The Law sets out different notice requirements for Constitutional Amendments and for Special

Elections. However, a special election may be held to consider proposed constitutional amendments [2.13-2]. In those situations, it may not be clear which set of notice requirements must be followed.

Potential Solutions:

Option 1 – Clarify in the Law which notice requirements would apply when Constitutional Amendments are scheduled for a special election.

Option 2 – revise the notice requirements from the Law to eliminate the conflicting notice requirements.

- The Election Law already contains several requirements for publishing various other types of notice. Most of those require notice to be published in the “Nation’s newspaper” and in “prominent locations”; both of which are defined in this Law.
- This new provision establishes notice requirements for Constitutional amendments which are different from the notice requirements commonly used for elections:
 - Notice would not be required to be posted in most “prominent places,” just in the location where the OBC conducts business.
 - Notice must be posted in all Oneida media outlets, not just the “Nation’s newspaper”.

Impact: If the notice requirements appear to conflict, it may create confusion for the reader.

Potential Solutions:

- Option 1 – Revise the Law so that all requirements match as far as where and how notice must be posted.
- Option 2 – amend this new requirement so that notice is required to be posted in the same manner as other notice mentioned in the Law.

Issue #4: Notice Requirements- Timelines

- The new language (section 2.13-3) identifies where notice must be posted, but does not identify timeline requirements for publishing notice (i.e. how long before an election the notice must be published.)
- Various other provisions in the Law set establish a timeline for publishing notice:
 - 2.12-7: notice of a special election must be posted in “not less than 10 calendar days” before the election.
 - 2.7-2: Polling information must be posted no less than 10 calendar days before the election, and must remain posted until the poll closes on the day of the election.
 - 2.7-3. Notice of general elections must be mailed to all Nation members, [...] no less than 10 calendar days prior to the election.

Impact: The lack of a timeline may not be as clear as it could be for the reader.

Potential Solution: Add timeline requirements to 2.13-3 for posting and publishing notice of the election.

Chapter 2 ONEIDA ELECTION LAW

Onayote'a·ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila

People of the Standing Stone how it is we will appoint them the kind of laws we have

2.1. Purpose and Policy
2.2. Adoption, Amendment, Repeal
2.3. Definitions
2.4. Election Board
2.5. Candidate Eligibility
2.6. Selection of Candidates

2.7. Notice of Polling Places
2.8. Registration of Voters
2.9. Election Process
2.10. Closing Polls and Securing Ballots
2.11. Election Outcome and Ties
2.12. Elections

2.1. Purpose and Policy

2.1-1. It is the policy of the ~~Tribe~~Nation that this law shall govern the procedures for the conduct of orderly ~~Tribal~~elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida ~~Tribe~~Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

2.2. Adoption, Amendment, Repeal

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution ~~#GTC 707-06-98-A~~ and amended by resolutions ~~#GTC-01-04-10- A~~ and ~~BC-02-25-15-C~~. ~~The amendments adopted by resolution #GTC 01-04-10 A shall be effective January 4, 2010.~~

2.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the ~~Oneida Administrative~~Legislative Procedures Act ~~by the Business Committee or the Oneida General Tribal Council.~~ Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. 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.

2.2-4. ~~Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.~~ 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.

2.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

2.3. Definitions

2.3-1. 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.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding ~~Tribal~~holidays of the Nation.

10/5/16

Draft #3 (redline to current permanent)

2.3-5. "Campaigning" shall mean all efforts designed to influence ~~Tribal~~ members of the Nation to support or reject a particular ~~Tribal~~ candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with ~~Tribal~~ members of the Nation.

2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a ~~Tribal~~Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the ~~Tribe~~Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida ~~Tribe~~Nation, or as defined in any law or policy of the ~~Tribe~~Nation.

2.3-10. "Election" shall mean every primary and election.

2.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. "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 ~~Tribe~~Nation.

2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. ~~"Oneida Police Officer" shall mean an enrolled member of the Oneida Tribe of Indians who is a police officer on any police force~~ "Nation" means the Oneida Nation.

2.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

2.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

2.3-18. "Private property" shall mean any lot of land not owned by the ~~Tribe~~Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-~~17~~19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-~~18~~20. "Qualified voter" shall mean an enrolled ~~Tribal~~ member of the Nation who is 21eighteen (18) years of age or older.

2.3-~~19~~21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

2.3-~~20~~22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise

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84 marred and is not tabulated.

85 2.3-2123. "Teller" shall mean the election official in charge of collecting and storing of all
86 ballots.

87 ~~2.3-22. "Tribal newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the~~
88 ~~Tribe for the benefit of transmitting news to Tribal members which is designated by the Election~~
89 ~~Board as a source for election related news.~~

90 ~~2.3-23. "Tribe" means the Oneida Tribe of Indians of Wisconsin.~~

91 2.4. Election Board

92 Section A. Establishment, Composition and Election

93 2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
94 law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

95 2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
96 elected to terms of three (3) years, not to exceed two (2) consecutive terms.

97 2.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an
98 Election Board member in any pre-election, election day, or post-election activities while he or
99 she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of
100 interest.

101 2.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A
102 member who is removed from the Election Board shall be ineligible to serve on the Board for
103 three (3) years from the time he or she is removed from the Election Board.

104 2.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the
105 Business Committee for the balance of the unexpired term. The filling of a vacancy may be
106 timed to correspond with the pre-election activities and the needs of the Election Board.

107 2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

108 2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the
109 Election Board, as recommended by the Election Board, to assist with election day and pre-
110 election activities.

111 2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the
112 By-laws of the Election Board, to preside over the meetings. This selection shall be carried out
113 at the first meeting of the Election Board following an election. The Chairperson shall then ask
114 the Election Board to select a Vice-Chairperson and Secretary.

115 Section B. Duties of the Election Board

116 2.4-9. The Election Board shall have the following duties, along with other responsibilities listed
117 throughout this law.

118 (a) The Election Board shall be in charge of all registration and election procedures; and

119 (b) Upon completion of an election, the Election Board shall make a final report on the
120 election results as set out in this law.

121 Section C. Specific Duties of Officers and Election Board Members

122 2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to
123 being present at all Election Board meetings and assisting the handicapped through the voting
124 process, are as set out herein:

125 (a) Chairperson: Shall preside over meetings of the Election Board; shall select the

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hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and ~~OneidaTrust~~ Enrollment Department personnel when their election day duties are complete; and shall post and report election results.

(b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.

(c) Secretary: Shall keep a record of the meetings and make them available to the ~~Tribal~~Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.

(d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the ~~OneidaTrust~~ Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the ~~OneidaTrust~~ Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between ~~Tribal~~ members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process ~~of the Tribe~~.

2.4-12. The ~~OneidaTrust~~ Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

2.5. Candidate Eligibility

Section A. Requirements

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

(a) be an enrolled ~~Tribal~~ member of the Nation, as verified by membership rolls of the ~~Tribe~~Nation.

(b) be a qualified voter on the day of the election.

(c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:

(1) a valid Wisconsin driver's license;

(2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;

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(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the ~~Tribal~~Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal ~~Tribal~~Nation mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

Section B. Eligibility Review

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
 - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
 - (c) A brief summary explaining why the applicant was found to be ineligible.
 - (d) That the applicant has two (2) business days from notification to make an appeal.
- Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal ~~Tribal~~Nation mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

2.5-8. Contributions:

(a) Solicitation of Contributions by Candidates.

(1) Candidates shall only accept contributions from individuals who are members of the ~~Tribe~~Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.

(2) Candidates shall not solicit or accept contributions in any ~~Tribal~~ office or business/facility of the Nation.

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(b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

(1) Campaign signs shall not be posted or erected on any ~~Tribal~~ property of the Nation except for private property with the owner/tenant's permission.

(2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.

(3) No campaign sign shall project beyond the property line into the public right of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

(c) Employees of the ~~Tribe~~Nation shall not engage in campaigning for ~~Tribal~~ offices of the Nation during work hours. ~~Tribal~~The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

2.5-14. *Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a

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Special Election shall be held.

2.6. Selection of Candidates

Section A. Setting of Caucus

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

- (a) Candidates shall be nominated from the floor.
- (b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.
- (c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

2.6-3. Any eligible ~~Tribal~~ member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the ~~Tribal~~ Office of the Nation's Secretary's ~~Office~~ or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

- (1) printed name and address;
- (2) date of birth;
- (3) Oneida ~~Tribal~~ Nation Enrollment Number; and
- (4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the ~~Tribal~~ Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The ~~Tribal~~ Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the ~~Oneida~~ Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

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2.7. Notice of Polling Places

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of ~~Tribal~~the Nation's businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all ~~Tribal~~Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The ~~Oneida~~Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the ~~Tribal~~Nation's newspaper.

2.8. Registration of Voters

Section A. Requirements

2.8-1. *Registration of Voters.* All enrolled members of the ~~Tribe~~Nation, who are ~~twenty-one~~(21)~~eighteen~~(18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida ~~Tribal~~Nation Constitution.

Section B. Identification of Voters

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) ~~Tribal~~Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

Section C. Registration Procedures

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. ~~Oneida~~Trust Enrollment Department personnel shall be responsible for verifying ~~Tribal~~enrollment~~, with the Nation.~~ Conduct of ~~Oneida~~Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the ~~Trust~~Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida ~~Tribal~~Nation

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Constitution, Article III Section 2, to vote in ~~tribal~~the Nation's elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

2.9. Election Process

Section A. Polling Places and Times

2.9-1. In accordance with Article III, Section ~~4~~5 of the ~~Tribal~~Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida ~~Tribal~~Nation facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) ~~Tribal~~members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management

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Department.

Section D. Rejected Ballots

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

2.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the ~~Tribal~~ members of the Nation before the polls were opened per section 2.9-3(a).

Section B. Manually Counted Ballots

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

2.11. Election Outcome and Ties

Section A. Election Results Announcement

2.11-1. The tentative results of an election shall be announced and posted by the Election Board

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within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

2.11-2. The Election Board shall post, in the prominent locations, and publish in the ~~Tribal~~Nation's newspaper, the tentative results of an election.

Section B. Tie

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the ~~Tribal~~office of the Nation's Secretary's-Office, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The ~~Tribal~~Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored

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where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Tribal Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

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2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

2.12. Elections

Section A. Primary Elections; Business Committee

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the [TribalNation's](#) newspaper if time lines allow.

Section B. Special Elections

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business

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Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the ~~Tribal~~Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the ~~Tribal~~Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the ~~Tribe~~Nation or general membership.

Section D. Initiation of Special Elections

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a ~~Tribal~~ member of the Nation to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

2.13. Oneida Nation Constitution and By-law Amendments

2.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of

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the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain a sufficient number of signatures, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.

2.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 2.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot for that special election.

2.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which shall be identified by Oneida Business Committee resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

2.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

2.13-5. Pursuant to Article VI of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

2.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

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672

Adopted - June 19, 1993

673

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

674

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

675

Amended- October 11, 2008 (General Tribal Council Meeting)

676

Amended-GTC-01-04-10-A

677

Amended – BC-02-25-15-C

Chapter 2 ONEIDA ELECTION LAW

Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila

People of the Standing Stone how it is we will appoint them the kind of laws we have

2.1. Purpose and Policy
2.2. Adoption, Amendment, Repeal
2.3. Definitions
2.4. Election Board
2.5. Candidate Eligibility
2.6. Selection of Candidates

2.7. Notice of Polling Places
2.8. Registration of Voters
2.9. Election Process
2.10. Closing Polls and Securing Ballots
2.11. Election Outcome and Ties
2.12. Elections

2.1. Purpose and Policy

2.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

2.2. Adoption, Amendment, Repeal

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A and amended by resolutions GTC-01-04-10- A and BC-02-25-15-C.

2.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. 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.

2.2-4. 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.

2.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

2.3. Definitions

2.3-1. 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.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

2.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

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2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

2.3-10. "Election" shall mean every primary and election.

2.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. "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.

2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. "Nation" means the Oneida Nation.

2.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

2.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

2.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

2.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

2.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

2.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

2.4. Election Board

Section A. Establishment, Composition and Election

2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this

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law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

2.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.4-4. *Removal*. Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

2.4-5. *Vacancies*. Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

2.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

Section C. Specific Duties of Officers and Election Board Members

2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment Department personnel in the registration process, and assist the Chairperson as directed in

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conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

2.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

2.5. Candidate Eligibility

Section A. Requirements

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

(a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.

(b) be a qualified voter on the day of the election.

(c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:

(1) a valid Wisconsin driver's license;

(2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;

(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's

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designated agent.

Section B. Eligibility Review

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

2.5-8. Contributions:

(a) Solicitation of Contributions by Candidates.

(1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.

(2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.

(b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

(1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.

(2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.

(3) No campaign sign shall project beyond the property line into the public right of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

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(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

2.5-14. Candidate Withdrawal After Winning an Election.

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.6. Selection of Candidates

Section A. Setting of Caucus

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be

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required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

2.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

2.7. Notice of Polling Places

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the Nation's newspaper.

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2.8. Registration of Voters

Section A. Requirements

2.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

Section B. Identification of Voters

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

Section C. Registration Procedures

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

2.9. Election Process

Section A. Polling Places and Times

2.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General

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Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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2.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 2.9-3(a).

Section B. Manually Counted Ballots

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

2.11. Election Outcome and Ties

Section A. Election Results Announcement

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

2.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

Section B. Tie

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

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2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates

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may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to

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destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

2.12. Elections

Section A. Primary Elections; Business Committee

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

Section B. Special Elections

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General

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Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

Section D. Initiation of Special Elections

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

2.13. Oneida Nation Constitution and By-law Amendments

2.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain a sufficient number of signatures, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to

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the election at which the proposed amendments are to be voted on.

2.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 2.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot for that special election.

2.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which shall be identified by Oneida Business Committee resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

2.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

2.13-5. Pursuant to Article VI of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

2.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C



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



TO: Legislative Operating Committee
FROM: Jennifer Falck, LRO Director *JF*
DATE: October 5, 2016
RE: LRO's Processing Open Records Requests SOP

The LRO continues to update and review its current procedures to improve service and efficiency.

As part of this effort, the LRO is submitting a newly developed standard operating procedure for your information. It is to be used to fulfill open records requests that come to the LRO.

The purpose of the SOP is to establish guidance for the LRO and the Records Management Department for the processing of LOC and/or LRO open records requests.

The SOP was developed and drafted in collaboration with the Records Management Manager, and includes activities that they and the LRO will cooperate on. The SOP is aligned to the Records Management Department's SOP's dealing with records requests, the Open Records & Open Meetings Law, and the Code of Ethics.

Please contact me if you have questions.



LEGISLATIVE REFERENCE OFFICE STANDARD OPERATING PROCEDURE

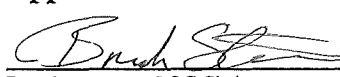
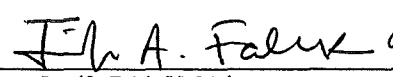
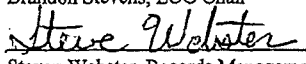
Title: Processing Open Records Requests

Origination Date: September 13, 2016

Revision Date:

Author: LRO

Approvals:

 Brandon Stevens, LOC Chair	9/28/16 Date	 Jennifer Falck, LRO Director	9/27/16 Date
 Steven Webster, Records Management	9/27/16 Date		

1.0 PURPOSE. To establish guidance for the Legislative Reference Office and Records Management Department for the processing of Legislative Operating Committee/Legislative Reference Office Open Records Requests.

2.0 DEFINITIONS

- 2.1 **Electronic Record.** A replication of a record in electronic form which is stored as a computer file (*i.e.* PDF, JPG, etc).
- 2.2 **LOC.** The Oneida Nation Legislative Operating Committee.
- 2.3 **LRO.** The Oneida Nation Legislative Reference Office, which is the legal custodian for various records for the Legislative Operating Committee, and for the Code of Laws. The LRO responsibilities identified herein shall be performed by the Director of the LRO, or by any LRO staff member(s) to whom the LRO Director delegates such responsibilities.
- 2.4 **Records Duplication.** Any replication of a record in printed or electronic form.
- 2.5 **Request Form.** The Open Records Request Form developed by the Legislative Reference Office.
- 2.6 **Requestor.** A person who is requesting to view or obtain copies of existing open records.

3.0 WORK STANDARDS

- 3.1 **Request Form.** The LRO shall develop a records request form and make the form available to any requestor seeking records for which the LRO or LOC is the custodian.
- 3.2 All completed Request Forms shall be submitted to the LRO to begin processing.
- 3.3 Within a reasonable period of time after receiving a Records Request, the LRO shall either approve the request, deny the request, or approve part and deny part of the request. If uncertain about whether a specific record may be released, the LRO shall consult with the Oneida Law Office before approving the record request.
 - 3.3.1 *When a Record Request is approved.*
 - 3.3.1.1. *Fees.* Records Management shall carry out all fee transactions related to a records request. Fees shall be assessed in accordance with the fee schedule adopted by Records Management. After a records request is received, the LRO shall provide the requestor with a written estimate of the fees, if any, that will be charged to

complete the records request. Records Management may be consulted to determine the total.

3.3.1.1.1 When the estimated fees total five dollars (\$5) or more, the requestor shall pay the fees before the records request is processed.

3.3.1.1.2 When the total cost is less than five dollars (\$5), the requestor may pay at the time s/he receives the record(s).

3.3.1.1.3. At any time, if it is determined that the actual fees will exceed the estimate given to the customer, the LRO shall notify the requestor of the additional cost as soon as possible. The records request shall not be processed further until:

3.3.1.1.3.1 The LRO has received consent from the requestor to proceed, and

3.3.1.1.3.2 The requestor has paid the balance, if the additional amount owed is equal to or greater than five dollars (\$5).

3.3.1.2 After the request is approved and the fees are paid, the LRO shall duplicate the requested records, and provide the duplicates to Records Management. Records Management shall contact the requestor, using the contact information provided on the Records Request form, and notify the requestor of the location/times to pick up the records.

3.3.2 *When the records request is denied.*

3.3.2.1 The LRO shall notify the requestor that the Records Request has been denied, as well as the reason(s) for denial.

3.3.2.2 Denials may be appealed to the Chairperson of the LOC.

3.3.3 *When the records request is partly approved and partly denied.*

3.3.3.1 The LRO shall notify the requestor that the records request has been denied in part, including which portion of the records request was denied, and the reason(s) for denial. The approved portion of such a request shall not be processed until the requestor has been notified of the partial denial and given permission to proceed.

3.3.3.2 Once the requestor has provided permission to proceed with the approved portion of the records request, the LRO shall follow the process as set out in 3.3.1.

3.3.3.3 The requestor may appeal the denial of the portion of the request in accordance with 3.3.2.

3.4 *Exceptions.* In the following situations, the LRO may process a records request and directly provide the record(s) to the requestor:

3.4.1 When the LRO receives a records request for a record in electronic format, the LRO may fulfill the request by directly sending the record to the e-

mail address provided on the records request form, as long as no other fees would be charged for the record, and as long as the electronic record can be sent by e-mail.

3.4.2 The LRO has discretion to print and provide a paper copy of a record to a requestor who is present in the LRO.

3.5 *Reasons for Denial.* The LRO may deny a records request in the following situations:

3.5.1 The request is without reasonable limitation as to subject matter or length of time represented by the record.

3.5.2 The request seeks records that are not in existence at the time the records request is made – i.e. perpetual or future records requests.

3.5.3 The LRO does not possess the requested records, or the requested records do not exist, or were unable to be located.

3.5.4 The information sought is not an open record, or falls under one of the categories of records that are exempt from inspection and copying, as identified in the Open Records and Open Meetings Law.

3.5.5 The submitted request form is incomplete.

3.6 *Release of Records.* Records Management may decline to release any record, including records requested through the LRO, when the requestor owes outstanding fees from any previous records requests. In those situations, Records Management may not release the record until the outstanding fees are paid.

3.6.1 This requirement shall be stated on the LRO's Records Request Form.

3.7 *Recordkeeping.*

3.7.1 The LRO shall maintain a log of all records requests received. For each records request, the log shall identify, at a minimum:

3.7.1.1 The name of the requestor

3.7.1.2 The enrollment number (if a Tribal member) and/or employee ID (if a Tribal employee)

3.7.1.3 The records requested

3.7.1.4 The date the request was received, and the date the requested records were submitted to Records Management.

3.7.1.5 Whether the request, or any part thereof, was denied, and the reasons therefor.

3.7.1.6 The amount of fees, if any, charged for the record(s).

3.7.1.7 The format of the record (i.e. MP3 burned to a compact disc, photocopy, electronic/e-mail; etc.)

4.0 REFERENCES

4.1 Open Records and Open Meetings Law

4.2 Code of Ethics (Confidentiality)

October 2016

October 2016						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November 2016						
Su	Mo	Tu	We	Th	Fr	Sa
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20	21	22	23	24	25	26
27	28	29	30			

	Monday	Tuesday	Wednesday	Thursday	Friday
Oct 3 - 7	Oct 3	4	5	6	7
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Oct 10 - 14	10	11	12	13	14
			BC Meeting (BCCR)		
Oct 17 - 21	17	18	19	20	21
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:00pm 1:00pm FW: Real Property Amendments- Public Meeting (BC_Conf_Room) - Jennifer A. Falck	
Oct 24 - 28	24	25	26	27	28
			BC Meeting (BCCR)		
Oct 31 - Nov 4	31	Nov 1	2	3	4

November 2016

November 2016						
Su	Mo	Tu	We	Th	Fr	Sa
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27	28	29	30			

December 2016						
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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
	Oct 31	Nov 1	2	3	4
Oct 31 - Nov 4			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:00pm 2:30pm Community Support Fund Public Meeting (BCCR)	
	7	8	9	10	11
Nov 7 - 11			BC Meeting (BCCR)		Veterans Day Holiday
	14	15	16	17	18
Nov 14 - 18			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
	21	22	23	24	25
Nov 21 - 25			BC Meeting (BCCR)	Thanksgiving Holiday	Indian Day Holiday
	28	29	30	Dec 1	2
Nov 28 - Dec 2					