



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA-REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center

January 18, 2017 10:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. January 4, 2017 LOC Meeting Minutes
- III. Current Business**
 - 1. Real Property Law Amendments
 - 2. Tobacco Ordinance Amendments
 - 3. Drug and Alcohol Free Workplace Policy Amendments
 - 4. Endowments Amendments
 - 5. Landlord-Tenant Emergency Amendments
 - 6. Employment
 - 7. Hunting, Fishing and Trapping Law Amendments
 - 8. Per Capita Amendments
- IV. New Submissions**
 - 1. Tribal Environmental Response
 - 2. Division of Land Management Rules
- V. Additions**
- VI. Administrative Updates**
 - 1. FY17 First Quarterly Report
 - 2. Code of Laws Reorganization Project
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

January 4, 2017 9:01 a.m.

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

Excused:

Others Present: Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Krystal John, Jennifer Falck, Rae Skenandore, Mike Debraska, Danelle Wilson, Shad Webster.

I. Call to Order and Approval of the Agenda

Tehassi Hill called the January 4, 2017 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. December 21, 2016 LOC Meeting Minutes

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

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

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

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

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

III. Current Business

1. Oneida Nation Seal and Flag Law (01:30-02:45)

Motion by Jennifer Webster to make the noted change and to forward the Oneida Nation Seal and Flag Law to the Oneida Business Committee for consideration noting

Legislative Operating Committee Meeting Minutes of January 4, 2017

that the legislative analysis shall be updated; seconded by David P. Jordan. Motion carried unanimously.

Noted change include: 1) revised the definition of Oneida-owned building to mean a building wholly owned and/or operated by the Nation within the boundaries of the Reservation and to such other lands as may be here after added thereto within or without said boundary lines under the law of the United States except as otherwise provided by law.

2. Petition: Delgado- Panel of Educators & Retention of Kindergarten Students (02:50-06:30)

Motion by Jennifer Webster to forward the legislative analysis regarding the Petition: Delgado- Panel of Educators & Retention of Kindergarten Students to Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

3. Tribal Criminal Code, Tribal Traffic Code, and Tribal Public Peace Laws (09:52-13:20)

Motion by Tehassi Hill to accept the 60-day update; seconded by Jennifer Webster. Motion carried unanimously.

4. Community Support Fund Amendments (13:22-18:50)

Motion by Jennifer Webster to accept the December 21, 2016 Community Support Fund Amendments e-poll and enter the e-poll results into the record; seconded by Fawn Billie. Motion carried unanimously.

5. Endowment Fund Amendments (18:50-27:05)

Motion by David P. Jordan to forward the Endowment Fund Amendments to the LRO and the Finance Department for a legislative analysis and fiscal analysis to be completed by January 12, 2017; seconded by Tehassi Hill. Motion carried unanimously.

6. Tobacco Law Amendments (27:05-30:35)

Motion by Tehassi Hill to accept the Tobacco Law Amendments public meeting comments; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Tehassi Hill to request an updated legislative analysis and fiscal analysis be brought back by January 12, 2017 and to direct the LRO to put together an adoption packet with the noted changes; seconded by Jennifer Webster. Motion carried unanimously.

Noted changes include: 1) alphabetize the definitions, 2) remove the definition of manager, 3) on line 77 tobacco outlet changed to Oneida retail location, 4) on line 89 removed Oneida Nation, 5) on line 97 added "or her" and 6) on line 105 removed Oneida Nation.

7. Hunting, Fishing and Trapping Law Amendments (30:36-01:19:33)

Motion by Tehassi Hill to accept the Hunting, Fishing and Trapping Law Amendments public meeting comments; seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the LRO to develop an adoption packet with the noted changes; seconded by Jennifer Webster. Motion carried unanimously.

Noted changes include: 1) create a list in rules pertaining to the designated hunter numbers, 2) remove hunting party size limits from law and create rule to address this issue, 3) remove supervision requirement for hunters age 15 – 17, and 4) revise 406.6-6 to delete subsections (a) & (b) and to include the following language “A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet of the center of the road as further detailed in the rules.”

8. Per Capita Law Amendments (01:19:38-01:21:55)

Motion by Tehassi Hill to accept the Per Capita Law Amendments public meeting comments; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to defer the Per Capita Law Amendments public meeting comments to a work meeting to commence directly after the conclusion of the January 4, 2017 LOC meeting; seconded by Jennifer Webster. Motion carried unanimously.

9. Budget Management and Control Law (01:21:56-01:49:26)

Motion by Jennifer Webster to accept the Budget Management and Control Law public comments; seconded by Tehassi Hill. Motion carried unanimously.

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

Noted changes include: 1) replace “entity” with “fund unit”, 2) include physical infrastructure to the definition of capital improvement, 3) clarify that “capital expenditure” is non-physical and “capital improvements” is physical, 4) include a footnote after the definition for “Capital expenditure” which states that acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of capital expenditure, 5) fix the grammatical error in section 121.3(i), 6) include the language “or that have been modified” to section 121.6-1, and 7) include the following language to section 121.7-1 “until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the general fund to be re-allocated in accordance with the Oneida Business Committee’s priority list under 121.5-3 using the regular budget process under 121.5.”

10. Employment Law (01:49:28-01:57:28)

Motion by Fawn Billie to direct the LRO to conduct an e-poll of the adoption packet regarding the Employment Law in consideration of forwarding to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Updates

1. Public Meeting SOP (01:57:29-01:57:55)

Motion by Tehassi Hill to accept the Public Meeting SOP as FYI; seconded by David P. Jordan. Motion carried unanimously.

VII. Executive Session

1. Department of Public Works HVAC Contracts

Motion by Fawn Billie to enter into executive session at 10:59 a.m., seconded by Tehassi Hill. Motion carried unanimously.

Motion by Fawn Billie to come out of executive session at 11:10 a.m., seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to add the Independent Contractor Policy to the active files list with David P. Jordan as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

VIII. Adjourn

Motion by David P. Jordan to adjourn the January 4, 2017 Legislative Operating Committee meeting at 11:11 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee January 18, 2017

Real Property Law Amendments

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

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

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

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

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

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

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

8/2/16: Update meeting held.

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

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

10/20/16: Public meeting held.

10/27/16: Work meeting held. Attendees include: Tehassi Hill, Jennifer Webster, Leyne Orosco, Cathy Bachuber, Rhiannon Metoxen, Jay Rasmussen, Don McLester, Krystal John and Maureen Perkins.

11/02/16 LOC: Motion by Fawn Billie to accept the public meeting comments for the Real Property Law Amendments, and make the changes recommended in the public comment review

memo, and to change the wording in section 601.5 from “mechanism” to “method”; seconded by Jennifer Webster. Motion carried unanimously.

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

12/01/16:

Public meeting held.

12/21/16 LOC:

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

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

01/04/17LOC:

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

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

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

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

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

Next Steps:

- Accept the Real Property Law Amendments public meeting comments, consider comments and direct any necessary changes and/or forward the Real Property Law Amendments to the Oneida Business Committee for consideration.

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

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

601.1. Purpose and Policy

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

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

601.2. Adoption, Amendment, Repeal

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

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

601.2-3. 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.

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

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

601.3. Definitions

601.3-1. 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, subject to 601.4-5.

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

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

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

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

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

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

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

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

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

601.4. General Provisions

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

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

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

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

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

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

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

601.5. Holding of Ownership

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

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

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

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

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

601.6. Legal Descriptions

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

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

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

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

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

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

601.7. Title Transfer

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

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

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

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

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

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

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

(a) A valid deed shall:

- (1) Be in writing;
- (2) Identify the grantor (seller) and grantee (buyer);
- (3) Provide the legal description of the real property;
- (4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;
- (5) Be signed by or on behalf of each of the grantors (sellers);
- (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and
- (7) Be delivered to the grantee (buyer).

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

- (1) The federal authority for trust acquisition;
- (2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;
- (3) The approximate acreage of the real property being transferred to trust; and
- (4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.

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

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

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

- (1) For the purposes of this section, public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing.
- (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate an agreeable taking by making an offer to purchase based on an appraisal of the real property. The appraisal amount may be based on an appraisal provided by the Nation. In the event the property owner objects to the Nation's appraisal, they may obtain an independent appraisal at their own cost. For the purposes of this section, an appraisal means process for estimating a piece of real property's value.
- (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

601.8. Probate

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

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

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

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

601.9. Leasing of Real Property

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

601.10. Records

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

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

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

- (f) Patents;
- (g) Declarations of involuntary transfer or taking;
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- (i) Leases made pursuant to the Leasing law;
- (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- (k) Marriage agreements; and
- (l) Correction of title defects.

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

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

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

601.11. Real Estate Education Requirements and Certifications

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

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

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

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

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

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

601.12. Organization

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

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

- (a) Interpret the provisions of this law and create policy to guide the Division of Land Management in implementing the same;
- (b) Approve or deny all easements and land use licenses;
- (c) Review and adopt the Division of Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;
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- (f) Name all buildings, roads, parks and the like on Tribal land.

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

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

End.

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

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

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

601.1. Purpose and Policy

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

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

601.2. Adoption, Amendment, Repeal

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

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

601.2-3. 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.

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

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

601.3. Definitions

601.3-1. 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, subject to 601.4-5.

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

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

(c) “Comprehensive Housing Division” means the entity responsible for housing matters as defined by Oneida Business Committee Resolution.¹

(d) “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose.

(e) “Estate” means a person’s interest in real property or other property.

(f) “Fiduciary” means a person required to act for the benefit of another person on all matters within the scope of their relationship and by such a relationship owes another duties of good faith, trust, confidence and candor. For the purposes of this law, both brokers and salespersons are “fiduciaries.”

(g) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

(h) “Individual Fee Land” means real property held in fee status by an individual or group of individuals.

(i) “Individual Trust Land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.

(j) “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.

(k) “Land Use License” means an agreement entered into by the Nation providing a party the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and a specific duration, which may require the Nation to be compensated for such use.

(l) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(m) “Nation” means the Oneida Nation.

(n) “Personal Representative” means a person to whom authority to administer a decedent’s estate have been granted by the Division of Land Management or the Judiciary.

(o) “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

(p) “Real Property” means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

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

(r) “Restricted Fee Status” means an interest in real property which includes a provision in the deed or will that, upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.

(s) “Rule” means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, Division of Land Management, Oneida Planning Department and/or the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

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

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

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

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

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

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

601.4. General Provisions

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

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

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

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

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

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

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

601.5. Holding of Ownership

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

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

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

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

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

601.6. Legal Descriptions

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

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

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

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

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

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

601.7. Title Transfer

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

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

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

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

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

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

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

(a) A valid deed shall:

- (1) Be in writing;
- (2) Identify the grantor (seller) and grantee (buyer);
- (3) Provide the legal description of the real property;
- (4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;
- (5) Be signed by or on behalf of each of the grantors (sellers);
- (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and
- (7) Be delivered to the grantee (buyer).

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

- (1) The federal authority for trust acquisition;
- (2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;
- (3) The approximate acreage of the real property being transferred to trust; and
- (4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.

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

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

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

- (1) For the purposes of this section, public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing.
- (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate an agreeable taking by making an offer to purchase based on an appraisal of the real property. The appraisal amount may be based on an appraisal provided by the Nation. In the event the property owner objects to the Nation's appraisal, they may obtain an independent appraisal at their own cost. For the purposes of this section, an appraisal means process for estimating a piece of real property's value.
- (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

601.8. Probate

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

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

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

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- (c) Review and adopt the Division of Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;
- (d) Approve or deny all acquisition of Tribal land;
- (e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and
- (f) Name all buildings, roads, parks and the like on Tribal land.

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- (e) Process land acquisition transactions as approved by the Oneida Land Commission.

End.

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



TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: January 18, 2017
RE: Real Property Law Amendments: Public Meeting Comment Review

On December 1, 2016, a second public meeting was held regarding amendments to the Real Property law. This memorandum is submitted as a review of the written comments received within the public comment period; no oral comments were presented at the public meeting. The public meeting draft with comments is attached for review.

Comment 1. Purpose Statement

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

Comment

Rae Skenandore – written comment: The reason the amendments were requested by the Land Commission was to transfer hearing body authority from the land Commission to the Judiciary.

LOC believed that the law required extensive updating to **provide greater clarity** as to the intent of the law. Additionally, content was pulled from this law and created into other laws.

The Oneida Land Commission is charged with interpreting the provisions of this law and create policy to guide the Division of Land Management in implementing the same. Based on the previous language, LC has interpreted that they and DOLM have the responsibility for policy and management of the properties in New York. From my perspective, the change in the language between an earlier version of the law and the one presented for public comment impacts my interpretation and calls into question the authority of DOLM in managing the property in New York. Please review the comparisons below;

Previous Purpose

The purpose of this Law is to provide regulations and procedures for **the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line**; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

Current Purpose

The purpose of this law is to provide regulations and procedures for the transfer, control and management of the **territory within the reservation**; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction **within the reservation**; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

Knowing that the properties in New York are going to be the topic of discussion with BC, LC, and Land Claims in the near future, I feel it would be prudent to actually solidify that language in the law. Not create more ambiguity.

Response

The purpose behind the phrase “**within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line**” was to incorporate any lands that added as trust lands. That is now covered in the definition of “reservation.” That being said, the commenter is correct that Tribal fee land outside of the Reservation would be left out under this current purpose statement. I recommend revising to read as follows:

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

Comment 2. Policy Statement

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

Comment

Rae Skenandore – written comment: The reason the amendments were requested by the Land Commission was to transfer hearing body authority from the land Commission to the Judiciary. LOC believed that the law required extensive updating to **provide greater clarity** as to the intent of the law. Additionally, content was pulled from this law and created into other laws.

The Oneida Land Commission is charged with interpreting the provisions of this law and create policy to guide the Division of Land Management in implementing the same. Based on the previous language, LC has interpreted that they and DOLM have the responsibility for policy and management of the properties in New York. From my perspective, the change in the language between an earlier version of the law and the one presented for public comment impacts my interpretation and calls into question the authority of DOLM in managing the property in New York. Please review the comparisons below;

Previous Policy

The provisions of this Law shall extend to **all tribal lands and waters** held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, **both within and without the exterior boundaries of the Oneida Reservation**, under any law of the United States, except as otherwise provided by law.

Current Policy

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

Response

Nothing in this policy statement would limit the Land Commission's ability to set policy relating to the New York Lands. Further, the policy statement is not really the appropriate place to delegate something so detail specific. There are no recommended revisions based on this comment.

Comment 3. Applicable Real Property

601.4-1. Applicable Real Property. The provisions of this law extend to all Tribal land, Tribal member's individual fee land, and individual trust land within the Reservation boundaries and all Tribal trust land.

Comment

The reason the amendments were requested by the Land Commission was to transfer hearing body authority from the land Commission to the Judiciary.

LOC believed that the law required extensive updating to **provide greater clarity** as to the intent of the law. Additionally, content was pulled from this law and created into other laws.

The Oneida Land Commission is charged with interpreting the provisions of this law and create policy to guide the Division of Land Management in implementing the same. Based on the previous language, LC has interpreted that they and DOLM have the responsibility for policy and management of the properties in New York. From my perspective, the change in the language between an earlier version of the law and the one presented for public comment impacts my interpretation and calls into question the authority of DOLM in managing the property in New York. Please review the comparisons below;

Current Applicable Real Property. The provisions of this law extend to all Tribal land, Tribal member's individual fee land, and individual trust land **within the Reservation boundaries** and all Tribal trust land.

Summary

Knowing that the properties in New York are going to be the topic of discussion with BC, LC, and Land Claims in the near future, I feel it would be prudent to actually solidify that language in the law. Not create more ambiguity.

Response

The commenter is correct that as drafted it may be read that the phrase “within the Reservation boundaries” applies to each “Tribal land Tribal member’s individual fee land, and individual trust land.” In order to provide better clarity, I recommend revising as follows:

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

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

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

601.1. Purpose and Policy

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the ~~reservation~~Reservation; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the ~~reservation~~Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the ~~reservation~~Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.¹

¹ The reason the amendments were requested by the Land Commission was to transfer hearing body authority from the land Commission to the Judiciary.

LOC believed that the law required extensive updating to **provide greater clarity** as to the intent of the law. Additionally, content was pulled from this law and created into other laws.

The Oneida Land Commission is charged with interpreting the provisions of this law and create policy to guide the Division of Land Management in implementing the same. Based on the previous language, LC has interpreted that they and DOLM have the responsibility for policy and management of the properties in New York. From my perspective, the change in the language between an earlier version of the law and the one presented for public comment impacts my interpretation and calls into question the authority of DOLM in managing the property in New York. Please review the comparisons below;

Previous Purpose

The purpose of this Law is to provide regulations and procedures for **the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line**; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

Current Purpose

The purpose of this law is to provide regulations and procedures for the transfer, control and management of the **territory within the reservation**; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction **within the reservation**; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

Previous Policy

The provisions of this Law shall extend to **all tribal lands and waters** held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of

601.2. Adoption, Amendment, Repeal

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

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

601.2-3. 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.

601.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control, provided that:

~~(a)~~ The, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

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

601.3. Definitions

601.3-1. 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, subject to 601.4-5.

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

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

(c) “Comprehensive Housing Division” means the entity responsible for housing matters as defined by Oneida Business Committee Resolution.²

~~(d)~~ “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose.

~~(de)~~ “Estate” means a person’s interest in real property or other property.

Wisconsin Reservation; and to such other lands as may be hereafter added, **both within and without the exterior boundaries of the Oneida Reservation**, under any law of the United States, except as otherwise provided by law.

Current Policy

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

Current Applicable Real Property. The provisions of this law extend to all Tribal land, Tribal member’s individual fee land, and individual trust land **within the Reservation boundaries** and all Tribal trust land.

Summary

Knowing that the properties in New York are going to be the topic of discussion with BC, LC, and Land Claims in the near future, I feel it would be prudent to actually solidify that language in the law. Not create more ambiguity.

² See BC Resolutions 08-10-16-L, 10-12-16-B and 10-12-16-D defining the Comprehensive Housing Division for purposes of the Mortgage and Foreclosure law, Eviction and Termination law and Landlord-Tenant law respectively..

(ef) “Fiduciary” means a person required to act for the benefit of another person on all matters within the scope of their relationship and by such a relationship owes another duties of good faith, trust, confidence and candor. For the purposes of this law, both brokers and salespersons are “fiduciaries.”

(fg) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

~~(gh)~~ “Individual Fee Land” means real property held in fee status by an individual or group of individuals.

(hi) “Individual Trust Land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.

(ij) “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.

(jk) “Land Use License” means an agreement entered into by the Nation providing a party the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and a specific duration, which may require the Nation to be compensated for such use.

(kl) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(lm) “Nation” means the Oneida Nation.

~~(mn)~~ “Personal Representative” means a person to whom authority to administer a decedent’s estate have been granted by the Division of Land Management or the Judiciary.

~~(no)~~ “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

(op) “Real Property” means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

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

(qr) “Restricted Fee Status” means an interest in real property which includes a provision in the deed or will that, upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.

(rs) “Rule” means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, Division of Land Management and/or the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

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

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

~~reservation~~ Reservation.

(wv) “Tribal Land” means Tribal fee land and Tribal trust land.
(xw) “Tribal Member” means an individual who is an enrolled member of the Nation.
(yx) “Tribal Trust Land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.

601.4. General Provisions

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

601.4-2. *Tribal Land Base.* ~~Any transaction~~The Division of Land Management shall administer all transactions which ~~adds~~add real property to the Tribal land base ~~must be administered through the Division of Land Management~~ under the provisions of this law.

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

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

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

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

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

601.5. Holding of Ownership

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

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

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

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

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

601.6. Legal Descriptions

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

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

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

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

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

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

601.7. Title Transfer

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

(a) The Division of Land Management shall ensure that Title-title companies ~~shall~~ follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstracter's certificate.

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

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

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

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

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

(a) A valid deed shall:

- (1) Be in writing;
- (2) Identify the grantor (seller) and grantee (buyer);
- (3) Provide the legal description of the real property;
- (4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;
- (5) Be signed by or on behalf of each of the grantors (sellers);
- (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and
- (7) Be delivered to the grantee (buyer).

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

- (1) The federal authority for trust acquisition;
- (2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;
- (3) The approximate acreage of the real property being transferred to trust; and
- (4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.

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

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

(a) Eminent Domain. Eminent domain is the right of the Nation's government to acquire private land for public uses without the consent of private owners.

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

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

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

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

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

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

- 231 | (A) The real property is within the ~~reservation~~Reservation boundaries;
- 232 | (B) The decedent's ownership in the given parcel of land is two percent
- 233 | (2%) or less of the total acreage; and
- 234 | (C) The interest is incapable of earning one hundred dollars (\$100.00) in
- 235 | any one (1) of the five (5) years immediately following the decedent's
- 236 | death.
- 237 | (2) A decedent's heirs may appeal a land consolidation under this section to the
- 238 | Judiciary.
- 239 | (3) Land consolidation is subject to the probate requirements, as included in this
- 240 | law and accompanying rules.
- 241 | (d) Transferring Interests Inherited by Non-Tribal Members. If the owner of an interest
- 242 | of real property which is held in trust or restricted fee status located within the
- 243 | ~~reservation~~Reservation devises such interest to a non-Tribal member, the Nation may
- 244 | acquire the said interest by paying the fair market value of the interest determined as of
- 245 | the date of the decedent's death. Such transfer is effective upon receipt of an order
- 246 | transferring inherited interests from the Judiciary pursuant to section 205 of the Indian
- 247 | Land Consolidation Act.
- 248 | (1) An order transferring inherited interests may not be granted if:
- 249 | (A) While the decedent's estate is pending, the non-Indian devisee
- 250 | denounces his or her interest in favor of a Tribal member person;
- 251 | (B) The interest is part of a family farm that is devised to a member of the
- 252 | immediate family of the decedent, provided that such a restriction
- 253 | ~~must~~shall be recorded as part of the deed relating to the interest involved;
- 254 | or
- 255 | (C) The devisee agrees in writing that the Nation may acquire the interest
- 256 | for fair market value only if the interest is offered for sale to a person or
- 257 | entity that is not a member of the immediate family of the owner of the
- 258 | interest.
- 259 | (e) Easements for Landlocked Properties. The Division of Land Management and the
- 260 | Oneida Land Commission shall jointly develop rules regarding requests for easements for
- 261 | landlocked properties.
- 262 | 601.7-4. Division of Land Management shall work with the Oneida Law Office in order to
- 263 | pursue an involuntary transfer of title.
- 264 |

265 | **601.8. Probate**

- 266 | 601.8-1. The Division of Land Management shall process and administer probate estates and,
- 267 | where necessary, shall refer probate estates to the Oneida Judiciary for formal administration.
- 268 | The Division of Land Management and the Oneida Land Commission shall jointly create any
- 269 | rules necessary to administer probate estates. The Division of Land Management shall:
- 270 | (a) Process applications for probate administration;
- 271 | (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate
- 272 | decedent's property pursuant to applicable laws and rules;
- 273 | (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- 274 | (d) Require and receive affidavits of service;
- 275 | (e) Receive waiver and consent to probate administration forms and any related
- 276 | affidavits;

- (f) Issue notice to creditors of the probate's administration, receive creditor claims for consideration and settlement, and issue discharge of creditors when appropriate;
- (g) Receive and process all estate inventories;
- (h) Receive and process, when possible, land transactions in accordance with this law and receive proof of recording documents;
- (i) Receive estate receipts;
- (j) In undisputed matters, receive and process statement of personal representative to close estate and issue discharge of personal representative; and
- (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and participate in the Judiciary's proceedings as necessary.

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

601.9. Leasing of Real Property

601.9-1. The ~~Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes. The~~ Division of Land Management shall administer and process all leasing of Tribal land for residential, agricultural and commercial purposes.

~~(a) For the purposes of this law, leasing refers to all leases made pursuant to in accordance with the Leasing law and all rental agreements made pursuant to the Landlord-Tenant law.~~

~~(b) ———.~~ The Leasing law definition of Tribal land does not include Tribal fee land, ~~however;~~ pursuant to this law, the Division of Land Management shall administer and process all leases of Tribal fee land lasting longer than one (1) year that are not made as part of the homeownership program ~~which uses~~using federal funding ~~must be administered and processed using~~in accordance with the Leasing law.

601.10. Records

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

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

- (a) Deeds;
- (b) Probate orders;
- (c) Mortgages and other valid liens;
- (d) Easements, covenants, and restrictions;
- (e) Certified survey maps and plats of survey;
- (f) Patents;
- (g) Declarations of involuntary transfer or taking;
- (h) Satisfactions;
- (i) Leases made pursuant to the Leasing law;

- (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- (k) Marriage agreements; and
- (l) Correction of title defects.

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

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

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

601.11. Real Estate ~~Licensing and Certification~~ Education Requirements and Certifications

601.11-1. *Wisconsin Real Estate ~~License~~ Education and Exam Required*. All persons engaging in the acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate closings, shall ~~have and maintain a valid~~ pass the Wisconsin ~~real estate~~ Real Estate License Exam. Such persons are not required to obtain a Wisconsin Real Estate License, but are required to fulfill the pre-license:

(a) — education requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of continuing education requirements as required of Wisconsin real estate licensees. The Division of Land Management Director shall select which continuing education courses are required and the Oneida Law Office shall provide the Director with a recommendation. In addition to Wisconsin's minimum education requirements as applied to the Nation's real estate employees in this law, the Division of Land Management shall require such employees to attend real estate training specific to the Nation's goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.

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

(b) All ~~persons engaging in the acquisition of Tribal land shall comply with the requirements and conduct standards applicable to the maintenance of a Wisconsin real estate license.~~

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

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

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

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

601.12. Organization

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

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

- (a) Interpret the provisions of this law and create policy to guide the Division of Land Management in implementing the same;
- (b) Approve or deny all easements and land use licenses;
- (c) Review and adopt the Division of Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;
- (d) Approve or deny all acquisition of Tribal land;
- (e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on rules which the Oneida Land Commission shall develop; and
- (f) Name all buildings, roads, parks and the like on Tribal land.

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

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

End.

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



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Oneida Nation Seal and Flag Law and Real Property Law Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center

December 1, 2016 12:15 p.m.

Present: Jennifer Webster, Jen Falck, Clorissa Santiago, Maureen Perkins, and Rae Skenandore.

Jennifer Webster: Greetings. The time is 12:15 p.m. and today's date is Thursday December 1, 2016. I will now call the public meeting for the Oneida Nation Seal and Flag law to order.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the LOC Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Thursday December 8, 2016.

In attendance from the LOC is, Jenny Webster. We will begin today's public meeting for the Oneida Nation Seal and Flag Law. This is a proposal that would; Recognize the official Oneida Nation Seal and describe where the seal should be used, Give authority to the Oneida Nation Secretary to govern the placement, maintenance and authorized use of the Oneida Nation Seal, Recognize the importance of publically demonstrating the sovereign authority and jurisdiction of the Nation through the proper flying of the Oneida Flag, Require all current and future Oneida Nation-owned buildings on the reservation that fly the Flag to do so pursuant to this law, Identify who is responsible for Flag duties, List the requirements for how the Flag is to be displayed, and Explain how the Flag is to be respected.

Is anybody here to speak on this first issue? –No Speakers-

12:20 Moving on to Real Property Law

The time is 12:20 p.m. and today's date is Thursday December 1, 2016. I will now call the public meeting for the Real Property Law amendments to order.

The LOC is hosting this public meeting to gather feedback from the community regarding these legislative proposals. All persons who wish to present oral testimony need to register and sign in the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the LRO Office in person, by U.S. mail, interoffice mail, e-mail or fax

as provided on the public meeting notice. These comments must be received by close of business day on Thursday December 8, 2016.

In attendance from the LOC is, Jenny Webster. We will begin today's public meeting for the Real Property Law Amendments. This is a proposal that would; remove hearing body authority from the Oneida Land Commission and transfer it to the Judiciary, Update the Probate Process, add Wisconsin state real estate education requirements for persons purchasing property on behalf of the nation, Provisions related to rental housing opportunities provided by the nation are moved to the Landlord Tenant law, Provisions related to mortgages and foreclosures within the nations programs are moved to the Mortgage and Foreclosure Law, Provisions related to termination or eviction from the nations leasing or rental programs are moved to the Evictions and Terminations Law.

Is there anyone here to speak on the Real Property Law Amendments? –No Speakers-

With nobody signed in and nobody here to speak on these issues we will close. The public meeting for the Real Property Law Amendments is now closed at 12:23 pm, written comments may be submitted until close of business day Thursday December 8th, 2016. The public meeting for the Oneida Nation Seal and Flag Law are now closed at 12:23 pm written comments may be submitted until close of business day Thursday December 8th, 2016. Thank you.

-End of Meeting-

Public Meeting Comments on the Real Property Law Amendments

Submitted by Rae Skenandore 12-8-16

The reason the amendments were requested by the Land Commission was to transfer hearing body authority from the land Commission to the Judiciary.

LOC believed that the law required extensive updating to **provide greater clarity** as to the intent of the law. Additionally, content was pulled from this law and created into other laws.

The Oneida Land Commission is charged with interpreting the provisions of this law and create policy to guide the Division of Land Management in implementing the same. Based on the previous language, LC has interpreted that they and DOLM have the responsibility for policy and management of the properties in New York. From my perspective, the change in the language between an earlier version of the law and the one presented for public comment impacts my interpretation and calls into question the authority of DOLM in managing the property in New York. Please review the comparisons below;

Previous Purpose

The purpose of this Law is to provide regulations and procedures for **the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line**; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

Current Purpose

The purpose of this law is to provide regulations and procedures for the transfer, control and management of the **territory within the reservation**; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction **within the reservation**; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

Previous Policy

The provisions of this Law shall extend to **all tribal lands and waters** held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, **both within and without the exterior boundaries of the Oneida Reservation**, under any law of the United States, except as otherwise provided by law.

Current Policy

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

Current Applicable Real Property. The provisions of this law extend to all Tribal land, Tribal member's individual fee land, and individual trust land **within the Reservation boundaries** and all Tribal trust land.

Summary

Knowing that the properties in New York are going to be the topic of discussion with BC, LC, and Land Claims in the near future, I feel it would be prudent to actually solidify that language in the law. Not create more ambiguity.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: January 25, 2017
RE: Real Property Law Amendments

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

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

Overview

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

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

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

Requested Action

Approve the Resolution: Real Property Law Amendments.

BC Resolution _____
Adoption of Real Property Law Amendments

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 Nation Constitution by the Oneida General Tribal Council; and

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

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

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

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

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

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

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

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

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

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

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

Resolution _____

Page 2

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

601.9. Leasing of Real Property

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

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

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

- (a) Possession of Leased Premises;
- (b) Improvements;
- (c) Maintenance of Premises;
- (d) Assignment and Subleasing;
- (e) Options to Renew;
- (f) Destruction of Premises;
- (g) Termination of Lease;
- (h) Breach of Lease;
- (i) Use of Premises;
- (j) Term of Lease; and
- (k) Security Deposit.

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

601.9-5. 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 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.

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



Statement of Effect

Adoption of Real Property Law Amendments

Summary

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

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

By: Krystal L. John, Staff Attorney

Analysis

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

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

The effective date of the law is extended to June 25, 2017, to align with the required effective date for all rules required to be developed by these amendments, provided that the resolution

permits the rules related to residential sale to become effective sooner than June 25, 2017. The Residential sales rule is permitted to become effective sooner because the Real Property law previously contained a general delegation of rulemaking authority to implement the law which would have allowed the residential sales rule to be adopted without requiring these amendments.

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

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

Conclusion

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



Real Property Law Amendments

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

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7
8 **Overview**
9 The Real Property Law has been redrafted; pulling out content into three separate laws (Landlord-Tenant, Mortgage and Foreclosure, and Eviction and Termination).¹ Additionally,

¹ It should be noted that the version of this law that is currently effective also includes provisions related to leasing. This detail was pulled out into the Leasing law with the amended version of the Real Property law that was adopted by BC-05-13-15-B and will become effective upon the BIA's approval of our Leasing law. These

Analysis to draft #8 for OBC Consideration 2017 01 25

hearing body authority was removed from the Land Commission and transferred to the Judiciary, the probate process was updated and Wisconsin State real estate education and testing requirements were added for persons purchasing property on behalf of the Nation.

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

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

Proposed Amendments

- The Rules of Statutory Construction *[see 67.2 of current law]* were removed from the current Real Property law as this provision was intended to guide contested cases; these provisions are not necessary under this amended draft because the Judiciary will hear contested cases – these rules are not typically included in laws.
- The probate section *[see 67.9 of current law]* was reworked and the Division of Land Management and the Oneida Land Commission were given rulemaking authority to jointly develop rules related to probate *[see 601.8]* under the Administrative Rulemaking law.
- Real Estate Trust Accounts section *[see 67.10 of current law]* was removed as these functions are performed through the rules under the Mortgage and Foreclosure law and detail regarding where the funds are kept is not necessary in this law.
- The Leasing law references tribal land only and does not include Tribal fee land *[see 602.4-3]*. The Leasing law is drafted to align with the HEARTH Act (federal legislation) which only applies to tribal land and excludes lands held in fee status, held in trust for individual Indian landowners as well as mineral leases. These proposed Real Property law amendments state that all leases, go through the Leasing law process regardless of whether the lease is on Tribal trust land or Tribal fee land *[see 601.9-1]*.
- General contracts were removed from the records section *[see 601.10]*. There was little guidance under the current law *[see 67.12-2 of current law]* and records that were not useful were recorded. The amended law refocuses the Oneida Register of Deeds to only accept records that affect land titles.
- The real estate licensing section *[see 67.13 of current law]* was amended to remove the Nation's Tribal Property License requirement and instead require- State of Wisconsin real estate education and exam. Under the amended law, Wisconsin Real Estate education and exam is required for all persons performing real estate closings *[see 601.11-1]*. An Oneida specific training is still required that focuses directly on the Nation's acquisition goals and the unique circumstances that apply to Indian nations. Persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and are not be eligible for a commission *[601.11-1(a)]*. Requiring State of Wisconsin education and

amendments to the Real Property law incorporate the Leasing law by reference, and upon adoption will replace the version of this law adopted by BC-05-13-15-B.

Analysis to draft #8 for OBC Consideration 2017 01 25

exam places those who purchase land on behalf of the Nation on equal footing with the seller, which is an advantage to the Nation. Also, the Nation's Tribal Property License program lacked oversight, which will now be provided through Wisconsin State real estate education. Finally, by requiring Wisconsin real estate education the Land Commission is removed from enforcement issues arising from questions regarding licensing complaints.

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

Rulemaking Authority

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

- The Division of Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties *[see 601.7-3(e)]*.
- The Division of Land Management and the Oneida Land Commission shall further develop rules related to probate *[see 601.8-1]*. The rules will include timelines to ensure timely probate completion and land consolidation *[see 601.7-3(c)(3)]*.
- The Oneida Land Commission shall develop rules to allocate and assign land uses to all Tribal land, except uses governed by the Public Use of Tribal Land law *[see 601.12-2(e)]*.

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- 99 ▪ The Oneida Land Commission and the Comprehensive Housing Division shall exercise
100 joint rulemaking authority to provide process requirements, including but not limited to
101 advertising, notice, prequalification, and selection, that apply in all circumstances when
102 the Nation is selling a residential property [*see 601.12-1*].
 - 103 ▪ The Division of Land Management and the Oneida Land Commission shall develop
104 easement and land use license rules [*see 601.12-3(a)*].
 - 105 ▪ The Oneida Planning Department shall develop the Land Use Technical Unit rules in
106 collaboration with the Oneida Land Commission [*see 601.12-2(e)*].
-



Legislative Operating Committee January 18, 2017

Tobacco Amendments

Submission Date: 7/22/16	Public Meeting: 12/15/16
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

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

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

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

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

11/16/16 LOC: Motion by Jennifer Webster to approve the Tobacco Law Amendments public meeting packet and direct the LRO to hold a public meeting on December 15, 2016; seconded by Tehassi Hill. Motion carried unanimously.

12/15/16: Public Meeting Held.

01/04/17LOC: Motion by Tehassi Hill to accept the Tobacco Law Amendments public meeting comments; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Tehassi Hill to request an updated legislative analysis and fiscal analysis be brought back by January 12, 2017 and to direct the LRO to put together an adoption packet with the noted changes; seconded by Jennifer Webster. Motion carried unanimously.

Noted changes include: 1) alphabetize the definitions, 2) remove the definition

of manager, 3) on line 77 tobacco outlet changed to Oneida retail location, 4) on line 89 removed Oneida Nation, 5) on line 97 added “or her” and 6) on line 105 removed Oneida Nation.

Next Steps:

- Approve the Tobacco Law Amendments adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: January 25, 2017
RE: Tobacco Law Amendments

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

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

Overview

This Resolution adopts amendments to the current Tobacco Ordinance. The amendments:

- Remove the requirement that all employees be enrolled members of the Oneida Nation allowing Oneida Retail locations to employ persons not enrolled in the Oneida Nation; and
- Replace the term “tobacco outlet” with “Oneida retail location;” and
- Update the language and format to ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the amendments on December 15, 2016, with a comment period closing on December 22, 2016. Those comments were accepted and considered by the LOC at the January 4, 2017, LOC meeting.

Requested Action

Approve the Resolution: Tobacco Law Amendments.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Tobacco 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 Tobacco Ordinance (the "Ordinance") was adopted by the Oneida Business Committee by resolution BC-11-18-81-A and amended by resolution BC-10-10-07-A and BC-04-09-14-F; and
- WHEREAS,** amendments now refer to the Ordinance as the Tobacco law in alignment with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward; and
- WHEREAS,** currently, the Ordinance requires all Oneida retail employees be enrolled members of the Oneida Nation; and
- WHEREAS,** the amendments remove the requirement for enrollment in the Oneida Nation from the Law allowing Oneida Retail locations to employ persons not enrolled in the Oneida Nation; and
- WHEREAS,** a public meeting on the amendments was held on December 15, 2016, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on January 4, 2017.
- NOW THEREFORE BE IT RESOLVED,** that the amendments to the Tobacco law are hereby adopted.



Statement of Effect

Tobacco Law Amendments

Summary

This Resolution adopts amendments to the Tobacco Law (the “Law”) that remove the requirement that Oneida Retail employees be enrolled members in the Oneida Nation.

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

Analysis by the Legislative Reference Office

Amendments to the Tobacco Ordinance (the “Ordinance”) retitle the Ordinance as a law in alignment with the Legislative Operating Committee’s (LOC’s) directive that all policies are to be classified as laws moving forward.

Currently, the Ordinance requires that all employees of an Oneida retail location be enrolled members of the Oneida Nation. The amendments remove the requirement for enrollment in the Oneida Nation from the Law allowing Oneida Retail locations to employ persons not enrolled in the Oneida Nation

Although the Law removed all references to enrollment requirements, the Nation’s Oneida Preference and Indian Preference Policy still governs and provides Oneida applicants preference in hiring for Oneida retail positions. The January 8, 1990 General Tribal Council directive that general managers and all top administrative positions shall be held by enrolled members of the Nation will still apply to Oneida retail location positions. Additionally, the Nation’s Human Resource Department has an Oneida Enrolled Tribal Member Requirements on Job Descriptions work standard, which defines criteria used to determine positions within the structure of the Oneida Nation which shall be held by an enrolled member of the Nation, would still apply to Oneida retail positions.

Additional amendments:

- replace the term “tobacco outlet” with “Oneida retail location;” and
- remove the term “manager” from the definitions; and
- replace the term “tribal employee” with “employee;” and
- update Section 115.4-2 to remove the requirement that Oneida retail locations be managed and operated by a tribal employee and instead state that Oneida retail locations be managed and operated by the Oneida Nation; and
- replace references to the “Personnel Policies and Procedures” with the “Nation’s laws, rules and policies governing employment” so that the Law allows for the possibility of future legislation regarding employment; and
- replace various references to the “Tribe” with “Nation” to reflect the 2015 Constitutional Amendments; and

- update Section 115.2. to ensure compliance with the language required by the Legislative Procedures Act; and
- update the language and format to ensure compliance with drafting style and formatting requirements.

A public meeting on the proposed amendments was held on December 15, 2016, in accordance with the Legislative Procedures Act. On January 4, 2017, the LOC reviewed all comments received during the public comment period; and any changes made based on those comments have been incorporated into this draft.

Conclusion

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



Tobacco

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<i>Analysis by the Legislative Reference Office</i>					
Title	Tobacco (law)				
Sponsor	Tehassi Hill	Drafter	Clorissa N. Santiago	Analyst	Maureen Perkins
Requester & Reason for Request	Dawn Moon-Kopetsky and Retail Division Amend the law to allow Oneida Retail to hire non-Oneida employees due to inability to keep positions filled with current restrictions to only hire Oneida members in retail.				
Purpose	Regulates the sale, possession and distribution of cigarettes within the Reservation.				
Authorized/ Affected Entities	Oneida Retail Enterprise, Oneida Human Resources Department, Judiciary				
Related Legislation	Rules of Civil Procedure				
Enforcement & Due Process	All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer [see 115.8-1]. Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation [see 115.8-1(a)]. Oneida Nation employees who violate this law shall be subject to disciplinary action in accordance with the Nation's laws, rules, and policies governing employment [see 115.8-1(b)]. Persons issued citations under this law may contest the citation with the Nation's judicial system [115.8-2].				
Public Meeting Status	A public meeting was held December 15, 2016.				

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Overview

8 Amendments to the Tobacco Ordinance were requested by a Tribal member and the
 9 Oneida Retail Enterprise to remove restrictions that require Oneida Retail employees be enrolled
 10 Members of the Nation. The Oneida Retail Enterprise is having difficulty hiring and retaining
 11 Retail Associates and the restrictions in the current Ordinance requiring employees of Oneida
 12 Retail be enrolled Members is limiting their ability to fully staff the Oneida retail locations. The
 13 Retail Enterprise has averaged approximately 5-8 vacancies within the past 18 months.

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Proposed Amendments

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- “Manager” was removed from the definitions list.
 - Oneida and Indian Preference in hiring will govern and provide Oneida applicants preference in Retail positions.
 - The January 8, 1990 GTC directive that the General Manager's and all top administrative positions be held by enrolled tribal members will apply to these

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- positions through the HRD hiring process.
- “Tribal Employee” was removed from the definitions list and replaced with “Employee” which is defined as a person employed by the Oneida Nation working in an Oneida retail location. This change removed restrictions that employees of Oneida Retail be enrolled members of the Nation.
 - Indian Preference in hiring will govern and provide Oneida applicants with preference in Retail positions.
 - Section 115.4-2 was updated to remove the requirement that Oneida Retail locations be managed and operated by a Tribal Employee and instead states that Oneida retail locations be managed and operated by the Oneida Nation. Indian preference and the GTC motion regarding hiring Tribal members will still apply to hiring Oneida Retail managers.
 - Reference to Personnel Policies and Procedures was removed and replaced with the Nation’s laws, rules and policies governing employment. This language is more general and allows for the possibility of future legislation regarding employment [*see 115.8-1(b)*].
 - The Violations section [*see 115.8-2*] was amended to clarify that citations under this law are contested (not appealed) to the Nation’s judicial system.

Other

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

Considerations

- The job descriptions for the Oneida Retail Enterprise positions will need to be updated to reflect changes in this law.
-

Title 1. Government and Finances - Chapter 60115**TOBACCO ORDINANCE****Oyú·kwa? Olihwá·ke***matters concerning tobacco*

60115.1. Purpose and Policy

60115.2. Adoption, Amendment, Repeal

60115.3. Definitions

60115.4. Tobacco OutletsOneida Retail Locations

60115.5. Purchase of, Title to And Possession of Tobacco

Products

60115.6. Restrictions on Sales

60115.7. Tribal Liability

60115.8. Violations

60115.1. Purpose and Policy

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

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

60115.2. Adoption, Amendment, Repeal

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

60115.2-2. This Lawlaw may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

60115.2-3. Should a provision of this Lawlaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Lawlaw which are considered to have legal force without the invalid portions.

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

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

60115.3. Definitions

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

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

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

(c) ~~“Manager” shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin~~ Employee” means a person employed by the Tribe to manage a Tobacco outletOneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation”-shall mean.

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

(eg) “Stamped Cigarettes” shall mean~~means~~ cigarettes bearing valid Wisconsin tax stamps.

~~(f) “Tobacco Outlet” shall mean a Tribal retail sales business selling stamped cigarettes within the Oneida Indian Reservation.~~

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

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

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

~~60.4. Tobacco Outlets~~

~~60.~~

115.4. Oneida Retail Locations

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

~~60115.4-2.~~ Each ~~tobacco outlet~~Oneida retail location established hereunder shall be ~~a Tribal Tobacco Outlet and shall be managed or~~and operated ~~for~~by the ~~Tribe by a Tribal employee~~Oneida Nation.

60115.5. Purchase of, Title to ~~And~~and Possession of Tobacco Products

~~60115.5-1.~~ The ~~Tribe~~Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to ~~a tobacco outlet~~an Oneida retail location on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the ~~tobacco outlet~~Oneida retail location to be held for sale to the consumers. The ~~Tribe~~Nation shall retain title to stamped cigarettes until sold to a consumer.

60115.6. Restrictions on Sales

~~60115.6-1.~~ The ~~Tribe~~Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the ~~Tribe~~Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

~~60115.6-2.~~ The ~~Tribe~~Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at a ~~tobacco outlet~~Oneida retail location.

~~60115.6-3.~~ Cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18). Cigarettes and electronic cigarettes for sale at ~~a tobacco outlet~~an Oneida retail location shall be on display behind a counter. No person other than an authorized ~~Tribal~~employee shall sell cigarettes and electronic cigarettes at ~~a tobacco outlet~~an Oneida retail location.

~~60115.6-4.~~ No person may sell or offer for sale unstamped cigarettes on the Reservation.

60115.7. Tribal Liability

~~60115.7-1.~~ The ~~Tribe~~Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a

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

60115.8 Violations

60115.8-1. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law~~law~~ are unlawful property and subject to seizure by any Oneida law enforcement officer.

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

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

60115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person ~~files an appeal~~contests the citation with the ~~Tribe's~~Nation's judicial system before the fine is to be paid.

End.

Adopted - BC-3-15-76-A

Adopted - BC-11-18-81-A

Adopted - BC-9-7-77-B

Amended - BC-10-10-07-A

Adopted - BC-9-4-79-C

Amended - BC-04-09-14-F

Title 1. Government and Finances - Chapter 115
TOBACCO
Oy&=kwa> Olihwa@ke
matters concerning tobacco

115.1. Purpose and Policy
115.2. Adoption, Amendment, Repeal
115.3. Definitions
115.4. Oneida Retail Locations

115.5. Purchase of, Title to And Possession of Tobacco Products
115.6. Restrictions on Sales
115.7. Liability
115.8. Violations

115.1. Purpose and Policy

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

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

115.2. Adoption, Amendment, Repeal

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

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

115.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

115.3. Definitions

115.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

(d) "Nation" means the Oneida Nation.

(e) "Oneida Retail Location" means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

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

(g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

115.4. Oneida Retail Locations

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

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

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

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

115.6. Restrictions on Sales

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

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

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

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

115.7. Liability

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

115.8 Violations

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

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

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

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

End.

Adopted - BC-3-15-76-A

Adopted - BC-11-18-81-A

Adopted - BC-9-7-77-B

Amended - BC-10-10-07-A

Adopted - BC-9-4-79-C

Amended - BC-04-09-14-F

MEMORANDUM

DATE: January 5, 2017

FROM: Rae Skenandore, Project Manager

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

RE: **Fiscal Impact Tobacco Amendments**

I. Background

This Law was adopted by the Oneida Business Committee by resolution BC-11-18-81-A and amended by resolution BC-10-10-07-A and, BC-04-09-14-F. A public meeting was held on December 15, 2016. The Legislative Operating Committee (LOC) has requested a fiscal analysis on the amendments to the Law that would remove restrictions that Oneida Retail employees be enrolled Oneida Tribal Members.

II. Executive Summary of Findings

A “Fiscal impact statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation. The analysis was completed on Draft 2 for OBC Consideration 2017 01 11.

Employment in the Oneida Retail Enterprise (ORE) has consisted solely of Tribal members for the last 36 years. To ease the transition to a new multicultural environment, ORE will be offering diversity training over a period of six months to minimize potential disruptions to operations.

Employees	Average Wage	Hours	Total
108	\$ 15.00	4	\$6,480

The expense is included in ORE's 2017 budget. Implementation of the Law is dependent on the training, which is dependent upon an approved 2017 budget. Estimated date of approval is March 27th 2017. Estimated date for training to be complete is approximately 3-6 months or July of 2017 depending on the approval of the amendments.

III. Financial Impact

\$6,480

IV. Recommendation

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



Legislative Operating Committee
January 18, 2017

Drug and Alcohol Free Workplace Emergency Amendments

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

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

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

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

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

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

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

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

Next Steps:

- Review draft and:
 - Direct any necessary changes to the draft; and/or
 - Refer to a work meeting; and/or
 - Forward to the Legislative Reference Office for a legislative analysis.

Title 2. Employment – Chapter 202

~~Drug and Alcohol Free Workplace Policy~~ DRUG AND ALCOHOL FREE WORKPLACE

~~Article I~~202.1. Purpose and Policy
~~Article II~~202.2. Adoption, Amendment, Repeal
~~Article III~~202.3. Definitions
~~Article IV~~202.4. Application
~~Article V~~202.5. Shared Responsibility
~~Article VI~~202.6. Prohibited Behavior
~~Article VII~~202.7. Reasonable Suspicion
~~Article VIII~~202.8. Drug and Alcohol Testing

~~Article IX~~202.9. Refusal to Test
~~Article X~~202.10. Reasonable Suspicion Testing Waiting Period
~~Article XI~~202.11. Consequences for Prohibited Behavior
~~Article XII~~202.12. Re-hire
~~Article XIII~~202.13. Other Potential Consequences
~~Article XIV~~202.14. Confidentiality
~~Article XV~~202.15. Communication

~~Article I~~202.1. Purpose and Policy

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

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

~~Article II~~202.2. Adoption, Amendment, Repeal

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

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

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

202.2-4. In the event of a conflict between a provision of this ~~Policy Law~~ and a provision of another ~~Policy Law~~, the provisions of this ~~Policy Law~~ shall control.

202.2-5. This ~~Policy Law~~ is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~-Nation.

~~Article III~~202.3. Definitions

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

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

(b) “Confirmed positive test result” ~~shall~~means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this ~~Policy Law~~ (levels established by the United States Department of Health and Human Services), confirmed

saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

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

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

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

~~(fe)~~ “HRD” shall mean the Human Resources Department and/or representatives performing Human Resources functions applicable to this Policy Law.

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

~~(hg)~~ “MRO” ~~shall~~ means Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing ~~laboratory-confirmed positive test~~ results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

(i) “Nation” means the Oneida Nation.

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

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

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

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

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

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

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

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

202.4Article IV. Application

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

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

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

202.4-43. An employee is not exempted from this ~~Policy Law~~ if they travel to another state, territory or country where the use of certain drugs is legal.

Article V202.5. Shared Responsibility

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

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

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by EHN and the MRO. The employee shall~~and~~ return the call of the MRO within twenty-four (24) hours of the call being made to the employee. ~~An e~~Employees who ~~fails~~ to cooperate and ~~does~~ not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.
- (f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority. ~~supervisor, EHN, a certified drug and alcohol technician, or police personnel in accordance with this Policy.~~
- (g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

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

- (a) Be familiar with this ~~Policy Law~~ and any related policies and procedures.
- (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.

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

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

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

(f) Take appropriate action as outlined by this Policy Law.

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

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

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

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

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

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

(b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from ~~his~~ ~~or her~~~~the employee's~~ physician or pharmacist.

(c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.

(d) It may be necessary for the employee's supervisor, area manager or ~~Employee Health Nursing (EHN)~~ to consult with the employee's personal physician, pharmacist or an MRO, with the employee's approval or written authorization, to determine if the medication might impact the employee's ability to perform ~~his~~ ~~or her~~~~the employee's~~ job, or pose a hazard to other employees or to the general public.

(e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

Article VI 202.6. Prohibited Behavior

202.6-1. An applicant or employee of the TribeNation is in violation of this Policy Law if he or she:

- (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding section 202.11 ~~Article XI~~, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the TribeNation.
- (b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the TribeNation.
- (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.
- (d) Refuses to test.
- (e) Has a confirmed positive test after completing a drug and/or alcohol ~~forensic~~ test through EHN or ~~its designee~~ a medical facility, or has a confirmatory test come back as positive.

Article VII 202.7. Reasonable Suspicion

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

- (a) Specific, ~~contemporaneous and articulable~~ observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse.
- (b) The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

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

Article VIII 202.8. Drug and Alcohol Testing

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

202.8-2. The Employee Health Nursing Department or its designee shall use Federal Drug Administration approved urine tests and National Highway Transportation Safety Administration (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices,

operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

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

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

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

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

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

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

202.8-6. Dilution of Test Results. In cases where a drug test result is diluted, a positive dilute of the test result requires that a test result is dilute the applicant or employee shall be given a confirmed positive test result, while a negative dilute of the test result requires ~~d or the test was cancelled, retesting. urine for drugs is required.~~ EHN shall notify the applicant or employee of the required retesting.

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

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

Article IX 202.9. **Refusal to Test**

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

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

(b) Refusal to sign the required forms

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

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

(e) Providing an insufficient sample of urine or breath

(f) Failing to test or to re-test

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

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

202.10 ~~Article X.~~ **Reasonable Suspicion Testing** **Waiting Period**

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

202.10-2 During drug and alcohol testing for reasonable suspicion, ~~a~~An employee shall be immediately removed from duty without pay ~~during the waiting period between~~at the time of specimen collection for the drug and alcohol tests until ~~and~~ the employer ~~is-s~~ notified by ~~EHN~~ation of negative results on both the drug and alcohol tests, ~~alcohol and drugs,~~ or MRO-verified negative test results.

202.10-32. When ~~negative confirmation of~~ test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date if the test was confirmed negative, or applicable consequences if the test was confirmed positive. ~~If the employee is reinstated, b~~Back pay shall be provided in accordance with the Back Pay ~~Policy~~law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws, rules and policies governing employment~~Personnel Policies and Procedures~~, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

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

Article XI 202.11. Consequences for Prohibited Behavior

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

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

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

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

202.11-5. Consequences.

(a) *First Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 Article VI for the first time shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also

determine if the employee shall be subject to return-to-duty/follow-up testing. If follow-up testing is required, the testing shall be at the employee's expense.

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

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

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

(b) *Second Violation.*

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

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

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

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

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

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

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

(c) *Third Violation.*

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

Article XII 202.12. Re-hire

202.12-1. A fFormer employees that wasere terminated due to violations of this Policy Law shall provide, along with their-the former employee's application for employment, the following:

- (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at ~~their~~ the former employee's own expense.

~~Article XIII~~ **202.13. Other Potential Consequences**

~~202.13-1.~~ 202.13-1. —The violation of this ~~Policy-Law~~ may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- (a) *Disqualification of Unemployment Benefits:* ~~An e~~Employees who ~~is~~are terminated as a result of a violation of this ~~Policy-Law~~ may be ineligible for unemployment benefits.
- (b) *Reduction of Workers Compensation Benefits:* ~~An e~~Employees who ~~suffer-incurs~~ an injury in a work-related accident that occurred while engaged in a violation of this ~~Policy Law~~ may have any workers compensation benefits reduced.
- (c) *Criminal Penalties:* ~~An e~~Employees whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.
- (d) *Liability for Accidents:* ~~An e~~Employees whose conduct in violation of this ~~Policy-Law~~ causes an accident may be held personally responsible for losses associated with the accident, and ~~the employee~~ may be required to pay for those losses.

~~Article XIV~~ **202.14. Confidentiality**

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

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

~~Article XV~~ **202.15. Communication**

~~202.15-1.~~ 202.15-1. HRD shall communicate this ~~Policy-Law~~ to all employees to ensure all employees are aware of their role in supporting this ~~PolicyLaw~~:

- (a) All employees shall be given information on how to access this ~~PolicyLaw~~.
- (b) This ~~Policy-Law~~ shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.
- (c) All employees shall sign an acknowledgment form stating they have received a copy of this ~~PolicyLaw~~, have read and understand it, and agree to follow this ~~PolicyLaw~~.

End.

See GTC-1-31-94-B
Adopted by the OBC on 8-17-94
Emergency Amendments BC-04-20-95-C
Adopted BC-10-25-95-A (repealed previous versions)

Amended BC-10-20-99-A
Amended BC-12-05-07-B
Amended BC-12-11-13-F
Amended BC-10-26-16-



Legislative Operating Committee
January 18, 2017

Endowments Law Amendments

Submission Date: 12/21/16	Public Meeting: none
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *An amendment to identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law as identified in the Administrative Rulemaking law for the purposes of developing rules.*

12/21/16 LOC: Motion by David P. Jordan to add Endowments Amendments to the Active Files list as a high priority with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

01/04/17LOC: Motion by David P. Jordan to forward the Endowment Fund Amendments to the LRO and the Finance Department for a legislative analysis and fiscal analysis to be completed by January 12, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Approve the public meeting packet and forward the Endowments Law Amendments to a public meeting to be held on February 16, 2017.

NOTICE OF
PUBLIC MEETING
TO BE HELD
Thursday, FEBRUARY 16th at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

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

TOPIC: ENDOWMENTS

This is a proposal to amend the existing Endowments Law which would:

- ◆ Identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law as required in the Administrative Rulemaking law for the purposes of developing rules; and
- ◆ Update language and ensure compliance with drafting style and formatting requirements; and
- ◆ Reformat the law to align with the approved reorganization of the laws.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL FEBRUARY 23, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidanation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Endowments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: JoAnne House	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
Intent of the Amendments	To grant Administrative Rulemaking authority by resolution to programs based upon criteria established by the endowments created under the Endowments law.		
Purpose	The purpose of this law is to provide the process for the establishment and maintenance of all endowment accounts established by the Oneida Nation <i>[see 131.1-1]</i> .		
Affected Entities	Finance Committee, Oneida Nation Treasurer, Oneida Business Committee, Oneida departments, Trust Enrollment Committee, Chief Financial Officer, Trust Enrollment Department,		
Affected Legislation	Administrative Rulemaking		
Enforcement/Due Process	There are no enforcement or due process provisions included in the law.		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A.** The current Endowments law does not include rulemaking authority. The current amendments fill this gap by granting rulemaking authority to Oneida entities according to a resolution adopting the creation of the specific endowment *[see 131.11]*.
- B.** This process opens endowments created according to the Endowments law to Oneida entities to create programming based upon criteria created by resolution.

SECTION 3. CONSULTATION

- A.** The Oneida Law Office, the Treasurer's Office and the Finance Committee were consulted in the proposed amendments of this law.
- B.** The amendments have incorporated the Administrative Rulemaking law to grant rulemaking authority by resolution.

SECTION 4. PROCESS

- A.** The amendments are following the legislative process as legislative and fiscal analyses have been requested with a public meeting to be requested.
- B.** The Endowment Fund Amendments were added to the Active Files list as a high priority on December 21, 2016.

SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A.** Administrative Rulemaking authority was granted through this law to be administered to Oneida entities by resolution *[see 131.11]*. This allows future endowments to be created under the

Endowments law and allows Oneida entities to create rules regarding how their programming under the established endowments will work.

- B.** The proposed amendments are written to the current standard of the Oneida Business Committee with the law containing the overarching goal of the endowment fund account process and the rules, as granted by administrative rulemaking and authorized by resolution. The rules created by Oneida entities utilizing the endowment funds will contain more detailed directives which will undergo public comment period and Oneida Business Committee input.
- C.** Section 131.10 was amended to mirror language in section 131.9. Specifically a two-thirds (2/3) vote of the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee are required to dissolve an established endowment [see 131.10-1(a)]. Additionally, a two-thirds (2/3) vote of the Oneida General Tribal Council is required if the proposed dissolved account contains five hundred thousand dollars (\$500,000) or more [see 131.10-1(a)(1)]. These requirements are already present in the law under the Reduction of Principal section [see 131.9-1(a) and 131.9-1(a)(1)].
- D.** Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. The Trust Department has been changed to the Trust Enrollment Department to reflect the current title of the department. The Trust Committee was changed to the Trust Enrollment Committee to reflect the current title of the Committee. Section 131.2 was updated to reflect the requirements set out in the Legislative Procedures Act. The law has been reformatted in accordance with the Oneida Code of Laws Reorganization Project.

SECTION 6. INTENT

- A.** The intent of the changes is to provide rulemaking authority to Oneida entities to expend endowment funds created by resolution as established by the Trust Enrollment Committee.
- B.** The legislation applies to the Trust Enrollment Committee, the Oneida Business Committee and the Oneida Finance Committee in the creation and function of endowment accounts. And grants rulemaking authority to Oneida entities in expending funds from established endowment funds.

SECTION 7. EFFECT ON EXISTING LEGISLATION

- A.** There are no impacts or conflicts with existing legislation.

SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A.** The proposed legislation provides a method for Oneida entities to access endowment funds established under the Endowments law.
- B.** This law does not contain due process procedures.
- C.** No terms of office will be affected.
- D.** The proposed amendments will not affect any existing legal agreements.

SECTION 9. ENFORCEMENT

- A.** There aren't any enforcement mechanisms in the current or amended law.

SECTION 10. ACCOUNTABILITY

- A. The Oneida Business Committee is responsible for the oversight of the law and requesting accounts to be audited *[see 131.4]*. The Oneida Finance Committee is responsible for establishing endowment fund accounts with final approval of the Oneida Business Committee. This process requires proposals to be published in the Kalihwisaks and presentation at a community meeting *[see 131.5]*. Endowments fund accounts established by private donors shall be established within 120 days from notice from the Finance Committee of the donation *[see 131.5-1(b)]*. Trust Enrollment Committee shall have exclusive authority of the investment and collection of principle, interest and investments of all monies deposited in and income derived from all Oneida Nation endowment fund accounts *[see 131.6-1]*.
- B. The Trust Enrollment Committee is also responsible to provide OBC and GTC with written annual financial reports *[see 131.6-3]*. The Trust Enrollment Committee shall submit a semi-annual report to the Oneida Business Committee *[see 131.6-7]*. The Director of the Oneida Tribal Trust Enrollment Department shall submit to the Oneida Trust Enrollment Committee and the Office of the Oneida Nation Treasurer, quarterly financial reports and performance measurements on all Oneida Nation endowment fund accounts. The quarterly financial reports shall include an itemized accounting of all expenditures *[see 131.7-2]*.
- C. All reports to the OBC and the GTC are publically available to the Oneida public.

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Title 1. Government and Finances - Chapter 13184

ENDOWMENTS

On^yote'a:ka Luwatithwistay^hahse Kay^tla'sla

Oneida Money Saved for our People the Laws

13184.1+ Purpose and Policy	13184.7+ Powers and Duties of the Director of the Oneida Trust
13184.2+ Adoption, Amendment, Repeal	Department Trust Enrollment Department
13184.3+ Definitions	13184.8+ Transfer of Funds
13184.4+ Powers and Duties of the Oneida Business Committee	13184.9+ Reduction of Principal
13184.5+ Powers and Duties of the Oneida Finance Committee	13184.10+ Dissolution of Endowment
13184.6+ Powers and Duties of the Oneida Trust Committee Trust	Accounts
Enrollment Committee	131.11 Administrative Rulemaking Authority

84131.1.-1. Purpose and Policy.-

131.1-1. The purpose of this law is to provide the process for the establishment and maintenance of all endowment accounts established by the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

84131.1-2. It is the policy of the ~~Tribe Nation~~ that endowments will be maintained, protected and grown in value for the benefit of the Oneida people, both those in the present, and future generations.

84131.2.-1. Adoption, Amendment, Applicability and Repeal.-

131.2-1. This Law is adopted ~~under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin~~ by the Oneida Business Committee ~~by r~~ Resolution BC-#02-23-05-G and BC.

84131.2-2. This Law may be amended, or repealed, by the Oneida Business Committee ~~and/or by the Oneida General Tribal Council~~ pursuant to the procedures set out in the Legislative Procedures Act.

84131.2-3. Should a provision of this law or the application thereof to any person or circumstances of this law be held as invalid, such invalidity shall not effect other provisions of this law which are considered to have legal force without the invalid portions.

84131.2-4. ~~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.

84131.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

84131.3.-1. Definitions.-

131.3-1. 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.

84 (a) -3-2. "Contribution" means a cash or check donation to the Oneida ~~Tribe Nation~~ for the purpose of contributing to an existing endowment account, or for the establishment of an endowment account. In addition, a contribution or gift may be accepted if it has potential monetary value, which may include, but not be limited to, stocks, bonds, real estate, property, and other assets including, but not limited to, assets which are current, commercial, equitable, earning, tangible and intangible.

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84 ~~(b) .3-3.~~ “Endowment fund account” means an account established from a gift, bequest or grant of monetary value, granted to the Oneida ~~Tribe~~Nation, or by the Oneida ~~Tribe~~Nation for the establishment of, or contribution to, an endowment account for a specified purpose which may be invested or deposited to grow and provide income to finance operations and programs of the ~~Tribe~~Nation or as specified in the creation of an account with an identified trustee.

84 ~~(c) .3-4.~~ “Income” means money or its equivalent derived from financial investments. The term includes interest, dividends or capital appreciation.

84 ~~(d) .3-5.~~ “~~Tribe or Tribal~~Nation” means the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

~~(e) “Rule” means a set of requirements enacted in accordance with this Administrative Rulemaking law based on authority delegated in this law, by resolution, in order to implement, interpret and/or enforce this law.~~

~~84131.4-1. Duties and Responsibilities of the Oneida Business Committee.~~

~~131.4-1.~~ The Oneida Business Committee shall exercise oversight over endowment fund accounts which includes:

(a) Approve or disapprove the establishment of endowment fund accounts as recommended by the Finance Committee;

(b) Authority to cause any or all endowment fund accounts to be audited by an independent auditor. Said audit shall become part of the public record and made available to the public. An executive summary of the audit shall be included on the agenda of the next regularly scheduled meeting of the Oneida General Tribal Council.

~~84131.5-1. Duties and Responsibilities of the Oneida Finance Committee.~~

~~131.5-1.~~ The Oneida Finance Committee is charged with establishing all endowment fund accounts, with final approval from the Oneida Business Committee.

(a) Before the Oneida Finance Committee establishes any endowment fund account the Oneida Finance Committee shall publish a notice in the Oneida Tribal newspaper (KALI-HWISAKS) a minimum of twenty (20) calendar days prior to a community meeting on the proposed endowment. The notice shall include:

(1) A statement of the terms, substance, or a description of the subjects and issues involved;

(2) The time, place, whom, and manner in which views may be presented. Said notice shall be published and posted for no less than ten (10) calendar days prior to the community meeting.

(b) The establishment of endowment fund accounts from private donors shall take no more than one hundred and twenty (120) calendar days from the date of notification from the Finance Committee of the donation received for the purpose of establishing an endowment fund account. These endowment fund accounts shall be exempt from the community meeting requirements as stated above.

~~84131.6-1. Duties and Responsibilities of the Oneida Trust Committee~~Trust Enrollment

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Committee.

131.6-1. The Oneida ~~Trust Committee~~**Trust Enrollment Committee** shall have exclusive control of the investment and collection of principal, interest and investments of all monies deposited in, and income derived from, all Oneida ~~Tribe~~**Nation** endowment fund accounts.

84131.6-2. The Oneida ~~Trust Committee~~**Trust Enrollment Committee** is authorized to accept donations, gifts, bequests or other instrument from private donors for the purpose of establishing endowment fund accounts and shall notify the Oneida Finance Committee immediately upon receipt.

(a) Pending the establishment of an endowment fund account, the Oneida ~~Trust Committee~~**Trust Enrollment Committee** shall deposit the gift into an interest bearing account.

84131.6-3. The Oneida ~~Trust Committee~~**Trust Enrollment Committee** shall provide written annual financial reports to the Oneida Business Committee and to the Oneida General Tribal Council. Such- financial reports shall include:

(a) An itemized accounting of all monies placed into endowment fund accounts.

(b) An itemized accounting of all withdrawals to include the date and destination of any withdraw from all endowment fund accounts.

(c) An itemized accounting of all monies spent on consultants, the reason for such consultation or advice, and the total amount spent for the consultation or advice. Said accounting shall include the names of any non-~~Tribal~~**Nation** employee financial consultants and investment advisors utilized.

84131.6-4. The Oneida ~~Trust Committee~~**Trust Enrollment Committee** will have the sole approval and sign off authority in relation to the Oneida ~~Trust Department~~**Trust Enrollment Department's** administrative activities regarding endowment fund accounts assigned to it by law.

84131.6-5. With the Oneida ~~Trust Committee~~**Trust Enrollment Committee's** approval, the Oneida ~~Trust Committee~~**Trust Enrollment Committee** Chairperson shall sign all deeds, contracts and other documents relating to endowment fund accounts.

84131.6-6. The Oneida ~~Trust Committee~~**Trust Enrollment Committee** shall submit a semi-annual report to the Oneida Business Committee on the condition, management and goals of endowment fund accounts.

84131.6-7. Consistent with its Bylaws and the provisions of this law, the Oneida ~~Trust Committee~~**Trust Enrollment Committee** shall adopt and implement internal procedures on investing endowment fund accounts.

84131.7-1. Duties and Responsibilities of the Director of the Oneida ~~Trust Department~~Trust Enrollment Department.

131.7-1. The Director of the Oneida ~~Trust Department~~**Trust Enrollment Department** shall adhere to the policies, principals and procedures of the Oneida ~~Trust Committee~~**Trust Enrollment Committee**.

84131.7-2. The Director of the Oneida Tribal ~~Trust Department~~**Trust Enrollment Department** shall submit to the Oneida ~~Trust Committee~~**Trust Enrollment Committee** and the Office of the ~~Tribal Oneida Nation~~ Treasurer, quarterly financial reports and performance measurements on all Oneida ~~Tribe~~**Nation** endowment fund accounts. The quarterly financial reports shall include an itemized accounting of all expenditures.

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~~84131.8-1. Transfer of Funds.~~

131.8-1. Pursuant to the ~~Tribal~~ Nation's budgetary process, the Director of the Oneida ~~Trust~~ Department ~~Trust Enrollment Department~~ shall notify the ~~Tribal~~ Oneida Nation Treasurer regarding how much investment and interest income may be available for ~~Tribal~~ contribution by the Nation to programs identified to receive funding from endowment fund accounts.

84131.8-2. Unless otherwise specified in the establishment of any endowment fund account, the amount available for ~~Tribal~~ programs of the Nation shall not exceed seventy five percent (75%) of income earned from financial investments made from an endowment fund account owned by the ~~Tribe~~ Nation. Income, minus administrative costs, not transferred shall be added to the principal of each endowment fund account.

(a) Unless otherwise expressed by the grantor, transfer of funds shall not be allowed if the principal of the account is less than ten thousand dollars (\$10,000) or the transfer of funds is less than five hundred dollars (\$500).

(b) Allocated funds from endowment fund accounts owned by the Oneida ~~Tribe~~ Nation shall be transferred to line item accounts of designated programs within one (1) calendar week of the adoption of the fiscal year budget.

~~84131.9-1. Reduction of Principal.~~

131.9-1. The principal of all Oneida ~~Tribe~~ Nation endowment fund accounts shall not be reduced except in accordance with this section.

(a) Any reduction of an endowment fund account shall require a two-thirds (2/3) ~~majority~~ vote of the Oneida ~~Trust Committee~~ Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee.

(1) The reduction of an endowment fund account which contains five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3) ~~majority~~ vote of the Oneida General Tribal Council.

~~84131.10-1. Dissolution of Endowment Fund Accounts.~~

131.10-1. ~~An e~~Endowment fund accounts shall ~~not~~ be ~~closed~~ dissolved ~~except in accordance with this section. only upon the recommendation of the Oneida Finance Committee and the Oneida Trust Committee and ratification by the Oneida Business Committee.~~

(a) The dissolution of an endowment fund account shall require a two-thirds (2/3) vote of the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee.

(1) The dissolution of an endowment fund account which contains five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the Oneida General Tribal Council.

~~(b)~~ When an endowment fund account is ~~closed~~ dissolved, no private person shall be entitled to any distribution or division of its assets. Any assets remaining to the endowment at dissolution or liquidation shall be distributed as follows:

(1) All liabilities of the endowment shall be paid or adequate provision shall be made for payment;

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(2) Assets held by the endowment upon a condition which occurs by reason of the dissolution shall be returned or otherwise conveyed in accordance with such requirements; and

(3) All remaining assets shall be distributed to the Oneida ~~Tribe~~Nation General Fund to be used to carry on activities consistent with the purposes for which the endowment was organized.

131.11. Administrative Rulemaking Authority

131.11-1. An endowment created by a resolution may incorporate rulemaking authority under the Administrative Rulemaking law. A resolution which includes such authority shall be construed as authority granted under this law.

End.

BC # 2-23-05-G Adopted

Title 1. Government and Finances - Chapter 131**ENDOWMENTS****On^yote'a:ka Luwatithwistay^hahse Kay^tla'sla***Oneida Money Saved for our People the Laws*

131.1	Purpose and Policy	131.7	Powers and Duties of the Director of the Oneida Trust
131.2	Adoption, Amendment, Repeal	131.8	Enrollment Department
131.3	Definitions	131.9	Transfer of Funds
131.4	Powers and Duties of the Oneida Business Committee	131.10	Reduction of Principal
131.5	Powers and Duties of the Oneida Finance Committee	131.11	Dissolution of Endowment Accounts
131.6	Powers and Duties of the Oneida Trust Enrollment Committee		Administrative Rulemaking Authority

131.1. Purpose and Policy

131.1-1. The purpose of this law is to provide the process for the establishment and maintenance of all endowment accounts established by the Oneida Nation.

131.1-2. It is the policy of the Nation that endowments will be maintained, protected and grown in value for the benefit of the Oneida people, both those in the present, and future generations.

131.2. Adoption, Amendment, Repeal

131.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-02-23-05-G and BC_____.

131.2-2. This Law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

131.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not effect other provisions of this law which are considered to have legal force without the invalid portions.

131.2-4. 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.

131.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

131.3. Definitions

131.3-1. 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) "Contribution" means a cash or check donation to the Oneida Nation for the purpose of contributing to an existing endowment account, or for the establishment of an endowment account. In addition, a contribution or gift may be accepted if it has potential monetary value, which may include, but not be limited to, stocks, bonds, real estate, property, and other assets including, but not limited to, assets which are current, commercial, equitable, earning, tangible and intangible.

(b) "Endowment fund account" means an account established from a gift, bequest or grant of monetary value, granted to the Oneida Nation, or by the Oneida Nation for the establishment of, or contribution to, an endowment account for a specified purpose which may be invested or deposited to grow and provide income to finance operations and programs of the Nation or as specified in the creation of an account with an identified

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trustee.

(c) "Income" means money or its equivalent derived from financial investments. The term includes interest, dividends or capital appreciation.

(d) "Nation" means the Oneida Nation.

(e) "Rule" means a set of requirements enacted in accordance with this Administrative Rulemaking law based on authority delegated in this law, by resolution, in order to implement, interpret and/or enforce this law.

131.4. Duties and Responsibilities of the Oneida Business Committee

131.4-1. The Oneida Business Committee shall exercise oversight over endowment fund accounts which includes:

(a) Approve or disapprove the establishment of endowment fund accounts as recommended by the Finance Committee;

(b) Authority to cause any or all endowment fund accounts to be audited by an independent auditor. Said audit shall become part of the public record and made available to the public. An executive summary of the audit shall be included on the agenda of the next regularly scheduled meeting of the Oneida General Tribal Council.

131.5. Duties and Responsibilities of the Oneida Finance Committee

131.5-1. The Oneida Finance Committee is charged with establishing all endowment fund accounts, with final approval from the Oneida Business Committee.

(a) Before the Oneida Finance Committee establishes any endowment fund account the Oneida Finance Committee shall publish a notice in the Oneida Tribal newspaper (KALI-HWISAKS) a minimum of twenty (20) calendar days prior to a community meeting on the proposed endowment. The notice shall include:

(1) A statement of the terms, substance, or a description of the subjects and issues involved;

(2) The time, place, whom, and manner in which views may be presented. Said notice shall be published and posted for no less than ten (10) calendar days prior to the community meeting.

(b) The establishment of endowment fund accounts from private donors shall take no more than one hundred and twenty (120) calendar days from the date of notification from the Finance Committee of the donation received for the purpose of establishing an endowment fund account. These endowment fund accounts shall be exempt from the community meeting requirements as stated above.

131.6. Duties and Responsibilities of the Oneida Trust Enrollment Committee

131.6-1. The Oneida Trust Enrollment Committee shall have exclusive control of the investment and collection of principal, interest and investments of all monies deposited in, and income derived from, all Oneida Nation endowment fund accounts.

131.6-2. The Oneida Trust Enrollment Committee is authorized to accept donations, gifts, bequests or other instrument from private donors for the purpose of establishing endowment fund accounts and shall notify the Oneida Finance Committee immediately upon receipt.

(a) Pending the establishment of an endowment fund account, the Oneida Trust

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Enrollment Committee shall deposit the gift into an interest bearing account.

131.6-3. The Oneida Trust Enrollment Committee shall provide written annual financial reports to the Oneida Business Committee and to the Oneida General Tribal Council. Such financial reports shall include:

(a) An itemized accounting of all monies placed into endowment fund accounts.

(b) An itemized accounting of all withdrawals to include the date and destination of any withdraw from all endowment fund accounts.

(c) An itemized accounting of all monies spent on consultants, the reason for such consultation or advice, and the total amount spent for the consultation or advice. Said accounting shall include the names of any non-Nation employee financial consultants and investment advisors utilized.

131.6-4. The Oneida Trust Enrollment Committee will have the sole approval and sign off authority in relation to the Oneida Trust Enrollment Department's administrative activities regarding endowment fund accounts assigned to it by law.

131.6-5. With the Oneida Trust Enrollment Committee's approval, the Oneida Trust Enrollment Committee Chairperson shall sign all deeds, contracts and other documents relating to endowment fund accounts.

131.6-6. The Oneida Trust Enrollment Committee shall submit a semi-annual report to the Oneida Business Committee on the condition, management and goals of endowment fund accounts.

131.6-7. Consistent with its Bylaws and the provisions of this law, the Oneida Trust Enrollment Committee shall adopt and implement internal procedures on investing endowment fund accounts.

131.7. Duties and Responsibilities of the Director of the Oneida Trust Enrollment Department

131.7-1. The Director of the Oneida Trust Enrollment Department shall adhere to the policies, principals and procedures of the Oneida Trust Enrollment Committee.

131.7-2. The Director of the Oneida Tribal Trust Enrollment Department shall submit to the Oneida Trust Enrollment Committee and the Office of the Oneida Nation Treasurer, quarterly financial reports and performance measurements on all Oneida Nation endowment fund accounts. The quarterly financial reports shall include an itemized accounting of all expenditures.

131.8. Transfer of Funds

131.8-1. Pursuant to the Nation's budgetary process, the Director of the Oneida Trust Enrollment Department shall notify the Oneida Nation Treasurer regarding how much investment and interest income may be available for contribution by the Nation to programs identified to receive funding from endowment fund accounts.

131.8-2. Unless otherwise specified in the establishment of any endowment fund account, the amount available for programs of the Nation shall not exceed seventy five percent (75%) of income earned from financial investments made from an endowment fund account owned by the Nation. Income, minus administrative costs, not transferred shall be added to the principal of each endowment fund account.

(a) Unless otherwise expressed by the grantor, transfer of funds shall not be allowed if the

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principal of the account is less than ten thousand dollars (\$10,000) or the transfer of funds is less than five hundred dollars (\$500).

(b) Allocated funds from endowment fund accounts owned by the Oneida Nation shall be transferred to line item accounts of designated programs within one (1) calendar week of the adoption of the fiscal year budget.

131.9. Reduction of Principal

131.9-1. The principal of all Oneida Nation endowment fund accounts shall not be reduced except in accordance with this section.

(a) Any reduction of an endowment fund account shall require a two-thirds (2/3) vote of the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee.

(1) The reduction of an endowment fund account which contains five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the Oneida General Tribal Council.

131.10. Dissolution of Endowment Fund Accounts

131.10-1. An endowment fund account shall not be dissolved except in accordance with this section.

(a) The dissolution of an endowment fund account shall require a two-thirds (2/3) vote of the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee.

(1) The dissolution of an endowment fund account which contains five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the Oneida General Tribal Council.

(b) When an endowment fund account is dissolved, no private person shall be entitled to any distribution or division of its assets. Any assets remaining to the endowment at dissolution or liquidation shall be distributed as follows:

(1) All liabilities of the endowment shall be paid or adequate provision shall be made for payment;

(2) Assets held by the endowment upon a condition which occurs by reason of the dissolution shall be returned or otherwise conveyed in accordance with such requirements; and

(3) All remaining assets shall be distributed to the Oneida Nation General Fund to be used to carry on activities consistent with the purposes for which the endowment was organized.

131.11. Administrative Rulemaking Authority

131.11-1. An endowment created by a resolution may incorporate rulemaking authority under the Administrative Rulemaking law. A resolution which includes such authority shall be construed as authority granted under this law.

End.



Legislative Operating Committee
January 18, 2017

Landlord-Tenant Law Emergency Amendments

Submission Date: 12/21/16	Public Meeting:
LOC Sponsor: David P. Jordan	Emergency Enacted: Expires:

Summary: *Emergency amendments are requested to allow Oneida Housing Authority's Rent-to-Own program to fit within the confines of the Law. Currently, the Law applies to rental agreements which are contracts where the tenant is granted the right to use or occupy the premises for a residential purpose for one year or less. Amendments will revise the definition of "rental agreement" to allow for longer than one year when the contract is on a rent-to-own basis.*

12/21/16 LOC: Motion by David P. Jordan to add the Landlord-Tenant Law Emergency Amendments to the Active Files list with David Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Approve emergency adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: January 25, 2017
RE: Landlord-Tenant Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Landlord-Tenant Law Emergency Amendments:

1. Resolution: Landlord-Tenant Law Emergency Amendments
2. Statement of Effect: Landlord-Tenant Law Emergency Amendments
3. Landlord-Tenant Law Emergency Amendments Legislative Analysis
4. Landlord Tenant Law (Redline)
5. Landlord Tenant Law (Clean)

Overview

Emergency amendments to the Landlord-Tenant law (the “Law”) are requested in order to allow the Oneida Housing Authority’s Rent-to-Own program to continue to exist within the confines of the Law. The Landlord-Tenant law has an effective date of February 9, 2017 and non-emergency amendments cannot be processed in time to meet this timeline.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation.

The emergency amendments to the Landlord-Tenant law are necessary for the preservation of the public health, safety, or general welfare of the reservation population because the amendments prevent the prohibition of the Oneida Housing Authority from entering into rent-to-own program agreements when the Law becomes effective on February 9, 2017. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon effect of the Law on February 9, 2017, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted.

Requested Action

Approve the Resolution: Landlord-Tenant Law Emergency Amendments.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Landlord-Tenant Law Emergency 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 Landlord-Tenant law (the “Law”) was adopted by the Oneida Business Committee by resolution 10-12-16-C; and
- WHEREAS,** the Law provides mechanisms for protecting the rights of the landlords and tenants of the Nation’s rental programs; and
- WHEREAS,** the current Law applies to rental agreements defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less;” and
- WHEREAS,** the Oneida Housing Authority’s rent-to-own program does not fall into the Law’s definition of rental agreements because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement; and
- WHEREAS,** the rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies; and
- WHEREAS,** the emergency amendment to the Law maintains the Law’s policies while including the Oneida Housing Authority’s rent-to-own program by revising the definition of “rental agreement” to state, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis;” and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** the emergency adoption of this amendment to the Landlord-Tenant law is necessary for the preservation of the public health, safety, or general welfare of the reservation population to ensure that the Oneida Housing Authority is not prohibited from entering into rent-to-own agreements when the Landlord-Tenant law becomes effective on February 9, 2017; and

WHEREAS, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation.

NOW THEREFORE BE IT RESOLVED, that the emergency amendment to the Landlord-Tenant Law is hereby adopted on an emergency basis and shall become effective immediately upon effect of the law on February 9, 2017.



Statement of Effect

Landlord-Tenant Law Emergency Amendments

Summary

This Resolution adopts an emergency amendment to the Landlord-Tenant Law (the “Law”) which would include the Oneida Housing Authority’s (OHA’s) rent-to-own program in the definition of rental agreement.

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

Analysis by the Legislative Reference Office

This resolution adopts an emergency amendment to the Landlord-Tenant Law. The Landlord-Tenant Law was adopted on October 12, 2016, set to become effective one hundred and twenty (120) calendar days later on February 9, 2017. Currently, the Law applies to rental agreements that are defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.” The rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies.

After the adoption of the Law it was discovered that Oneida Housing Authority’s (OHA’s) rent-to-own program does not fall into the definition of rental agreements provided in the Law because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement. Therefore, once the Law becomes effective on February 9, 2017, OHA will no longer be permitted to enter into rent-to-own agreements.

The emergency amendment to the Law maintains the policies the Law sets forth while including OHA’s rent-to-own program by revising the definition of “rental agreement” to state, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.” This emergency amendment to the Law allows OHA to continue to enter into rent-to-own program agreements when the Law becomes effective on February 9, 2017.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” The Landlord-Tenant Law Emergency Amendments prevent the prohibition of the OHA from entering into rent-to-own program agreements when the Law becomes effective on February 9, 2017, which would be necessary for the preservation of the public health, safety, or general welfare of the reservation population. Additionally, observance of the adoption

requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the Resolution, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Law.

The emergency amendments to the Landlord-Tenant Law will take effect immediately upon effect of the law on February 9, 2017. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted.

Conclusion

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



Landlord-Tenant Emergency Amendments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Krystal L. John	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
Intent of Proposed Amendments	The current emergency amendments are proposed by the Oneida Law Office in consultation with the Oneida Housing Authority in order to ensure the Rent to Own rental agreements are covered by the law when it becomes effective February 9, 2017.		
Purpose of the Law	To provide mechanisms for protecting the rights of the landlords and tenants within the reservation <i>[see 710.1-1]</i> .		
Affected Entities	Comprehensive Housing Division (Oneida Housing Authority, Division of Land Management and Elder Services), Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law		
Affected Legislation	Eviction and Termination, Administrative Rulemaking, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness, and Real Property		
Enforcement/Due Process	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement <i>[see 710.10-1]</i> .		
Public Meeting	A public hearing is not required for emergency legislation.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current emergency amendments correct an error in the current law by covering Rent to Own rental agreements that last longer than one year *[see 710.3-1(e)]*.

SECTION 3. CONSULTATION

- A. The Oneida Housing Authority and the Oneida Law Office recognized that the current law does not cover the Rent to Own programs because these are rental agreements that last longer than one year and the definition of rental agreements in the law states
- B. This change does not require additional research.

SECTION 4. PROCESS

- A. This amendment to the law is being considered on an emergency basis. This is the correct legislative process considering there is not enough time to adopt the amendment through the regular legislative process by the effective date of the law which is February 9, 2017. The Legislation Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; however they will be required when considering permanent adoption of this amendment.
- B. The emergency amendments were added to the Active Files List on December 21, 2016.

SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A. The term for “Rental Agreements” is restricted to one year or less in the recently adopted Landlord-Tenant law. This definition excludes rent to own contracts which are for fifteen (15) year terms. The

emergency amendment adds rent to own contracts to the definition of rental agreements to include rent to own contracts which are for terms longer than one year [see 710.3-1(e)].

Pursuant to the Legislative Procedures act, the Oneida Business Committee can temporarily enact legislation on an emergency basis when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the regular legislative process under the Legislative Procedures Act. The Landlord-Tenant Law Emergency Amendments recognize the current rent to own rental agreements and allow the Oneida Housing Authority to continue entering into rent-to-own program agreements when the Law becomes effective on February 9, 2017.

These emergency amendments will become effective immediately upon the effective date of the law (February 9, 2017) and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted.

SECTION 6. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. The proposed amendments will ensure the Landlord-Tenant law covers existing rent to own contracts and future rent to own contracts and ensures Tribal members who enter into these contracts have the same due process and other rights as all other rental agreements under the Landlord-Tenant law.

SECTION 7. OTHER CONSIDERATIONS

A. The Landlord-Tenant law was adopted on October 12, 2016 and becomes effective on February 9, 2017. The emergency amendments to the Landlord-Tenant law are proposed to become effective on the same date that the Landlord-Tenant law becomes effective: February 9, 2017.

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 BC-10-12-16-C.

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 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.

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

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(i) “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 and Termination law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 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 and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

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-10-12-16-C

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

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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 BC-10-12-16-C.

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 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.

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

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(i) “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.

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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.

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(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 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

184 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or
185 air conditioning.

186 (C) Make all necessary structural repairs.

187 (D) Except as provided in section 710.6-3(b)(2), repair or replace any
188 plumbing, electrical wiring, machinery, or equipment furnished with the
189 premises and no longer in reasonable working condition.

190 (E) Comply with any laws or rules of the Nation that are applicable to the
191 premises.

192 (2) If the premises are part of a building where other parts are occupied by one (1)
193 or more other tenants, negligence or improper use by one (1) tenant does not
194 relieve the landlord from the landlord's duty to make repairs as provided in 710.6-
195 3(a)(1), provided that the landlord may require the responsible tenant to pay for
196 such repairs.

197 (3) A landlord shall disclose to a prospective tenant, before entering into a rental
198 agreement with or accepting any earnest money or security deposit from the
199 prospective tenant, any violation of either the Building Code of the Oneida Nation
200 or the Zoning and Shoreland Protection Ordinance if all of the following apply:

201 (A) The landlord has actual knowledge of the violation;

202 (B) The violation affects the dwelling unit that is the subject of the
203 prospective rental agreement or a common area of the premises;

204 (C) The violation presents a significant threat to the prospective tenant's
205 health or safety; and

206 (D) The violation has not yet been corrected but the landlord shall correct
207 the violation prior to the tenant taking occupancy of the premises.

208 (4) If the premises are damaged by fire, water or other casualty, not the result of
209 the negligence or intentional act of the landlord, this subsection is inapplicable
210 and either section 710.6-3(b) or (c) governs.

211 (5) The landlord is responsible for all required pest control to keep the premises
212 in a safe and healthy condition, provided that where an infestation has occurred
213 due to the acts or inaction of the tenant the pest control costs may be assessed
214 against the tenant.

215 (b) *Duties of the Tenant.*

216 (1) If the premises are damaged, including by an infestation of insects or other
217 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the
218 tenant to remediate or repair the damage and restore the appearance of the
219 premises by redecorating. However, the landlord may elect to undertake the
220 remediation, repair, or redecoration, and in such case the tenant shall reimburse
221 the landlord for the reasonable cost thereof; the cost to the landlord is presumed
222 reasonable unless proven otherwise by the tenant.

223 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment
224 furnished with the premises in reasonable working order.

225 (3) Tenants shall comply with all laws and rules of the Nation.

226 (c) *Untenability.* If the premises become untenable because of damage by fire, water or
227 other casualty or because of any condition hazardous to health, or if there is a substantial
228 violation of section 710.6-3(a) materially affecting the health or safety of the tenant, the
229 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 and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

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-10-12-16-C



Legislative Operating Committee January 18, 2017

Employment Law

Submission Date: 9/17/16	Public Meeting: 3/31/16
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures (Previously titled “Personnel Policies and Procedures-Revisions”).*

9/17/14 LOC: Motion by Jennifer Webster to add the Employment Law to the Active Files List, with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

10/8/14 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers: 4) With regard to the Personnel Commission legislation, the Business Committee agrees that the Employment Law should continue forward and shall include consideration regarding how the Personnel Commission and/or their processes are incorporated into the Employment Law legislation; seconded by Trish King. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to defer the Employment Law to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.

6/15/15: Work meeting held. Attendees include Brandon Stevens, David Jordan, Matthew Denny, Gina Buenrostro, Don White, Yvonne Jordan, Lynn Franzmeier, Candice Skenandore, Douglass McIntyre, Krystal John.

10/5/15 LOC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Danelle Wilson, Rhiannon Metoxen, Nick Reynolds, Krystal John, and Candice Skenandore.

10/8/15 OBC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Melinda Danforth, Trish King, Tehassi Hill, Jessica Wallenfang, Mitzi Kopetsky, Nathan King, Apache Danforth, Rhiannon Metoxen, Danelle Wilson, Leyne Orosco, and Krystal John.

11/18/15: Gaming Supervisory Advisor Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Robert Sundquist, Louise Cornelius, Lisa Duff, Georgianna Mielke, Donna Smith, Luke Schwab, Donald Solecki, Gabrielle Metoxen, Michelle Schneider, Martin Prevost and Laura Laitinen-Warren.

11/19/15: Gaming Management Advisory Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Andrew Doxtator, Cherice Santiago, Fawn Teller, Julie Clark, Larae Gower, Shelly Stevens, Jacqueline Smith, Jay Rasmussen, Laura Laitinen-Warren, Michelle Schneider, Travis Cottrell, Louise Cornelius, Jessalyn Marvath, Brenda Mendolla-Buckley, Lucy Neville, David Emerson, Gabrielle Metoxen and Lambert Metoxen.

11/30/15: Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.

- 12/3/15:** Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
- 12/22/15:** Work meeting held. Attendees include Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.
- 1/6/16:** Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
- 1/8/16:** Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
- 2/1/16:** Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.
- 2/8/16:** Work meeting held. Attendees include Brandon Stevens, Rhiannon Metoxen Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez, Krystal John and Maureen Perkins.
- 2/15/16:** Work meeting held. Attendees include Lorena Metoxen, Larry Smith, Donna Smith, Larae Gower, Matt Denny, Geraldine Danforth and Krystal John.
- 2/17/16:** Employment Law information meeting for managers and supervisors held at Skenandoah.
- 2/18/16:** Employment Law information meeting for managers and supervisors held at Skenandoah.
- 2/22/16:** Employment Law information meeting for employees held at Skenandoah.
- 2/25/16:** Employment Law information meeting for employees held at Skenandoah.
- 2/26/16:** Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Matt Denny, Lucy Neville, Maureen Perkins and Krystal John.
- 2/29/16:** Employment Law information meeting for managers and supervisors held at Norbert Hill Center.
- 3/1/16:** Employment Law information meeting for managers and supervisors at Main Casino.
- 3/3/16:** Employment Law information meeting for managers and supervisors held at Norbert Hill Center.
- 3/4/16:** Employment Law information meeting for employees held at Norbert Hill Center.
- 3/7/16:** Employment Law information meeting for employees held at Norbert Hill Center.
- 3/10/16:** Employment Law information meeting for managers and supervisors held at Little Bear Development Center.
- 3/14/16:** Employment Law information meeting for employees held at Little Bear Development Center.
- 3/16/16:** Employment Law information meeting employees at Mohawk Room (Radisson). Morning Session
- 3/16/16:** Employment Law information meeting employees at Mohawk Room (Radisson). Afternoon Session
- 3/17/16:** Employment Law information meeting for managers and supervisors held at Social Services (OLC).
- 3/18/16:** Employment Law information meeting for managers and supervisors held at Social Services (OLC).
- 3/21/16:** Employment Law information meeting employees held at Social Services (OLC). Morning Session
- 3/21/16:** Employment Law information meeting employees held at Social Services (OLC). Afternoon Session
- 3/23/16:** Employment Law information meeting for Gaming Panels at Employee Services Morning Session
- 3/23/16:** Employment Law information meeting for Gaming Panels at Employee Services Afternoon Session
- 3/25/16:** Employment Law information meeting for managers and supervisors held at Oneida Health Center.
- 3/28/16:** Employment Law information meeting for managers and supervisors held at Oneida Health Center.
- 3/29/16:** Employment Law information meeting for employees held at Oneida Health Center.

- 3/30/16:** Employment Law information meeting for employees held at Oneida Health Center.
- 3/31/16:** Employment Law Public Meeting held.
- 4/7/16:** Work meeting held. Attendees include Lucy Neville, Marianne Close, Wendy Alvarez, and Krystal John.
- 4/29/16:** Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Maureen Perkins and Krystal John.
- 5/4/16 LOC:** Motion by Jennifer Webster to accept the Employment law public meeting comments and defer the consideration of the comments to a work meeting to be held on Thursday, May 12, 2016 in the Business Committee Conference Room from 10:30 a.m. - 1:30 p.m.; seconded by David P. Jordan. Motion carried unanimously.
- 5/13/16:** Work meeting held. Attendees include Geraldine Danforth, Matt Denny, Wendy Alvarez and Krystal John.
- 5/18/16 LOC:** Motion by Jennifer Webster to accept the updated draft of the Employment law based on the public meeting comments; noting the revision to be made to section 300.11-4 changing the language from a fee waiver to a statement that prohibits the Judiciary from assessing court fees upon employees disputing employment matters; and deferring to the Legislative Reference Office for an updated legislative analysis; seconded by David P. Jordan. Motion carried unanimously.
- 6/1/16 LOC:** Motion by Jennifer Webster to accept the updated legislative analysis for the Employment Law and direct the sponsor and the drafting attorney to conduct an informational meeting for the Oneida Business Committee to solicit input and, provided there are no major changes, bring an adoption packet back once all input has been collected; seconded by David P. Jordan. Motion carried unanimously.
- Note: This meeting is scheduled for Friday June 3, 2016.*
- 6/3/16 OBC:** Employment Law update provided to OBC with OBC feedback requested. Attendees include Brandon Stevens, Melinda Danforth, Lisa Summers, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Leyne Orosco, Mitzi Kopetsky, R.C. Metoxen and Krystal John.
- 6/15/16 OBC:** Employment Law update concluded to OBC with OBC feedback requested. Employment Law update provided to OBC with OBC feedback requested. Attendees include Brandon Stevens, Melinda Danforth, Lisa Summers, Tehassi Hill, Fawn Billie, David P. Jordan, Leyne Orosco, Mitzi Kopetsky, R.C. Metoxen and Krystal John.
- 8/10/16 OBC:** Motion by Lisa Summers to accept the updated written report; to direct this item be placed on the 2017 Annual General Tribal Council meeting agenda; and included in that item will be a request for General Tribal Council to schedule a special General Tribal Council meeting to specifically address this item, seconded by Brandon Stevens. Motion carried unanimously:
- Ayes: Fawn Billie, Tehassi Hill, David Jordan, Brandon Stevens, Lisa Summers
Not Present: Melinda J. Danforth, Trish King, Jennifer Webster
- Motion by Lisa Summers to request the team working on this item include in the communication plan that Employment Law and handbook be provided and distributed 30 (thirty) days prior to the 2017 Annual General Tribal Council meeting, seconded by Brandon Stevens. Motion carried unanimously:
- Ayes: Fawn Billie, Tehassi Hill, David Jordan, Brandon Stevens, Lisa Summers
Not Present: Melinda J. Danforth, Trish King, Jennifer Webster
- 8/17/16 LOC:** Motion by David P. Jordan to accept the updated Employment Law draft and legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

Note: The updated draft of the Employment Law incorporates feedback from the June 3 and June 15 Oneida Business Committee work meetings.

Note: Updates have also been made to the Employee Handbook based on OBC feedback; the current draft is available on the Oneida Register.

- 10/5/16LOC:** Motion by David P. Jordan to approve the Employment Law packet and forward to the Oneida Business Committee to be placed on the Annual General Tribal Council meeting agenda for January 2017; seconded by Fawn Billie. Motion carried unanimously.
- 10/19/16:** *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. Will go to OBC on 10/26/16- to be forwarded to the GTC in January 2017.
- 11/3/16:** *Work Meeting.* Present: RC Metoxen, Apache Danforth, Phil Wisneski, Jo Anne House, Krystal John, Lisa Summers. Group discussed communication efforts in an effort to prepare for upcoming GTC meetings- where the employment law may be on the agenda.
- 01/04/17LOC:** Motion by Fawn Billie to direct the LRO to conduct an e-poll of the adoption packet regarding the Employment Law in consideration of forwarding to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps: Approve the Employment Law e-poll.

----- Original message -----

From: "Jennifer A. Falck" <jfalck@oneidanation.org>

120 of 289

Date: 1/9/17 4:25 PM (GMT-06:00)

To: "Brandon L. Yellowbird-Stevens" <bstevens@oneidanation.org>, "Rhiannon R. Metoxen" <rmetoxe2@oneidanation.org>, "Ronald W. Hill" <rhill7@oneidanation.org>, "Danelle A. Wilson" <dwilson1@oneidanation.org>, "Fawn J. Billie" <fbillie@oneidanation.org>, "Cathy L. Bachhuber" <cbachhub@oneidanation.org>, "Leyne C. Orosco" <lorosco@oneidanation.org>, "Jennifer A. Webster" <JWEBSTE1@oneidanation.org>

Subject: E-POLL

Hello LOC,

Please see the attached Employment Law Packet for the March 19, 2017 GTC meeting. Please respond indicating whether you approve the LRO submitting this packet to the Secretary's office for inclusion in the GTC Packet. The materials are due to the Secretary's office today.

Thank You- have a safe night-

-jen

From: Ronald W. Hill
Sent: Tuesday, January 10, 2017 3:02 PM
To: Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; Leyne C. Orosco; Jennifer A. Webster
Subject: RE: E-POLL

Approve.

From: Jennifer A. Webster
Sent: Tuesday, January 10, 2017 2:49 PM
To: Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; Leyne C. Orosco
Subject: RE: E-POLL

Approve,
Jenny

From: Brandon L. Yellowbird-Stevens
Sent: Tuesday, January 10, 2017 2:44 PM
To: Jennifer A. Falck; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; Leyne C. Orosco; Jennifer A. Webster
Subject: RE: E-POLL

approve

From: Fawn J. Billie
Sent: Tuesday, January 10, 2017 8:07 AM
To: Jennifer A. Falck
Subject: RE: E-POLL

Approve



Legislative Operating Committee
January 18, 2017

Hunting, Fishing and Trapping Law Amendments

Submission Date: 1/21/15	Public Meeting: 12/15/16
LOC Sponsor: Tehassi Hill	Emergency Enacted: no Expires: n/a

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

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

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

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

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

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

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

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

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

- 8/2/16:** Update meeting held with sponsor, drafter, analyst, LRO director. Work meeting scheduled for 8/11/16.
- 8/11/16:** *Work meeting held.* Drafting attorney will provide updated draft to LRO Director in a few days.
- 10/10/16:** *Quarterly Update Meeting held.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John. Draft is complete. Waiting for an updated analysis, which should be complete the week of 10/17/16.
- 11/16/16 LOC:** Motion by David P. Jordan to approve the Hunting, Fishing, Trapping Law Amendments public meeting packet and direct the LRO to hold a public meeting on December 15, 2016; seconded by Tehassi Hill. Motion carried unanimously.
- 12/15/16:** *Public Meeting held.*
- 01/04/17LOC:** Motion by Tehassi Hill to accept the Hunting, Fishing and Trapping Law Amendments public meeting comments; seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the LRO to develop an adoption packet with the noted changes; seconded by Jennifer Webster. Motion carried unanimously.

Noted changes include: 1) create a list in rules pertaining to the designated hunter numbers, 2) remove hunting party size limits from law and create rule to address this issue, 3) remove supervision requirement for hunters age 15 – 17, and 4) revise 406.6-6 to delete subsections (a) & (b) and to include the following language “A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet of the center of the road as further detailed in the rules.”

Next Steps:

- Review the adoption packet with the noted changes and forward the Hunting, Fishing and Trapping Law Amendments to the Oneida Business Committee for consideration.

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

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

406.1. Purpose and Policy

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

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

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

406.2. Adoption, Amendment, Repeal

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

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

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

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

midnight.

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

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

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

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

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

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

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

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

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

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

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

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

(o) “Nation” means the Oneida Nation.

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

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

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

(1) Damage to property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406.4. Jurisdiction

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

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

406.4-2. This law applies:

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

406.4-~~43~~³. *Lack of State Jurisdiction.* The Nation and the federal government have sole jurisdiction over the management and regulation of the Nation’s natural resources. Accordingly, licenses, permits, tags and the like issued by the state have no legal effect on lands over which

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

the Nation exercises its jurisdiction under Section 406.4-2.

406.5. Administration and Supervision

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

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

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

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

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

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

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

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

(1) the taking of wildlife;

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

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

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

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

(1) bait;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

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

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

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

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

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

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

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

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

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

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

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

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

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

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

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

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any nuisance animal that is not an endangered or threaten species and

is also not a regulated or protected species.

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

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

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

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

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

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

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

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

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

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

(4) The hunt takes place on the reservation.

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

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

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

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

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

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

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

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt:

~~(from a)~~ stationary vehicle within fifty (50) feet ~~of~~ on the center of a road; ~~and/or~~.
~~(b) from within a vehicle, provided that~~ as further detailed in the ~~vehicle may not be moving and the engine of the vehicle may not be running~~ rules developed pursuant to this law.

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

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

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

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

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

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

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

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

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

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

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

406.7. General Requirements

406.7-1. Persons may not:

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

(b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on

the reservation's lands and waters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406.7-4. *Carcass Tags*. Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

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

406.8. Wildlife Damage and Nuisance Control

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

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

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

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

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

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

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

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

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

provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-6.7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

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

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

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

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

406.9. Hunting

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

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

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

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

(2) Across any roadway; or

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

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

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

(a) Hunt with the use of aircraft;

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

(c) Hunt from a vehicle;

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

(e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;

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

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

(h) Hunt with, or possess while hunting:

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

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

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

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

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

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

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

(C) A fully-automatic firearm;

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

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

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

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

(1) Possess a valid hunting license;

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

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

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

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

406.9-5. *Age Restrictions.*

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

contact of the youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

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

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

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

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

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

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

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

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

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people; ~~but and~~ may ~~not exceed ten (10) people legally hunting deer~~ be limited in a group size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

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

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

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

406.10. Enforcement and Penalties

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

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Community Service.* Community service may be substituted for fines at ERB's

discretion, provided that, if so substituted, ERB shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

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

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

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

End.

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



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: January 25, 2017
RE: Hunting, Fishing and Trapping Law Amendments

Please find the following attached backup documentation for your consideration of the Hunting, Fishing and Trapping Law Amendments:

1. Resolution: Hunting, Fishing and Trapping Law Amendments
2. Statement of Effect: Hunting, Fishing and Trapping Law Amendments
3. Hunting, Fishing and Trapping Law Amendments Legislative Analysis
4. Hunting, Fishing and Trapping Law (Clean)
5. Hunting, Fishing and Trapping Law Amendments Fiscal Impact Statement

Overview

This is a proposal to amend an existing Hunting, Fishing and Trapping Law which would:

- Provide rulemaking authority to the Environmental Resource Board (ERB) and Conservation Department.
- Remove specific and detail oriented aspects of hunting, fishing and trapping regulations and place them in a rule handbook.
- Clarify that the state of Wisconsin does not have jurisdiction related to hunting, fishing and trapping matters within the Reservation.
- Require non-tribal members to obtain a license through the Nation when hunting on the Reservation.
- Allow persons age 9 and younger to accompany a mentor while hunting.
- Allow a mentor to accompany two hunters when the hunters are ages 10 & 11.
- Only Tribal members, descendants, non-member Indians and dependents may hunt between the ages of 10 and 11.
- Require persons age 12 – 14 to be supervised by a parent, guardian or responsible adult when hunting.
- Clarify that suspension, revocation and/or future ineligibility for a license/permit is an available penalty.
- Update ERB's hearing process for contested actions.

In accordance with the Legislative Procedures Act, a public meeting on the proposed amendments to the Hunting, Fishing and Trapping Law was held on December 15, 2016.

Requested Action

Approve the Resolution: Hunting, Fishing and Trapping Law Amendments

BC Resolution _____*Adoption of Hunting, Fishing and Trapping 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 Nation Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee adopted the Hunting, Fishing and Trapping law pursuant to resolution BC-08-31-94-C and amended the law by resolutions: BC-04-24-96, BC-07-22-98, BC-09-13-00-D, BC-06-04-03-A, BC-06-30-04-I, BC-07-13-05-E, BC-08-29-07-F, BC-06-24-09-E, BC-0826-10-I, BC-12-14-11-E, and BC-05-22-13-A; and

WHEREAS, these amendments remove specific and detail orientated aspects of hunting, fishing and trapping regulation and place them into a rule handbook that the Environmental Resource Board and the Conservation Department are delegated the joint authority and responsibility to create; and

WHEREAS, these amendments clarify that non-Tribal members are required to obtain a license and applicable permits through the Nation when hunting on the Reservation; and

WHEREAS, the State of Wisconsin will no longer have jurisdiction related to hunting, fishing and trapping matters within the Reservation; and

WHEREAS, these amendments modify the licensing and supervision requirements for youth hunters between the ages of ten (10) and fourteen (14); and

WHEREAS, these amendments update the Environmental Resource Board's hearing process for contested actions; and

WHEREAS, a public meeting regarding these amendments was held on December 15, 2016 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Environmental Resource Board and the Conservation Department shall have the rule handbook required to support the amendments to the Hunting, Fishing and Trapping law finalized to become effective on April 25, 2017.

NOW THEREFORE BE IT FURTHER RESOLVED, that these Hunting, Fishing and Trapping law amendments are hereby adopted and shall become effective on April 25, 2017.



Statement of Effect

Adoption of Hunting, Fishing and Trapping Law Amendments

Summary

This Resolution adopts amendments to the Hunting, Fishing and Trapping law which would:

- Provide rulemaking authority to the Environmental Resource Board (ERB) and Conservation Department.
- Remove specific and detail oriented aspects of hunting, fishing and trapping regulations and place them in a rule handbook.
- Clarify that the state of Wisconsin does not have jurisdiction related to hunting, fishing and trapping matters within the Reservation.
- Require non-tribal members to obtain a license through the Nation when hunting on the Reservation.
- Allow persons age 9 and younger to accompany a mentor while hunting.
- Allow a mentor to accompany two hunters when the hunters are ages 10 & 11.
- Only Tribal members, descendants, non-member Indians and dependents may hunt between the ages of 10 and 11.
- Require persons age 12 – 14 to be supervised by a parent, guardian or responsible adult when hunting.
- Clarify that suspension, revocation and/or future ineligibility for a license/permit is an available penalty.
- Update ERB's hearing process for contested actions.

By: Krystal L. John, Staff Attorney

Analysis

This resolution adopts amendments to the Real Property law which was adopted by resolution BC-08-31-94-C and thereafter amended by resolutions BC-04-24-96, BC-07-22-98, BC-09-13-00-D, BC-06-04-03-A, BC-06-30-04-I, BC-07-13-05-E, BC-08-29-07-F, BC-06-24-09-E, BC-0826-10-I, BC-12-14-11-E, and BC-05-22-13-A.

The most notable revisions to the Hunting, Fishing and Trapping law are noted above. Because the Nation does not have any other laws that govern this subject matter, these amendments affect solely this law and do not conflict with any of the Nation's other laws.

Much of the detail orientated content and regulations related to hunting, fishing and trapping have been removed from the law. The law now requires that the Environmental Resource Board and the Conservation Department jointly adopt rules that address and processes and regulations

required to further support this law in accordance with the Administrative Rulemaking law.

The effective date of the law is extended to April 25, 2017, to align with the required effective date for the rules required to be developed by these amendments.

A public meeting was held on December 15, 2016 in accordance with the Legislative Procedures Act.

Conclusion

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



Hunting, Fishing, Trapping Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Hunting, Fishing, Trapping Law (the Law)				
Sponsor	Tehassi Hill	Drafters	Rebecca Webster, Krystal John	Analyst	Tani Thurner
Requester & Reason for Request	Originally, the Conservation Department requested updates to the law for upcoming hunting seasons, however additional changes were made.				
Purpose	The Law governs hunting, fishing, and trapping on the Reservation/Tribal trust land.				
Authorized/ Affected Entities	Environmental Resource Board, Conservation Department, Oneida Police Department				
Related Legislation	Domestic Animals Law, Public Use of Tribal Land law, Administrative Rulemaking law				
Enforcement & Due Process	Fines/penalties for violations; denial/revocation of licenses/permits. These actions are appealable to ERB; some of ERB's decisions appealable to Judiciary.				
Public Meeting Status	A public meeting was held on December 15, 2016, and the comments received have been reviewed and considered by the LOC.				

Overview

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

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

Jurisdiction

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

Rulemaking

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

ERB and the Department are more clearly delegated broad authority to regulate hunting, fishing, and trapping-related activities. Many types of requirements, including penalty schedules, and the maximum size of group deer hunting parties, are removed from the law and would be established through rules instead. [406.5-2 and 406.9-6]

Licensing Requirements

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

under this Law.

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

Hunting - Age Requirements and Mentors

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

Nuisance Animal Removal

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

- 52 Tribal land; not an agent.
- 53 ○ When there is a legitimate threat to a person's immediate health and safety. The
- 54 taking must be reported, and the Department must investigate. [406.8-3]
- 55 • It is now illegal to live-trap/relocate nuisance animals to other Tribal land or private property
- 56 without written authorization. [406.8-1]
- 57 • A person will now be considered ineligible for a nuisance removal permit if s/he has violated
- 58 this law or rules within the past 12 months, "at a minimum." [406.8-2(a)(4)]
- 59 • Currently, a landowner/lessee may have others assist in the removal of nuisance animals.
- 60 Under the amendments, a permittee is allowed to assign "an agent" to handle the removal;
- 61 using the landowner/lessee's permit. [406.8-4] This appears to mean the landowner/lessee
- 62 may no longer use the nuisance removal permit themselves. Unlike designated hunters,
- 63 agents are not required to be pre-approved by the Department. [406.8-4]
- 64 • Persons killing certain nuisance birds are now required to provide an annual report to the
- 65 U.S. Fish and Wildlife Service for all such takings occurring within the previous year. This
- 66 reflects the Wisconsin DNR Nuisance Guidelines Rule Booklet. [406.8-5]
- 67 • Keeping the Furs of Nuisance Animals. New provisions address what happens to nuisance
- 68 animals once they are killed:
- 69 ○ **If a Nuisance Permit was required:** Permittees/agents may not keep the furs unless
- 70 the permit explicitly and separately authorizes them to keep and sell the wildlife.
- 71 [406.8-6(b)] There are no restrictions for any other parts of a nuisance animal.
- 72 ○ **If a Nuisance Permit was not required:** Permittees/agents may keep the furs, but
- 73 cannot commercialize in, sell, trade, ship or transport any wildlife without a separate
- 74 license or permit authorizing them to do so - except that squirrel parts may be sold
- 75 during "the closed season." [406.8-7]
- 76 • Currently, when a person obtains a permit to remove a nuisance animal, s/he is required to
- 77 open his/her lands for public access for hunting and trapping of that species for one year
- 78 afterwards. The Law no longer specifically requires lands to be opened for public access, but
- 79 applicants for a nuisance permit must still demonstrate that s/he has the authority to control
- 80 hunting and trapping access to the lands subject to the nuisance, as well as any contiguous
- 81 lands (or written consent from the owner/lessor of those lands.) [406.8-2 (a), current 45.6-4]
- 82 • All landowners and lessees who are removing nuisance animals/structures, must now do the
- 83 following, even if a nuisance removal permit is not required:
- 84 ○ follow this Law/rules, including permitted methods of taking and hunting hours.
- 85 ○ grant wardens free and unrestricted access to the premises, and
- 86 ○ promptly furnish any related, requested information. [406.8-6 and 406.8-1]

87

88 Enforcement and Hearings

- 89 • All persons are now required, instead of encouraged, to report violations of this law (and
- 90 now, must also report violations of rules) [406.10-1 and the current law, 45.16-5]
- 91 • The law now prohibits inflicting or threatening to inflict, bodily harm on a Department
- 92 warden. [406.7-1(q)]
- 93 • Oneida Police Department (OPD) is no longer authorized to enforce this law. Instead, OPD
- 94 officers must report violations to the Department. But, if immediate action is necessary to
- 95 prevent imminent danger to life or serious damage to property, the officer may issue a
- 96 warning/citation, and/or prevent persons from committing a violation of this law. [406.5-4]
- 97 • The amendments add several reasons why the Department may decline to issue a
- 98 license/permit; [406.6-7(a)] and a new, separate list of reasons the Department may suspend,

99 revoke, or declare a person ineligible for a license/permit. [406.10-2] The two lists are
100 different – for example, the Department is authorized to decline to issue a license or permit,
101 but cannot suspend an already-issued license or permit if: the applicant was ever found guilty
102 of imposing or threatening to impose great bodily harm on another; or if the applicant has,
103 within the past three years, egregiously and repeatedly demonstrated poor judgment,
104 disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including
105 while interacting with other sportsmen or any wardens.

- 106 • This Law authorizes ERB to hear appeals of decisions to decline to issue a license/permit;
107 and to conduct pre-hearings and hearings when a person is issued a citation.
 - 108 ○ **Licensing/Permitting Actions.** The Department’s decisions “related to” a
109 license/permit can now be appealed to ERB, which must conduct a hearing. ERB’s
110 decision is final and cannot be appealed. [406.10-4]
 - 111 ○ **Contesting Citations.** ERB must now schedule monthly pre-hearings where ERB
112 will accept “pleas” from persons who were issued a citation. Pleas may be entered
113 either contesting or admitting each violation, and when a plea is entered to contest a
114 citation, ERB conducts the regular hearing.[406.10-5] The amendments add that
115 ERB’s decision can be appealed to the Judiciary Court of Appeals in accordance with
116 the Rules of Appellate Procedure. [406.10-5(e)]
- 117 • New language adds that ERB may pursue unpaid fines through garnishment or attaching per
118 capita payments. [406.10-5(d)]

119 120 **Other Changes**

- 121 • Currently, disabled hunter permits exempt a hunter from certain hunting restrictions, but
122 disabled permittees are still required to be a minimum of 50 feet from the center of a
123 roadway while hunting. [45.6-2(a) and 45.10-5] Under the amendments, disabled hunter
124 permittees can hunt from a vehicle within 50 feet of a road “as further detailed in the Rules
125 developed pursuant to this law”, and the vehicle’s engine can now be running, the vehicle
126 just must be stationary. [406.6-6]
 - 127 ○ By comparison, under Wisconsin law, it is still illegal to hunt within 50 feet of the
128 center of a roadway; or to shoot from or across a highway, or within 50 feet of the
129 roadway’s center. [See, Wis. Stat. 167.31(2)(d)] Although this provision of state law
130 identifies certain specific exceptions to this rule, it does not allow for an exception for
131 disabled hunters.
- 132 • Designated hunters are no longer specifically limited to only hunting deer for others, and the
133 law now requires the rules to be developed that identify the number of permittees a
134 designated hunter can hunt for. [406.9-4(b)]
- 135 • A permit is now required in order to hunt from a snowmobile, ATV, moped or similar
136 conveyance; or to use hovercraft, drones, or any other aircraft while hunting. [45.5-1(i)]
- 137 • Various firearms will no longer be prohibited, if the hunter possesses a valid state or federal
138 permit for that type of firearm. 406.9-2(h) and 45.9-2(h)(4).
- 139 • Various restrictions that applied to particular weapons are expanded. It would be illegal to:
 - 140 ○ transport any cocked bow or crossbow in a vehicle, as well as loaded firearms.
 - 141 ○ use any device typically used for the harvesting of wildlife in a reckless manner, not
142 just firearms and bows. [406.7-1(k)]
 - 143 ○ discharge air rifles, bows and crossbows (in addition to firearms) into Reservation
144 lakes, reservoirs or public use areas, except in limited situations. [406.9-1(b)]
 - 145 ○ shoot air rifles, bows, crossbows, or any traps except live traps, within 100 yards of

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

165 Other

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

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

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

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

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

406.1. Purpose and Policy

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

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

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

406.2. Adoption, Amendment, Repeal

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

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

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

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

midnight.

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

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

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

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

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

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

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

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

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

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

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

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

(o) “Nation” means the Oneida Nation.

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

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

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

(1) Damage to property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406.4. Jurisdiction

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

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

406.4-2. This law applies:

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

406.4-3. *Lack of State Jurisdiction.* The Nation and the federal government have sole jurisdiction over the management and regulation of the Nation’s natural resources. Accordingly, licenses, permits, tags and the like issued by the state have no legal effect on lands over which

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

the Nation exercises its jurisdiction under Section 406.4-2.

406.5. Administration and Supervision

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

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

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

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

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

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

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

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

(1) the taking of wildlife;

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

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

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

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

(1) bait;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

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

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

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

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

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

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

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

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

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

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

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

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

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

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

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

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

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

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

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

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

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

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

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

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

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

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

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

(4) The hunt takes place on the reservation.

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

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

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

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

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

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

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

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

person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. Denial of a License or Permit.

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

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

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

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

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

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

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

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

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

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

406.7. General Requirements

406.7-1. Persons may not:

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

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

(c) Cause damage to land or property belonging to another, including but not limited to,

the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.

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

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

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

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

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such

manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

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

406.8. Wildlife Damage and Nuisance Control

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

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

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

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

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

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

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

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

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

(c) The permittee shall return all unused permits, including carcass tags, to the

Department within ten (10) days of the permit's expiration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been

conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

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

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

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

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

406.9. Hunting

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

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

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

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

(2) Across any roadway; or

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

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

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

(a) Hunt with the use of aircraft;

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

(c) Hunt from a vehicle;

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

(e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;

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

- 495 (g) Hunt in a party of more than ten (10) persons;
496 (h) Hunt with, or possess while hunting:
497 (1) Any firearm for which the possession is unlawful under Wisconsin or Federal
498 law;
499 (2) Slugs, except that a person may possess slugs during deer firearm season if he
500 or she also possesses the required associated permit;
501 (3) A handgun with a barrel length of less than five (5) inches;
502 (4) A concealed handgun without a valid permit from the State of Wisconsin;
503 and/or
504 (5) Any of the following without a valid federal permit:
505 (A) A shotgun that has a barrel length of less than eighteen (18) inches or
506 an overall length of less than twenty-six (26) inches;
507 (B) A rifle that has a barrel length of less than sixteen (16) inches or an
508 overall length of less than twenty-six (26) inches;
509 (C) A fully-automatic firearm;
510 (D) Any mechanism designed to muffle, silence or minimize the report of
511 any firearm.

512 406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting
513 and injures another person, shall render or attempt to obtain necessary medical assistance,
514 provide the injured person with his or her name and contact information including address, and
515 report the accident to either the Department or the Oneida Police Department as soon as possible.

516 406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap
517 on behalf of the permittee in the event that the permittee is physically or legally unable to take
518 pursuant to his or her own permit, provided that, the designated hunter shall provide his or her
519 name and contact information to the Department along with a signed statement from the original
520 permittee naming the designated hunter. The designated hunter shall receive the Department's
521 approval of the designation before using the permits of the original permittee.

- 522 (a) To be eligible to be named a Designated Hunter, the named person shall:
523 (1) Possess a valid hunting license;
524 (2) Be eligible for the permits for which the person is named the designated
525 hunter; and
526 (3) Meet any other requirements of the rules created pursuant to this law.
527 (b) Designated hunters may hunt for the number of permittees as authorized by the rules
528 developed pursuant to this law.
529 (c) Any wildlife taken by a designated hunter remains the property of the original
530 permittee; the designated hunter shall transfer any wildlife taken by designation to the
531 original permittee's possession as soon as practicable following the taking.

532 406.9-5. *Age Restrictions.*

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

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

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

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

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

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

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

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

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

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

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

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

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

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

406.10. Enforcement and Penalties

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

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

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

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

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by requesting a hearing before ERB.

(a) In order to be considered timely, the person contesting an action of the Department shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.

(b) ERB shall schedule a hearing for all timely filed appeal, and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.

(c) ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(d) ERB's determination related to a license and/or permit is final; no further review is available.

406.10-5. *Contested Action Hearings.* All citations issued pursuant to this law shall include a prehearing date set for the next scheduled monthly prehearing date that is at least thirty (30) calendar days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Environmental Resource Board shall accept pleas which either contest or admit committing the act for which the citation was issued. For all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ERB shall schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing. In addition to scheduling requested hearings, ERB may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) ERB shall conduct prehearings and hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.

(b) *Community Service.* Community service may be substituted for fines at ERB's discretion, provided that, if so substituted, ERB shall use the rate of one (1) hour per ten

dollars (\$10.00) of the fine.

(c) All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(d) ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

End.

Adopted - BC-8-31-94-C
Adopted - BC-4-24-96-A
Adopted - BC-07-22-98-A
Amended - BC-09-13-00-D
Amended - BC-6-04-03-A
Amended - BC-6-30-04-I
Amended - BC-7-13-05-E
Amended - BC-8-29-07-F
Amended - BC-06-24-09-E
Amended - BC-08-26-10-I
Emergency Amended - BC-06-22-11-H (Expired)
Amended – BC-12-14-11-E
Amended – BC-05-22-13-A

MEMORANDUM

DATE: January 10, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Hunting, Fishing, and Trapping Law Amendments**

I. Background

The Legislative Operating Committee (LOC) has requested a Financial Impact Statement on draft 20 of the Hunting, Fishing, and Trapping Law Amendments. This Law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, and BC-05-22-13-A. A public meeting on the current amendments was held on December 22. According to the Legislative Reference Office, the new law contains the following:

- Remove many of the specific and detail oriented aspects of hunting, fishing and trapping regulations from the Law and move them to a rule handbook which the Environmental Resource Board and Conservation Department are delegated the joint rulemaking authority to create.
- Clarify that the State of Wisconsin has no jurisdiction related to hunting, fishing and trapping matters within the Reservation and create a requirement that non-Tribal members be licensed through the Nation to hunt within the Reservation.
- Change the age requirements related to hunting. For hunters twelve (12) to seventeen (17) a parent, guardian or authorized adult must be present.
- Only Tribal members, descendants, non-member Indians and dependents may hunt between the ages ten (10) to eleven (11) and a mentor is required to accompany the youth hunter with a maximum of one (1) weapon shared between the youth and the mentor.
- Allow minors under the age of ten (10) to hunt with a mentor, provided that a weapon may not be used.

- Clarify that suspension, revocation and/or future ineligibility for a license/permit is an available penalty under this Law.
- Updates the Environmental Resource Board's hearing process for contested actions under this law.

II. Executive Summary of Findings

A "Fiscal Impact Statement" means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

Finance contacted Conservation and the Environmental Resource Board regarding any anticipated expenses of implementing the Law. Neither anticipates any additional expenses due to the amendments and they estimate that 90 days will be needed to approve the rules.

III. Financial Impact

No impact.

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has full information with which to render a decision.



Legislative Operating Committee
January 18, 2017

Per Capita Law Amendments

Submission Date: 7/10/15	Public Meetings: 05/19/2016 06/16/2016 12/15/2016
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *This request from the Trust Enrollment Department was submitted to clarify several provisions of the law, modify the frequency of form requirements and in elder distributions, and incorporate fees for stop payments and closed bank accounts.*

7/15/15 LOC: Motion by Jennifer Webster to add the Per Capita Law Amendments to the active files list with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to accept the update as FYI and defer the Per Capita Law Amendments to the Legislative Reference Office and to bring back in 30 days for an update; seconded by Fawn Billie. Motion carried unanimously.

10/21/15 LOC: Motion by David P. Jordan to accept the memorandum as FYI and to defer the Per Capita Law Amendments to the sponsor to continue to work with the Trust Enrollment Committee and to bring a draft back on November 4, 2015; seconded by Fawn Billie. Motion carried unanimously.

10/23/15: Work meeting held, attendees include: Cheryl Skolaski, David P. Jordan, Caroyl Long, Douglass McIntyre, Bonnie Pigman, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore.

10/26/15: Work meeting held, attendees include: Caroyl Long, Bonnie Pigman, Misty Cannon, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore, Susan White, Krystal John.

11/4/15 LOC: Motion by Jennifer Webster to defer to Legislative Reference Office for legislative analysis and fiscal impact; seconded by Fawn Billie. Motion carried unanimously.

2/3/16 LOC: Motion by Tehassi Hill to defer the Per Capita Law Amendments to a work meeting with the Trust Enrollment Department, the Finance Department, Law Office and the sponsor and bring back to the LOC within the next 30 days; seconded by David P. Jordan. Motion carried unanimously.

3/2/16 LOC: Motion by Jennifer Webster to accept the Per Capita Law Amendments status update memorandum and defer to the sponsor to bring back an updated draft with an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

4/6/16 LOC: Motion by Jennifer Webster to prepare the Per Capita Law Amendments for a public meeting to be held on May 19, 2016; seconded by David P. Jordan. Motion carried unanimously.

4/20/16 LOC: Motion by Tehassi Hill to enter the April 7, 2016 e-poll results for the Per Capita Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

Note: the April 7th 2016 e-poll directed the Legislative Reference Office to update the draft Per Capita Law Amendments and legislative analysis to include the revisions discussed in the memo.

Motion by Tehassi Hill to approve the Per Capita Law Amendments Public Meeting packet, noting one update to be made to the legislative analysis, and deleting one definition from the draft law; seconded by Fawn Billie. Motion carried unanimously.

Note: the update to the legislative analysis would identify one additional new duty of the Trust Enrollment Department: calculating the amount of attachments. The definition to be deleted is for "proof of education", since there are duplicate definitions.

5/19/16: *Public Meeting held.*

6/1/16 LOC: Motion by David P. Jordan to accept the results of the e-poll conducted on May 19, 2016 which approved the public meeting packet for an additional public meeting to be held for the Per Capita Law amendments on June 16, 2016 at 12:15 p.m.; seconded by Jennifer Webster. Motion carried unanimously.

Note: This will be the second public meeting for Per Capita Law Amendments.

6/16/16: *Public Meeting held.*

7/6/16 LOC: Motion by Tehassi Hill to accept the public meeting comments regarding the Per Capita law amendments from the May 19, 2016 and June 16, 2016 public meetings and direct desired changes; seconded by David P. Jordan. Motion carried unanimously.

Note: Directed change: remove the word automatic from section 123.6-1(d)(1)(C)(i).

7/25/16: Work Meeting held. Meeting held for an update on the status of this item. Attendees include Maureen Perkins, Jen Falck, Tani Thurner, Jo Anne House.

- 10/13/16:** Quarterly Sponsor Update Meeting held. Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maureen Perkins, Clorissa Santiago. Waiting for new draft.
- 10/24/16:** Work Meeting held. Present: David Jordan, Krystal John, Jennifer Falk, Jo Anne House, Maureen Perkins. Changes directed.
- 11/2/16LOC:** Motion by Fawn Billie to defer the Per Capita Law Amendments to the November 16, 2016 Legislative Operating Committee meeting; seconded by Jennifer Webster. Motion carried unanimously.
- 11/16/16LOC:** Motion by David P. Jordan to approve the Per Capita Law Amendments public meeting packet and direct the LRO to hold a public meeting on December 15, 2016; seconded by Jennifer Webster. Motion carried unanimously.
- 12/15/16** *Public Meeting held.*
- 01/04/17LOC:** Motion by Tehassi Hill to accept the Per Capita Law Amendments public meeting comments; seconded by Jennifer Webster. Motion carried unanimously.
- Motion by Fawn Billie to defer the Per Capita Law Amendments public meeting comments to a work meeting to commence directly after the conclusion of the January 4, 2017 LOC meeting; seconded by Jennifer Webster. Motion carried unanimously.
- 01/04/17:** Work meeting held. Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Mike Debraska, Susan White, Maureen Perkins, Jennifer Falck, Krystal John.

Next Steps:

- Review the adoption packet with the noted changes and forward the Per Capita Law Amendments to the Oneida Business Committee for consideration.

Title 1. Government and Finances – Chapter 123

PER CAPITA

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Issues concerning where they give the money

123.1. Purpose and Policy
123.2. Adoption, Amendment, Repeal
123.3. Definitions
123.4. General

123.5. Distributions
123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults
123.7. Per Capita Actions

123.1. Purpose and Policy

123.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

123.2. Adoption, Amendment, Repeal

123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and _____.

123.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

123.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

123.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that this law repeals Oneida Business Committee resolution 11-06-02-A.

123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

123.3. Definitions

123.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year.
- (b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.
- (c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.
- (d) “Day” means calendar days, unless otherwise specifically stated.
- (e) “Debtor” means a Tribal member owing a debt to an Oneida entity.
- (f) “Direct Deposit” means the electronic distribution of funds.
- (g) “Distribution” means the transfer of funds to Tribal members.
- (h) “IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

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(i) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court and/or Appellate Court.

(j) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.

(k) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1st and is eligible to claim a trust account for the first time in the distribution year.

(l) “Minor Beneficiary” means a Tribal member who is less than eighteen (18) years age.

(m) “Nation” means the Oneida Nation.

(n) “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.

(o) “Outstanding Check” means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.

(p) “Per Capita Payment” means the amount authorized by the General Tribal Council to be distributed to Tribal members.

(q) “Pooled Account” means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation’s laws.

(r) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.

(s) “Rule” means a set of requirements enacted by the Trust Enrollment Committee and/or the Trust Enrollment Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(t) “Tribal Member” means an individual who is an enrolled member of the Nation.

(u) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.

(v) “Trust Enrollment Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.

(w) “Trust Fund Accountant” means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

123.4. General

123.4-1. This section sets forth the responsibilities delegated under this law.

123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council

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through adoption of a resolution.

123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;
- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

123.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

123.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting ~~Division~~Department and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to ~~the same~~approved per capita payments.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting ~~Division~~Department and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting ~~Division~~Department.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check ~~trust account~~ distributions in

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the Enrollment Database.

(k) Complete trust account reconciliations.

(l) Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments.

123.4-7. *Oneida Accounting ~~Division~~Department.* When a per capita payment is approved, the Oneida Accounting ~~Division~~Department shall:

(a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.

(b) Record issued, voided and outstanding check distributions on the general ledger.

(c) Complete bank account reconciliations.

(d) Process per capita distribution to the payables ledger.

(e) Perform all activities related to fiscal and calendar year end processes, including providing tax documents and tax reporting as required by applicable law.

123.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting ~~Division~~Department.

123.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) “Debt owed to an Oneida entity” includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal

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member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not ~~attach~~ process an attachment of a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

(i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt; and

(iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the

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Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

- (i) The dates of all prior notices of indebtedness provided to the debtor;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt;
- (iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;
- (v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;
- (vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and
- (vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1st in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to ~~implement~~process an attachment for a current per capita payment distribution, Oneida Entities shall:

- (i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31st, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's

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thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31st; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall determine the amount of per capita payment attachment based on the order provided in section 123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

(B) Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not ~~attach~~process an attachment of a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may ~~implement~~process attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 123.5-2(b)(1) or who

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refuse a payment under 123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

123.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal member whose per capita payment is subject to attachment in accordance with section 123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory.* A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a.* The Nation shall comply with the most recent edition of IRS Publication 15a.

123.5. Distributions

123.5-1. *General.* This section sets forth the required processes for distribution of per capita payments.

123.5-2. *Deadlines.* The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment.* A Tribal member who is dually enrolled with another

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Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1st.

(b) *Distribution Documents.*

(1) *Adult Distribution Form and Instructions.* Unless and until the Trust Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1st of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to all adult Tribal members. Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1st in order to be eligible for a per capita distribution.

(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1st of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions in accordance with Article III of the Per Capita Trust Agreement.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The ~~Trust Enrollment Department~~Nation shall distribute all annual per capita payments on or before September 30th, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) ~~The~~Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any ~~fees associated with reissuing a distribution~~such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not

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claimed or fully attached, by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 123.5-5.

(A) The Trust Enrollment Department shall ~~distribute~~process prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall ~~distribute~~process prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1st of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, minor beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall ~~deposit~~process expired funds ~~in a pooled account~~ in accordance with 123.5-5.

(B) ~~The~~Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any ~~fees associated with reissuing a distribution~~such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with sections 123.5-2(b)(1)(A) and 123.5-2(b)(2)(A).

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(3) The Trust Enrollment Department shall ~~deposit~~~~process~~ refused distributions in ~~a pooled account in~~ accordance with 123.5-5.

123.5-3. *Deceased Tribal Members.*

(a) *Deceased Tribal Member Distribution Forms.* Tribal members are eligible to receive a distribution so long as the Tribal member has complied with the distribution documents and/or distribution rule(s) requirements. This includes distributions identified to be deposited to a trust account. The estate of a deceased Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living. Should a Tribal member become deceased after submitting the required distribution form, but before the distribution date, the Trust Enrollment Department shall continue to issue the distribution in the name of the deceased Tribal member. The Trust Enrollment Department shall not reissue any distributions in the name of any claimant or the decedent's estate.

(b) *Deceased Minor/Majority Age Beneficiary or Legally Incompetent Adult.*

(1) ~~When~~~~a~~ *there is a Beneficiary Designation Form on Record.* A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to the designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally ~~income~~incompetent adult's trust account, to the General Fund.

(2) *When there is No Beneficiary Designation Form on Record.* The Trust Enrollment Committee shall establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the

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minor/majority age beneficiary or the legally incompetent adult.
123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall ~~deposit~~process funds set aside for a relinquished adult's distribution ~~in a pooled account~~ in accordance with 123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1st of the distribution year and submits the majority age distribution form by July 1st of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21st) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 123.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 123.5-5.

123.5-5. *Pooled Account.* Pooled account funds are ~~managed~~identified by the Trust Enrollment ~~Committee~~Department, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

(1) A Tribal member submits a refusal form under 123.5-2(f);

(2) A Tribal member fails to request a prior distribution or trust account funds

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within the time provided under this law and/or the Per Capita Trust Agreement;

(3) An ~~adult's death occurs prior to~~ adult receives a distribution in accordance with 123.5-3(a) and the distribution is not redeemed within one (1) year of the date; ~~or~~ of distribution;

(4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 123.5-3(b-); or

(5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 123.5-3(c).

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults

123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA, the Tribal Revenue Allocation Plan and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1st of the distribution year as required by the Per Capita Trust Agreement, he

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or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1st of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 123.6-2. In such circumstances, the Trust Enrollment Department shall liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a documentation of learning or other disability that has been medically diagnosed and from a professional qualified to make such a diagnosis and who are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

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(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1st of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

123.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with [IGRA-the Tribal Revenue Allocation Plan and IGRA.](#)

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

123.7. Per Capita Actions

123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.

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642 123.7-2. No administrative hearing body, including a board, committee or commission, is
 643 authorized to hear a complaint regarding actions taken pursuant to this law and/or rules.

644 123.7-3. In regards to taking actions authorized under this law, complaints filed with the
 645 Oneida Judiciary shall name the Trust Enrollment Department.

646 |
 647 *End.*

648 |
 649 |

Adopted - BC-7-12-00-B	incompetent adults)
Emergency Amendments – BC-01-03-01-B	Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)
Emergency Amendments - BC-2-28-01-E	Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)
Amendments - BC-11-06-02-A (Elder Per Capita)	Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)
Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)	Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13
Amendments - BC-6-16-04-C (Child support priority for attachment)	Amendments Adopted – BC-08-14-13-D
Emergency Amendments - BC-9-12-07-A (one-time per capita payment)	
Amendments – BC-04-22-09-A (High School Diploma; legally	



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson
DATE: January 25, 2017
RE: Per Capita Law Amendments

BS

Please find the following attached backup documentation for your consideration of the Per Capita Law Amendments:

1. Resolution: Per Capita Law Amendments
2. Statement of Effect: Per Capita Law Amendments
3. Per Capita Law Amendments Legislative Analysis
4. Per Capita Law (Clean)
5. Per Capita Law Amendments Fiscal Impact Statement

Overview

This is a proposal to amend the existing Per Capita Law which would:

- Reduce the frequency of per capita distributions to elders while maintaining the elders' payments by placing elders on the same distribution schedules as adults.
- Allow for per capita distributions to be paid to a Tribal member who has filled out the required distribution forms but died prior to the distribution date.
- Create a majority age beneficiary category distinct from minor beneficiary.
- Include provisions that allow all persons with per capita trust accounts to name beneficiaries.
- Clarify how per capita distributions held in trust accounts are inherited when the beneficiary passes.
- Establish bank fees for closed accounts and returned distributions.
- Transfer the hearing authority of the Trust Enrollment Committee to the Judiciary.
- Revise the attachment process to allow entities to collect debt owed to the Nation without requiring a court order.

In accordance with the Legislative Procedures Act, public meetings on the proposed amendments to the Per Capita Law were held on May 19, 2016, June 16, 2016 and December 15, 2016.

Requested Action

Approve the Resolution: Adoption of Per Capita Law Amendments

BC Resolution _____
Adoption of Per Capita 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 Nation Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee adopted the Per Capita law pursuant to resolution BC-07-12-00-B and amended the law by resolutions: BC-11-06-02-A, BC-06-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13; and

WHEREAS, these amendments place all elders on the same distribution schedule as adults so that first time elders with birthdays after the distribution date will receive their payment early at the same time as everyone else; and

WHEREAS, these amendments modify the policy related to a Tribal member that dies prior to a distribution date to permit payment so long as the Tribal member timely filled out the distribution form, provided that such payments may not be re-issued to the estate or any other claimant; and

WHEREAS, these amendments add new provisions which allow for a beneficiary designation for any Tribal member with a per capita trust account; and

WHEREAS, these amendments clarify the distribution process and requirements for deceased Tribal members' trust accounts; and

WHEREAS, these amendments establish bank fees for closed accounts and returned distributions to be deducted from the per capita payment; and

WHEREAS, these amendments transfer the Trust Enrollment Committee's original hearing body authority to the Oneida Judiciary; and

WHEREAS, the these amendments revise the attachment process to allow the Nation's entities to collect debt owed to the Nation without requiring a court order; and

WHEREAS, public meetings regarding these amendments were held on May 19, 2016, June 16, 2016 and December 15, 2016, in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Trust Enrollment Department and the Trust Enrollment Committee shall develop the rules required to support these Per Capita law amendments to be effective no later than May 25, 2017.

NOW THEREFORE BE IT FURTHER RESOLVED, that these Per Capita law amendments are hereby adopted.



Statement of Effect

Adoption of Per Capita Law Amendments

Summary

This Resolution adopts amendments to the Per Capita law which would:

- Reduce the frequency of per capita distributions to elders while maintaining the elders' payments by placing elders on the same distribution schedules as adults.
- Allow for per capita distributions to be paid to a Tribal member who has filled out the required distribution forms but died prior to the distribution date.
- Create a majority age beneficiary category distinct from minor beneficiary.
- Include provisions that allow all persons with per capita trust accounts to name beneficiaries.
- Clarify how per capita distributions held in trust accounts are inherited when the beneficiary passes.
- Establish bank fees for closed accounts and returned distributions.
- Transfer the hearing authority of the Trust Enrollment Committee to the Judiciary.
- Revise the attachment process to allow entities to collect debt owed to the Nation without requiring a court order.

By: Krystal L. John, Staff Attorney

Analysis

This resolution adopts amendments to the Per Capita law which was adopted by resolution BC-07-12-00-B and thereafter amended by resolutions BC-11-06-02-A, BC-06-16-04-C, BC-14 04-22-09-A, BC-05-09-12-B and BC-08-14-13.

In addition to the summary of the most notable revisions to the Per Capita law provided above, the amendments to the Per Capita law also delegate administrative rulemaking authority to the Trust Enrollment Department (Department) and the Trust Enrollment Committee (Committee) to further define the processes needed to implement this law.

The Department is permitted, but not required, to create rules which would modify the adult distribution form and instructions.

The Committee is required to create rules:

- related to distribution timelines for requests for prior payments;
- to provide the definition of and notice to potentially interested parties in the event a

Tribal member with a trust account dies without a beneficiary designation form on file;

- to establish valuation dates and frequency of reports and identify data critical to the completion of the reports, provided that the Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors; and
- to determine when a guardian qualifies for distribution from an established trust account.

Public meetings were held on May 19, 2016, June 16, 2016 and December 15, 2016 in accordance with the Legislative Procedures Act.

In accordance with the Legislative Procedures Act, the effective date of these amendments is February 1, 2017, which is ten (10) business days from the date the resolution is adopted. The effective date is not required to be extended in order to allow the Committee time to develop the rules because the rules will be ready for the 2017 per capita distribution cycle as the resolution requires the rules to be effective by no later than April 25, 2017.

Conclusion

Adoption of these amendments does not conflict with the Nation's laws.

Analysis to Draft # 17 for OBC Consideration 2017 01 25



Per Capita Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Per Capita (law) Amendments				
Sponsor	David P. Jordan	Drafter	Krystal L. John	Analyst	Maureen Perkins
Requester & Reason for Request	Trust Department. To 1) clarify minor and majority age beneficiary references as they relate to deferrals and hardships; 2) make changes in Elder distributions; 3) incorporate fees for stop payments and closed bank accounts and 4) review how resolutions BC-01-28-04-A and BC-11-06-02 are affected by the proposed changes and original intent, as they apply to the law.				
Purpose	The purpose of this law is to specify the procedures to be followed in the event that per capita payments are distributed by the Nation and to clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments [See 123.1-1].				
Authorized/ Affected Entities	Oneida Business Committee, Trust Enrollment Committee, Trust Enrollment Department, Judiciary, Oneida Accounting Department, Oneida Nation Child Support Agency, other Oneida Entities that may be owed a debt/fine by a Tribal member.				
Related Legislation	Per Capita Trust Agreement, Tribal Revenue Allocation Plan, Child Support Law and Accompanying Rules, Memorandum of Agreement, Judiciary				
Enforcement & Due Process	Any Tribal member or guardian of a Tribal member can file a complaint regarding actions taken according to this law and/or rules [See 123.7] or an attachment [See 123.4-9(d)(5)] to the Judiciary. Attachments may be ordered by the Judiciary for child support arrears or a federal tax levy [See 123.4-9(a)(1) and 123.4-9(a)(3)]. Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested [see 123.4-9(d) and 123.4-9(d)(5)]. Debt owed to an Oneida Entity includes any money owed and any fines that have been issued by the Oneida Entity [See 123.4-9(a)(2)(A)]. The Judiciary may order attachments against per capita payments of Tribal members who have not returned a notarized membership payment form or who refuse a per capita payment [See 123.4-9(f)]. All fees associated with reissuing a distribution must be applied to the distribution [see 123.5-2(e)(2)(B)] unless it is an error on the Nation's behalf [See 123.5-2(e)(2)(B)(i)].				
Public Meeting Status	Public meetings were held May 19, June 16, and December 1, 2016. The LOC has reviewed the public comments received during the public comment period; any changes made based on the public comments received have been incorporated into this draft.				

Overview

The proposed Per Capita law amendments were requested by the Trust Enrollment Department (formerly known individually as the Trust Department and the Enrollment Department) to reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults, allow for per capita distributions to be paid to a Tribal member who has filled out the required distribution

forms but died prior to the distribution date, create the majority age beneficiary category distinct from minor beneficiary, include provisions that allow all persons with per capita trust accounts to name beneficiaries, clarify how per capita distributions held in trust accounts are inherited when the beneficiary passes, establish bank fees for closed accounts and returned distributions, and transfers the hearing authority of the Trust Enrollment Committee to the Judiciary. Additional amendments include: repeals BC resolution 11-06-02-A, merges Trust and Enrollment Departments into one Trust Enrollment Department, recognizes the Trust Enrollment Committee (the current law recognizes the Trust Committee), eliminates deadlines related to attachments, eliminates the requirement for Oneida entities to receive an attachment order from the Judiciary unless an attachment hearing is requested and eliminates the role of the Trust Enrollment Committee to hold administrative hearings.

Analysis was requested regarding the following resolutions:

▪ **BC Resolution 11-06-02-A**

- This resolution amended the Per Capita Ordinance to create a separate per capita payment schedule for elders who turn 62 and 65 in a distribution year. The amendments added age 65 to the definition of elder in the Per Capita Ordinance. The resolution also established that elders who turn 62 or 65 by December 31st were to receive the respective elders' per capita payment for that September 30th distribution year. Those who turn 62 or 65 after September 30th were to receive their respective first time elder per capita payment in the month following their birth date. This establishes that there are additional elders payments sent after September 30th of a distribution year for those who are turning 62 and 65 after September 30 of that distribution year.
 - The proposed amendments still honor December 31st as the cut off for elders who reach the age determined by the GTC resolution in the distribution year that takes place on September 30th. These distributions; however, will occur on September 30th along with all adult distributions. Elders who reach age categories established by the GTC resolution between October 1st and December 31st will receive their elders' payments early on September 30th of that distribution year.
 - BC Resolution 11-06-02-A conflicts with the proposed amendments in that there is not a separate schedule for elders' payments in the proposed law as established by this resolution. Elders are classified as adults in the definition and therefore follow the adult distribution timeline.
 - Adult is defined as a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year [See 123.3-1(a)].

	BC Resolution 11-06-02-A	Current Law	Proposed Amendments
definition	Elder: shall mean those tribal members who are age 62 years or	9.3-1(e) "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of	123.3-1 "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1 st of a given year.

	over, or 65 years or over, as of December 31 of a given year.	December 31st of a given year.	123.4-6(a) For the purposes of this section, elder means a Tribal Member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
	BC Resolution 11-06-02-A	Current Law	Proposed Amendments
Payments / Distributions	<p>(c) Payments Sent. Per capita payments shall be mailed on September 30th.</p> <p>1) After September 30, and through December 31, first time elder per capita payments shall be sent in the month following birth date.</p>	<p>9.5-3(d) (d) Annual Payments. Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.</p> <p>(e) (1) Prior Payments: Elders. Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month.</p>	123.5-2 (c) Annual Distribution Date. The Nation shall distribute all annual per capita payments on or before September 30 th , excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

- **Impact.** BC Resolution 11-06-02-A conflicts with the proposed amendments.
 - This law repeals BC Resolution 11-06-02-A considering that elders will still receive their elders' payments in the distribution year according to the proposed Per Capita Law amendments.
- **Special BC Resolution 1-28-04-A**

- This resolution was passed at the Special BC meeting held in lieu of the GTC Annual Meeting due to a lack of quorum. This resolution designates the interest from the unclaimed unallocated per capita pooled account to be applied to the Oneida Language Revitalization Program.
- Please note that the pooled account itself has not been designated for use by the GTC through this resolution; only the interest from the account was allocated, the principal of the account shall not be depleted.
- **Impact.** This resolution has no legislative impact on the proposed amendments.

Proposed Amendments

This section will highlight each of the major proposed amendments to the law and will indicate whether there is overlap or conflict with the Per Capita Trust Agreement.

- **Repeals BC Resolution 11-06-02-A**

- **Impact.** The separate process for elders' per capita distributions has been eliminated; all adult distributions will follow the same distribution schedule.

- **Trust Enrollment Committee.** Added responsibilities include: provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan [see 123.4-5(c)].

- **Impact.** No legislative impact or conflict.

- **Trust Enrollment Department.** Added responsibilities include:

- Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee [see 123.4-6(f)].
- Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments [see 123.4-6(l)].
- **Impact.** No legislative impact or conflict.

- **Tribal Treasurer** [see 123.4-8]. Duties removed:

- Make a payment to those Tribal members responding to the membership payment form deadline who are not minors or incompetent adults [see 9.7-5(a) of current law].
- Cover unverified member payments for those members who are unresponsive to the membership payment form deadline [see 9.7-5(b) of current law].

- **Impact.** No legislative impact or conflict.

- **Deadlines.** Deadlines regarding attachments were removed throughout the law to eliminate the need to amend the law due to updated deadlines in the future [see 9.4-6(d)(4) and 9.4-6(d)(4)(B) and 9.4-6(d)(4)(C) and 9.4-6(d)(5) and 9.4-6(d)(6)(A) and 9.4-6(d)(6)(B) and 9.4-6(e)(1) and 9.4-6(e)(2) and 9.4-6(e)(3)(A) and 9.4-6(e)(3)(B) of current law].

- **Impact.** No legislative impact or conflict.

- **Distinction of Majority Age and Minor Beneficiaries.** Two terms have been added to create clarity in the law: majority age beneficiaries and minor beneficiaries.

- **Proposed Amendments to the Law.** The proposed amendments to the law define the new terms as follows:

- Majority age beneficiaries: a Tribal member who has reached eighteen (18) years of age by September 1 and is eligible to claim a trust account for the first time in the distribution year [see 123.3-1(k)].
- Minor beneficiaries are defined as Tribal members who are less than

- 18 years of age *[see 123.3-1(l)]*.
- **Per Capita Trust Agreement.** The Per Capita Trust Agreement refers only to “beneficiaries” defined as:
 - The beneficiaries of the trust shall be all duly enrolled members of the Oneida Tribe of Indians of Wisconsin who are eligible to receive a per capita distribution in any year in which any such distribution is made, and who have not yet attained the age of eighteen years by September 1st of the year in which such distribution is made *[see Article I. Beneficiaries of the Per Capita Trust Agreement]*.
 - **Impact.** No legislative impact or conflict.
 - **Oneida Entity Debt Attachment.** Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested *[see 123.4-9(d)]*. The entity owed the debt must provide two written notices via first class mail to the debtor’s last known address prior to issuing final notice of indebtedness with intent to attach. The notice to attach must also appear in the Nation’s newspaper. Once this has been satisfied, the Trust Enrollment Department will calculate the attachment amount. The Trust Enrollment Department may attach per capita payments, as ordered by the Judiciary, of Tribal members who do not return a notarized membership payment form or who refuse a distribution *[see 123.4-9(f)]*. Any remaining amount after all attachments have been satisfied will be distributed to the Tribal member if the Tribal member follows the process for requesting a prior per capita payment *[see 123.5-2(e)]* or otherwise deposited into the pooled account *[see 123.4-9(f)]*.
 - **Administrative Hearings.** The role of the Trust Enrollment Committee to hold administrative hearings regarding challenges to payment or non-payment of per capita payments has been removed from this law *[see 9.4-4(c) of current law]*. Disputes are settled by the Judiciary in the proposed amendments.
 - **Proposed Amendments to the Law.** The proposed amendments to the law state, “The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.” *[see 123.7-1]*.
 - **Per Capita Trust Agreement.** The Per Capita Trust Agreement states, “If any dispute arises out of the distribution of a beneficiary’s interest under the trust, all such matters shall be resolved according to the procedures set forth in the Oneida Administrative Procedures Act, except as otherwise provided in the Oneida Tribe of Indians of Wisconsin Revenue Allocation Plan *[see Article XV of the Per Capita Trust Agreement]*.”
 - **Impact.** Article XV of the Per Capita Trust Agreement would need to be updated to refer disputes to the Judiciary.
 - **Bank Fees.** The current law is silent with respect to bank fees.
 - **Proposed Amendments to the Law.** All fees associated with reissuing a distribution (due to stop payment or incorrect direct deposit information) must be applied to the distribution *[see 123.5-2(d)(1)]* unless it is an error on the Nation’s behalf *[see 123.5-2(d)(2)]*.
 - **Impact.** No legislative impact or conflict.
 - **Elders Payments.** The separate process for elder’s distributions was removed from this law. Elder’s distributions now follow the same process and adhere to the same deadlines

as the adult distributions [see 123.5], except for those elders who reach the age category established by the GTC resolution between October 1 and December 31 of the distribution year, who will receive their elders' payments early on September 30 (implied intent). This change conflicts with BC Resolution 11-06-02-A which sets the distribution timeline for elders reaching 62 and 65 by December 31st of the distribution year.

- **Impact.** BC Resolution 11-06-02-A is repealed in this law as noted in the analysis of the resolution above.
- **Deceased Tribal Members.** Tribal Members who complete the distribution form and die prior to the distribution date will receive a per capita payment. The payment will only be made in the Tribal Member's name and will not be reissued in the name of any claimant or the decedent's estate [see 123.5-3(a)].
 - **Impact.** No legislative impact or conflict.
- **Beneficiary Designation Forms.** All minor/majority age beneficiaries and legally incompetent adults will receive beneficiary designation forms from the Trust Enrollment Department to name a beneficiary to inherit any remaining trust account balance in the event of death of the minor/majority age beneficiary or legally incompetent adult. The Trust Enrollment Department will send these forms out each year for newly enrolled members and Tribal members declared legally incompetent [see 123.6-3].
 - **Impact.** No legislative impact or conflict.
- **Per Capita Actions.** A process to file a complaint to the Judiciary was added to this law [See 123.7].
 - **Impact.** The complaint process would need to be updated in the Per Capita Trust Agreement as it currently refers to the Administrative Procedures Act and the Revenue Allocation Plan to settle disputes [See Article XV of the Per Capita Trust Agreement].
- **Complaint with Regard to Oneida Entity Debt and Federal Tax Levy Attachments**
 - Tribal members subject to attachment to collect a debt owed to the Judiciary who wish to file a complaint regarding the attachment may file a request for a show cause hearing with the Judiciary within 30 days of the final notice of indebtedness with intent to attach. The Judiciary shall honor all requests for show cause hearings [see 123.4-9(d)(5)].
 - **Impact.** Provides an opportunity for Tribal members to file a complaint regarding an attachment to collect debt issued by the Judiciary.

Administrative Rulemaking Authority

- The Trust Enrollment Department has rulemaking authority under this law to develop and implement the following rules:
 - Modify the Adult Distribution Form and Instructions [see 123.5-2(b)(1)].
- The Trust Enrollment Committee has rulemaking authority under this law to develop and implement the following rules:
 - Distribution timelines [see 123.5-2(b)(1)(A)].
 - Defining potentially interested parties in the event there is no signed beneficiary designation form on record [see 123.5-3(a)].

- Establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors *[see 123.6-1(a)(1)]*.
- Determine when a guardian qualifies for distribution from an established trust account *[see 123.6-2(a)]*.

Other

Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Please refer to the fiscal impact statement for any financial impacts.

Title 1. Government and Finances – Chapter 123
PER CAPITA
Shakotiw\$ Stawih# Olihw@ke
Issues concerning where they give the money

123.1. Purpose and Policy
123.2. Adoption, Amendment, Repeal
123.3. Definitions
123.4. General

123.5. Distributions
123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults
123.7. Per Capita Actions

123.1. Purpose and Policy

123.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

123.2. Adoption, Amendment, Repeal

123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and _____.

123.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

123.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

123.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that this law repeals Oneida Business Committee resolution 11-06-02-A.

123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

123.3. Definitions

123.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year.
- (b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.
- (c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.
- (d) “Day” means calendar days, unless otherwise specifically stated.
- (e) “Debtor” means a Tribal member owing a debt to an Oneida entity.
- (f) “Direct Deposit” means the electronic distribution of funds.
- (g) “Distribution” means the transfer of funds to Tribal members.
- (h) “IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

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- (i) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1st and is eligible to claim a trust account for the first time in the distribution year.
- (l) “Minor Beneficiary” means a Tribal member who is less than eighteen (18) years age.
- (m) “Nation” means the Oneida Nation.
- (n) “Oneida Entity” means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) “Outstanding Check” means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) “Per Capita Payment” means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) “Pooled Account” means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation’s laws.
- (r) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) “Rule” means a set of requirements enacted by the Trust Enrollment Committee and/or the Trust Enrollment Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.
- (t) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (u) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (v) “Trust Enrollment Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.
- (w) “Trust Fund Accountant” means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

123.4. General

123.4-1. This section sets forth the responsibilities delegated under this law.

123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

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123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;
- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

123.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

123.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Department and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to approved per capita payments.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Department and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Department.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check distributions in the Enrollment Database.

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(k) Complete trust account reconciliations.

(l) Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments.

123.4-7. *Oneida Accounting Department.* When a per capita payment is approved, the Oneida Accounting Department shall:

(a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.

(b) Record issued, voided and outstanding check distributions on the general ledger.

(c) Complete bank account reconciliations.

(d) Process per capita distribution to the payables ledger.

(e) Perform all activities related to fiscal and calendar year end processes, including providing tax documents and tax reporting as required by applicable law.

123.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Department.

123.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in

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171 this law. If there is a remaining unclaimed balance, the Tribal member may request it to
172 be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit
173 any remaining refused balance in accordance with 123.5-5.

174 (c) *Child Support Attachments*. Claimants or their designated representative shall submit
175 all requests for attachments for child support arrears to the Oneida Nation Child Support
176 Agency.

177 (1) After receiving an initial attachment request for child support arrears, the
178 Oneida Nation Child Support Agency shall send a one-time notice and a voluntary
179 federal income tax withholding request form to those Tribal members whose per
180 capita payment will be attached for child support arrears.

181 (2) The Oneida Nation Child Support Agency shall prepare a certified accounting
182 of all attachment requests and forward the accounting to the Judiciary.

183 (3) The Trust Enrollment Department may not process an attachment of a Tribal
184 member's per capita payment to collect child support arrears without first having
185 received an order of determination issued by the Judiciary.

186 (4) After the child support arrears have been satisfied, if an attachment request is
187 submitted for the same Tribal member's per capita payment based on new child
188 support arrears, the Oneida Nation Child Support Agency shall issue another one-
189 time notice and federal income tax withholding form in accordance with 123.4-
190 9(c)(1).

191 (d) *Oneida Entity Debt Attachments*. Oneida entities are not required to receive an
192 attachment order from the Judiciary prior to initiating a per capita payment attachment
193 unless an attachment hearing is requested under section 123.4-9(d)(5).

194 (1) *Notice of Indebtedness*. Prior to initiating an attachment, the Oneida entity
195 owed the debt shall provide written notice of indebtedness to the debtor by first
196 (1st) class mail at the debtor's last known address.

197 (A) *Frequency of Notice*. Oneida entities shall send debtors notice of
198 indebtedness for each month a debt is owed with each notice being sent a
199 minimum of thirty (30) calendar days apart. Oneida entities shall send
200 two (2) consecutive monthly notices prior to the debt becoming eligible
201 for attachment.

202 (B) *Notice Content*. Oneida entities shall include the following in their
203 notices of indebtedness:

204 (i) How many notices of indebtedness have been provided prior to
205 the subject notice and the dates of all prior notices;

206 (ii) The amount of the debtor's indebtedness;

207 (iii) Information for making payment on the debt; and

208 (iv) An explanation that if the debt is not paid in full within thirty
209 (30) calendar days from the date of the second consecutive
210 monthly notice, the entity may initiate an automatic attachment of
211 the Tribal member's per capita payment.

212 (2) *Initiating an Attachment*. After thirty (30) calendar days have lapsed since the
213 Oneida entity sent the second consecutive monthly notice of indebtedness, the

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Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

- (i) The dates of all prior notices of indebtedness provided to the debtor;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt;
- (iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;
- (v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;
- (vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and
- (vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1st in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to process an attachment for a current per capita payment distribution, Oneida Entities shall:

- (i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31st, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment

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hearing with the Judiciary expires on or before July 31st; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall determine the amount of per capita payment attachment based on the order provided in section 123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

(B) Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not process an attachment of a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may process attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 123.5-2(b)(1) or who refuse a payment under 123.5-2(f). If the amount of the per capita payment exceeds the amount of the

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attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

123.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal member whose per capita payment is subject to attachment in accordance with section 123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory.* A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a.* The Nation shall comply with the most recent edition of IRS Publication 15a.

123.5. Distributions

123.5-1. *General.* This section sets forth the required processes for distribution of per capita payments.

123.5-2. *Deadlines.* The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment.* A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification

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that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1st.

(b) *Distribution Documents.*

(1) *Adult Distribution Form and Instructions.* Unless and until the Trust Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1st of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to all adult Tribal members. Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1st in order to be eligible for a per capita distribution.

(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1st of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions in accordance with Article III of the Per Capita Trust Agreement.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Nation shall distribute all annual per capita payments on or before September 30th, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1,

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2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 123.5-5.

(A) The Trust Enrollment Department shall process prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall process prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1st of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, minor beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall process expired funds in accordance with 123.5-5.

(B) Upon receipt of notice from the Oneida Accounting Department of any fees incurred by the Nation associated with reissuance of a distribution, the Trust Enrollment Department shall deduct any such fees from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with sections 123.5-2(b)(1)(A) and 123.5-2(b)(2)(A).

(3) The Trust Enrollment Department shall process refused distributions in accordance with 123.5-5.

123.5-3. *Deceased Tribal Members.*

(a) *Deceased Tribal Member Distribution Forms.* Tribal members are eligible to receive

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a distribution so long as the Tribal member has complied with the distribution documents and/or distribution rule(s) requirements. This includes distributions identified to be deposited to a trust account. The estate of a deceased Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living. Should a Tribal member become deceased after submitting the required distribution form, but before the distribution date, the Trust Enrollment Department shall continue to issue the distribution in the name of the deceased Tribal member. The Trust Enrollment Department shall not reissue any distributions in the name of any claimant or the decedent's estate.

(b) *Deceased Minor/Majority Age Beneficiary or Legally Incompetent Adult.*

(1) *When there is a Beneficiary Designation Form on Record.* A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to the designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally incompetent adult's trust account, to the General Fund.

(2) *When there is No Beneficiary Designation Form on Record.* The Trust Enrollment Committee shall establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.

123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

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473 (a) *Relinquished Adult*. The Trust Enrollment Department shall process funds set aside
474 for a relinquished adult's distribution in accordance with 123.5-5.

475 (b) *Majority Age/Minor Beneficiary Relinquishment*. Upon a majority age/minor
476 beneficiary's relinquishment the following provisions apply:

477 (1) The Trust Enrollment Department shall deposit any funds in a trust account
478 for a majority age/minor beneficiary in a joint savings account in the name of the
479 Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

480 (2) A relinquished majority age/minor beneficiary is eligible to claim the joint
481 savings account if he or she is eighteen (18) years of age by September 1st of the
482 distribution year and submits the majority age distribution form by July 1st of the
483 same year. In addition, a relinquished majority/minor age beneficiary shall claim
484 any remaining funds held in the joint savings account prior to the first distribution
485 following his or her twenty-first (21st) birthday.

486 (3) A relinquished majority age/minor beneficiary may refuse his or her joint
487 savings account funds at the age of eighteen (18). The proof of education
488 requirement is not required to refuse joint savings account funds, however the
489 relinquished majority age/minor beneficiary shall satisfy the requirements of
490 section 123.5-2(f).

491 (4) The Trust Enrollment Department shall follow the Trust Enrollment
492 Committee's standard operating procedure for allocating any fees necessary for
493 the establishment and maintenance of a relinquished majority age/minor
494 beneficiary's joint savings account to the said account.

495 (5) The Trust Enrollment Department shall deposit any unclaimed joint savings
496 account funds in a Pooled Account in accordance with section 123.5-5.

497 (c) *Legally Incompetent Adult Relinquishment*. Upon a legally incompetent adult's
498 relinquishment the Trust Enrollment Department shall disburse any funds in a trust
499 account for the legally incompetent adult to the guardian of the legally incompetent adult.

500 (1) If the trust account funds for a legally incompetent adult are not claimed
501 within one (1) year after the date of relinquishment, the Trust Enrollment
502 Department shall liquidate and deposit the trust fund account in accordance with
503 123.5-5.

504 123.5-5. *Pooled Account*. Pooled account funds are identified by the Trust Enrollment
505 Department, to be used for a purpose designated by General Tribal Council. Pooled account
506 funds result from the following.

507 (a) *Expiration of Unclaimed Per Capita Payments*. Tribal Members' rights to unclaimed
508 Per Capita Payments expire upon the occurrence of any one (1) of the following:

509 (1) A Tribal member submits a refusal form under 123.5-2(f);

510 (2) A Tribal member fails to request a prior distribution or trust account funds
511 within the time provided under this law and/or the Per Capita Trust Agreement;

512 (3) An adult receives a distribution in accordance with 123.5-3(a) and the
513 distribution is not redeemed within one (1) year of the date of distribution;

514 (4) The estate of a deceased majority age/minor beneficiary fails to request
515 distribution of the trust account within the time provided under 123.5-3(b); or

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(5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 123.5-3(c).

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults

123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA, the Tribal Revenue Allocation Plan and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1st of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1st of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the

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requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 123.6-2. In such circumstances, the Trust Enrollment Department shall liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have documentation of learning or other disability from a professional qualified to make such a diagnosis and who are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1st of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

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123.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with the Tribal Revenue Allocation Plan and IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

123.7. Per Capita Actions

123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.

123.7-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or rules.

123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

End.

Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support

priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

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Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)	Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)
Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)	Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13
Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)	Amendments Adopted – BC-08-14-13-D

MEMORANDUM

DATE: January 11, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Per Capita Amendments**

I. Background

This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D. A public meeting was held on December 22, 2016. The fiscal analysis was completed on Draft 17.

According to the Legislative Reference Office, the new Law contains the following:

- Reduce the frequency of per capita distributions to elders while still maintaining the elders' payments by placing elders on the same distribution schedule as adults.
- Allow per capita distributions to all Tribal members who have completed the required distribution forms, even if the Tribal member becomes deceased before the per capita distribution.
- Create the majority age (18) beneficiary category distinct from minor beneficiary.
- Include provisions that allow all persons with per capita trust accounts to name beneficiaries.
- Clarify how per capita distributions held in trust accounts are "inheritable" when the beneficiary is deceased.
- Establish bank fees for closed accounts and returned distributions.
- Transfer the Trust and Enrollment Committee hearing authority to the Oneida Judiciary.
- Revise the attachment process to allow entitles to collect debt owed to the Nation without requiring a judgment from a court.

II. Executive Summary of Findings

A “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

According to the Director for the Trust and Enrollment Committee, there are no projected increases in expenses due to the implementation of these amendments. In fact, it is anticipated that there may be some incalculable administrative savings due to the decrease disbursements. Amendments will take effect during the Fiscal Year 2017 payouts.

III. Financial Impact

No impact.

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has full information with which to render a decision.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: January 9, 2017
- 2) Contact Person(s): Victoria Flowers
 Dept: Environmental, Health & Safety Division
 Phone Number: 869-4548 Email: vflowers@oneidanation.org
- 3) Agenda Title: Revisions to Chapter 40 - Tribal Environmental Response Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
To change references from Oneida Tribe of Indians of Wisconsin to Oneida Nation.
To review and update procedures for hearing bodies.
Establish rulemaking authority for TERL.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Copy of Chapter 40 with notes
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Chapter 40 Tribal Environmental Response Law
- 6) Please list all other departments or person(s) you have brought your concern to:
Jeffrey Mears, Environmental Area Manager, Jennifer Falck - Director LRO
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why:

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

Chapter 40
Tribal Environmental Response
 Latihw<tsyahal#tu kayanl^hsla>
 They clean up the earth laws

Comment [VAF1]: Change to Oneida Nation

40.1. Purpose and Policy
 40.2. Adoption, Amendment, Conflicts
 40.3. Definitions
 40.4. Jurisdiction
 40.5. Tribal Environmental Response Program (TERP)
 40.6. Environmental Quality Standards

40.7. Discharge of Hazardous Substances
 40.8. Remedial Actions
 40.9. Case Closure or No Further Action
 40.10. Enforcement and Penalties
 40.11. Appeals

40.1. Purpose and Policy

40.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

40.1-2. It is the policy of the Tribe to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

Comment [VAF2]: Oneida Nation

40.2. Adoption, Amendment, Conflicts

40.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B.

40.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

40.2-3. 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.

40.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

40.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

Comment [VAF3]: Oneida Nation

40.3. Definitions

40.3-1. 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) "All Appropriate Inquiries" means the process of evaluating a property's environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.
- (b) "Contamination" or "contaminated" means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

- (c) “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.
- (d) “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.
- (e) “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.
- (f) “Groundwater” means any water contained beneath the ground surface.
- (g) “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:
 - (1) a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.
 - (2) those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.
 - (3) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.
- (h) “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.
- (i) “Operator” means any person who operates a site.
- (j) “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.
- (k) “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (l) “Practicable” means remedial action is capable of being implemented, taking into account:
 - (1) The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and
 - (2) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.
- (m) “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.
- (n) “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.
- (o) “Responsible party” means any person who, under this law, is required to:
 - (1) take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(2) reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

Comment [VAF4]: Oneida Nation

(p) “Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.

(q) “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.

(r) “Tribal entity” means a board, committee, commission, department, division, or agency of the Oneida Tribe of Indians of Wisconsin.

Comment [VAF5]: Oneida Nation entity

Comment [VAF6]: Oneida Nation

40.4. Jurisdiction

40.4-1. *Personal Jurisdiction.* This law shall apply to:

(a) all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;

(b) individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and

(c) individuals who have consented to the jurisdiction of the Tribe or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Tribe:

Comment [VAF7]: Nation

Comment [VAF8]: Oneida Nation

Comment [VAF9]: Oneida Nation

Comment [VAF10]: Oneida Nation

Comment [VAF11]: Oneida Nation

(1) By entering into a consensual relationship with the Tribe, Tribal entities Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

Comment [VAF12]: Oneida Nation

(2) By other facts which manifest an intent to consent to the authority of the Tribe, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

40.4-2. *Territorial Jurisdiction.* This law extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Tribe within the State of Wisconsin.

Comment [VAF13]: Oneida Nation

40.5. Tribal Environmental Response Program (TERP)

40.5-1. The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

Comment [VAF14]: Oneida Nation, remove environmental

Comment [VAF15]: ONRP

Comment [VAF16]: Oneida Nation Response Program

Comment [VAF17]: ONRP

Comment [VAF18]: ONRP

40.5-2. Under the TERP, the Division shall:

(a) provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.

(b) conduct and/or oversee assessments and investigations of sites with contamination concerns.

(c) identify potentially responsible parties to clean up contaminated sites.

(d) require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.

(e) oversee and enforce required remedial actions.

(f) develop mechanisms for the approval, certification, and verification of remedial actions or other controls taken at a site.

Comment [VAF19]: This is added to cover the issuance of administrative orders to maintain institutional controls of contamination further developed in the next section 40.5-3

(g) maintain a public record of remedial actions conducted at a contaminated site.

40.5-3. *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

- (a) orders to prevent the discharge of a hazardous substance.
- (b) orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.
- (c) orders to require a responsible party to take action to prevent and/or abate contamination.
- (d) orders to require a responsible party to maintain institutional or physical controls on the property to prevent direct contact with contaminated soil, groundwater or vapors.

Comment [VAF20]: To be added

40.5-4. *Emergency Situations.* Chapter 35 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

40.6. Environmental Quality Standards

40.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

40.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

- (1) The notice shall contain a deadline for comments to be received from any person.
- (2) The Division shall review and consider comments received before approving the new or revised standards.

40.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

40.7. Discharge of Hazardous Substances

40.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 40.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

- (a) Any person who possesses or controls a hazardous substance which is discharged;
- (b) Any person who causes the discharge of a hazardous substance; and
- (c) Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

40.7-2. *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

40.7-3. *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any discharge has

caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

- (1) visible soil contamination;
- (2) presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and
- (3) reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) Whether contamination exists shall be based on the level of contamination as compared to Tribally adopted environmental quality standards.

Comment [VAF21]: Oneida Nation

40.7-4. The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

40.7-5. The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be recorded and published in a document available to the public.

Comment [VAF22]: Have to revisit this concept – maybe remove or amend to have a GIS notification and website notice.

40.7-6. A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

40.7-7. A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

Comment [VAF23]: ONRP

40.7-8. Except as provided in 40.7-10, the following persons are responsible parties:

- (a) The current owner and operator of the site;
- (b) Any owner or operator of the site at the time the discharge or contamination occurred;
- (c) Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;
- (d) Any person who transports the hazardous substance and selects the disposal site; and
- (e) Any person who, by any act or omission, caused or contributed to the discharge or contamination.

40.7-9. *Exemptions.* The following persons are not “responsible parties” under this law:

(a) Any person discharging in accordance with a permit or program approved under federal or Tribal law.

Comment [VAF24]: Oneida Nation

(b) Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) Any person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (1) An act of nature;
- (2) An act of war; or
- (3) An act or omission of a third party, including but not limited to a trespasser, other than:
 - (A) An employee or agent of the person asserting the defense; or
 - (B) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) Any person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

- (1) To establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) Any person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

- (1) the person did not cause the contamination on the property;
- (2) the person establishes that all disposal of hazardous substances occurred before the person acquired the property;
- (3) the person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and
- (4) the person is not affiliated with a party liable for any contamination.

40.7-10. Where there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

40.8. Remedial Actions

40.8-1. A responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

40.8-2. If, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

40.8-3. The Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

- (a) the replacement and/or removal of injured plant and animal life or contaminated soil.
- (b) the treatment of contaminated soils and/or surface and/or groundwater.
- (c) adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.
- (d) the replacement or repair of faulty equipment.

(e) other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

40.8-4. Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

40.8-5. In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

40.8-6. Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

40.9. Case Closure or No Further Action

40.9-1. The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

Comment [VAF25]: order

40.9-2. Sampling shall be conducted at the completion of the remedial action when:

- (a) The hazardous substance discharge is in contact with groundwater.
- (b) The amount, identity or duration of the contamination is unknown.
- (c) Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

Comment [VAF26]: Delete

40.9-3. The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

40.9-4. If additional remedial action is required for a previously closed case, the Division:

- (a) Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.
- (b) May require the responsible parties to achieve compliance with Tribal public health and environmental laws, within a time period established by the Division.

Comment [VAF27]: Oneida Nation

40.10. Enforcement and Penalties

40.10-1. If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

- (a) Take remedial action to prevent or abate the discharge of a hazardous substance; and/or
- (b) Allow the investigation of a site believed to be contaminated or under threat of contamination.

40.10-2. The Oneida Business Committee shall adopt a fine schedule, upon recommendation of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a fine in accordance with the fine schedule.

Comment [VAF28]: may

- (a) Each day a violation exists or continues shall constitute a separate offense.

(b) Any person who is a lessee of the Tribe who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Land Commission.

Comment [VAF29]: Does this need to be revised to reference the Judiciary?

40.11. Appeals

40.11-1. *Appeal of Compliance Orders* A person may appeal a compliance order issued by the Division by filing a written appeal with the Division Director within ten (10) business days after the order is issued.

(a) The Division Director shall uphold, revise or reverse the order, in writing, within five (5) business days after receiving the appeal.

(b) A person may appeal the Division Director's decision by filing a written appeal with the Environmental Resources Board within ten (10) business days after the Division Director's decision.

(1) The Environmental Resources Board shall conduct a hearing on the Division Director's decision and shall uphold, revise or reverse the decision of the Division Director.

(2) The Environmental Resources Board shall post and publish its final decision, within ten (10) business days after the hearing. The Environmental Resources Board shall include in its decision specific facts which are the basis for its decision, and shall forward the decision to the parties of the appeal.

Comment [VAF30]: Does this need to be revised to reference the Judiciary?

40.11-2. *Contesting the Issuance of a Fine.* Any person issued a fine under this law may contest the fine by attending a hearing before the Environmental Resources Board.

(a) The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued.

(1) If the person does not wish to contest the fine, he or she shall pay the fine by the hearing date specified on the fine.

(b) After the hearing, the Environmental Resources Board shall determine whether the person is responsible for the fine, as was issued by the Division, and may set a new date for when the fine shall be paid.

40.11-3. *Appeals from the Environmental Resources Board Decision.* Any party of interest may appeal a decision of the Environmental Resources Board to the Oneida Appeals Commission in accordance with Tribal law.

Comment [VAF31]: Revise to Judiciary?

End.

Adopted – BC-09-12-12-B



HANDOUT

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

221 of 289



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: January 18, 2017
RE: Certification of Department of Land Management and Oneida Land Commission Rules

The Legislative Reference Office has reviewed the certification packets provided by the Division of Land Management and Oneida Land Commission for the following rules:

1. Mortgage and Foreclosure law Rule No. 1 – Mortgage Programs, Guidelines and Requirements; and
2. Landlord-Tenant law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements; and
3. Real Property law Rule No. 2 – Comprehensive Housing Division Residential Sales.

The certification packets for the rules listed above illustrate that the promulgation of the rules comply with the procedural requirements contained in the Administrative Rulemaking law. In accordance with the Administrative Rulemaking law:

- A public meeting notice for the above listed rules was published in the Kalihwisaks on December 1, 2016; and
- A public meeting for the rules was held on December 15, 2016; and
- The public comment period was held open until December 22, 2016; and
- There were no oral or written comments received during the public meeting or the public meeting comment period; and
- The Land Commission approved of the certification packets of the rules for LOC submission of January 9, 2017.

The certification packets provided by the Division of Land Management and Oneida Land Commission contain all documentation required by the Administrative Rulemaking law for a complete administrative record.

If certified, the rules would have the following effective dates:

- Mortgage and Foreclosure law Rule No. 1 – Mortgage Programs, Guidelines and Requirements – March 9, 2017; and
- Landlord-Tenant law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements – February 9, 2017; and
- Real Property law Rule No. 2 – Comprehensive Housing Division Residential Sales – March 9, 2017.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54115-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 1-18-2017
- 2) Contact Person(s): Nicole Kimmel
Dept: Land Management
Phone Number: 920-869-6623 Email: NKimmel@oneidanation.org
- 3) Agenda Title: Mortgage & Foreclosure Rule #1 - Mortgage programs etc.
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Newly Drafted rule that defines Mortgage and Foreclosure Law.

List any supporting materials included and submitted with the Agenda Request Form

- 1) memo includes a list of
- 2) attachments.
- 3) _____
- 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Mortgage Foreclosure Law
- 6) Please List all other departments or person(s) you have brought your concern to:
N/A
- 7) Do you consider this request urgent? ☐ Yes ☒ No
If yes, please indicate why:

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:

Nicole Kimmel 1-11-2017

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690



MEMORANDUM

TO: Legislative Operating Committee
 FROM: Division of Land Management and Oneida Land Commission
 SUBJECT: Request for Certification of Procedural Compliance – Mortgage and Foreclosure Rule No. 1 – Mortgage Programs, Guidelines, and Requirements
 DATE: January 18, 2017

The Division of Land Management and the Oneida Land Commission are exercising their joint rule making authority to further define sections of the Mortgage and Foreclosure Law.

The rule is newly drafted and is not a revision of a prior rule. In accordance with the Administrative Rulemaking Law, a public meeting was held for these rules on December 15, 2016 for which the comment period expired on December 22, 2016. There were no community members in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Received Land Commission approval of DRAFT rules and direction to proceed with holding a public meeting.	November 7, 2016
Public Meeting notice for the three rules is posted in the Kalihwisaks (see page 28) and on the Oneida Register.	December 1, 2016
Public Meeting held.	December 15, 2016
Public Comment Period closed, there were no comments received.	December 22, 2016
Land Commission approval of LOC submission packet.	January 9, 2017

The following attachments are included for your review:

1. E-mail listing Land Commission motions, changes, and directives from the November 7, 2016 meeting.
2. Summary Report
3. Public Meeting Notice

4. Copy of Public Meeting published in the Kalihwisaks – Page 28 of the December 1, 2016 issue.
5. Sign-in sheet from December 15, 2016 Public Meeting.
6. Public meeting transcription from the December 15, 2016 Public Meeting.
7. Land Commission minutes dated January 9, 2017, approving the rule packet to be submitted to LOC.

Action Requested:

Find that the development of the Mortgage and Foreclosure Rule No. 1 – Mortgage Programs, Guidelines, and Requirements has procedurally complied with the requirements of the Administrative Rulemaking laws and recognize its effective date as March 9, 2016.

Cc: Pat Pelky, Interim Director, Division of Land Management

Nicole A. Rommel

From: Lori A. Elm
Sent: Tuesday, November 22, 2016 6:00 PM
To: Nicole A. Rommel
Cc: Stephanie L. Skenandore; Jacqueline M. Schuman; Rebecca L. Skenandore
Subject: Directive from November 7, 2016 Land Commission meeting - Rules

Directive from November 7, 2016 Land Commission meeting

C. Review & approve Rule: Title 6. Property and Land – Chapter 601 REAL PROPERTY Rule No. 2 – Comprehensive Housing Division Residential Sales (Draft 1) – Krystal John

Overview of 2.4 Advertising and Showing, introducing line 40, where the Nation is offering a home for sale as-is process, clarification on "forms" must be on our form or not accepted.

- Notes: Directed revisions in section 2.7 to clarify that we will only accept offers to purchase that use the Nation's form.

Motion by Jay T. Rasmussen to approve the rules with the modifications were only the Oneida Nations forms are accepted and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

D. Review & approve Rule: Title 6. Property and Land – Chapter 612 MORTGAGE and FORECLOSURE Rule No. 1 – Mortgage Programs, Guidelines and Requirements (Draft 3) – Krystal John

- Notes: Directed revision in the following sections:
- 1.5-1 to clarify that only the Nation's mortgage applications will be accepted;
- 1.9-3 to clarify that this section only applies when the financing is for a property being sold by a party other than the Nation and to fix the numbering of the subsections;
- 1.11 to change the policy from only refinancing the Nation's loans to refinancing any loan so long as the loan does not finance individual fee land.

Motion by Rebecca Webster to approve the rules with the noted revisions accepted, and directs DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Donald McLester. Motion carried.

E. Review & approve Rule: Title 7. Property and Land – Chapter 710 LANDLORD-TENANT Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements (Draft 1) – Krystal John

- Notes: Directed revisions in section 1.5-2 to clarify that we will only accept rental applications that use the Nation's form.

Motion by Jay T. Rasmussen to approve the rules with the noted revisions accepted, and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

Attachment 2

Draft 4 – For Public Meeting
2016 11 07

Title 6. Property and Land – Chapter 612 MORTGAGE and FORECLOSURE Rule No. 1 – Mortgage Programs, Guidelines and Requirements

1.1 Purpose and Effective Date

1.1-1. *Purpose.* The purpose of this rule is to provide the various mortgage programs offered by the Comprehensive Housing Division and to provide additional requirements for participating in such programs than the minimum requirements found in the Mortgage and Foreclosure law.

1.1-2. *Delegation.* The Mortgage and Foreclosure law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Mortgage and Foreclosure law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Appraisal" means the valuation of real property by the estimate of an authorized person.

(b) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to mortgages and foreclosures as defined by Oneida Business Committee Resolution.

(c) "Cosmetic" means a renovation that improves the appearance of a building without changing its size, or improving its structure, safety, or code integrity and doesn't correct a problem that interrupts the use of the home or threatens to cause permanent damage. Examples include, but are not limited to: painting, flooring, fixtures, landscaping.

(d) "Home Inspection" means an examination of a property's condition.

(e) "Mortgage" means a lien, held by the Nation, on a real property interest that is given as security for the payment of a debt and/or the performance of a duty, including the refinancing of an original conveyance, that will become void upon the payment and/or performance according to the stipulated terms.

(f) "Mortgagor" means the borrower in a mortgage.

(g) "Nation" means the Oneida Nation.

(h) "Non-Cosmetic" means a renovation that changes the size, improves the structure,

safety or code integrity of a structure or corrects a problem that interrupts the use of the home or threatens to cause permanent damage. Examples include, but are not limited to: roof repairs, water damage or mold repairs.

(i) "Refinance" means an exchange of an old debt for a new debt, as by renegotiating a different interest rate, term of the debt, or by repaying the existing loan with money acquired from a new loan.

(j) "Title" means legal evidence of a person's ownership rights in real property.

(k) "Title Report" means the written analysis of the status of title to real property, including a property description, names of titleholders and how the title is held, tax rate, encumbrances and any real property taxes due.

1.4. Mortgage Eligibility Requirements

1.4-1. *Ineligible Properties.* Mortgages are not available for properties with condominiums, twindos and/or duplexes.

1.4-2. *Credit Rating.* In order to be eligible, mortgage applicants are required to have a minimum Trans Union credit rating of 550.

1.4-3. *Debt to Income Ratio.* In order to be eligible, mortgage applicants are required to have a debt to income ratio of thirty-six percent (36%) or lower.

(a) Comprehensive Housing Division staff shall calculate the debt to income ratio by dividing the mortgagor's monthly debt by the mortgagor's gross monthly income.

(b) For purposes of calculating income for the debt to income ratio, the Comprehensive Housing Division staff:

(1) May not include child support payments;

(2) May not include education grants/scholarships; and

(3) Shall include per capita payments to the extent that receipt of per capita payment may be verified for each of the five (5) years prior to mortgage application.

(A) For per capita payments paid by the Nation, the Comprehensive Housing Division staff shall verify with the Trust Enrollment Department that the applicant received the full eligible amount of the per capita payments for each of the five (5) years prior to mortgage application.

(B) For per capita payments paid by other tribes the Comprehensive Housing Division staff shall verify that the applicant received per capita payments for each of the five (5) years prior to mortgage application using the applicant's tax return.

(C) When per capita payments qualify to be considered as part of the income calculation, Comprehensive Housing Division staff shall use an average of the payments the applicant received for the five (5) years prior to mortgage application.

(4) If mortgage applicants include an unmarried couple in which one (1) party is a Tribal member and the other is not, the Comprehensive Housing Division staff shall only include the Tribal member's income.

1.4-4. *Loan to Value Ratio.* Except as provided otherwise in this rule, the Comprehensive Housing Division may not offer mortgages if:

(a) For a cash-out mortgage or a refinancing, the loan to value ratio exceeds ninety percent (90%) of the value of the improvements;

(b) For a mortgage to purchase a home, regardless of cash-out, or for home repairs, the loan to value ratio exceeds one hundred percent (100%) of the value of the real property subject to the mortgage.

1.4-5. *Total Amount of all Judgments.* In order to be eligible, mortgage applicants shall have a maximum total of \$20,000 in money judgments and/or collections. At the time of prequalification, all money judgments and/or collections must either be satisfied in full or subject to current payment agreements with proof of payments being received under the payment agreements for each of the six (6) months prior to the request for prequalification.

1.5. Mortgage Application.

1.5-1. *Application Form.* Tribal members wishing to receive a residential mortgage from the Comprehensive Housing Division may submit a mortgage application to the Comprehensive Housing Division, using the mortgage application form available on the Nation's website and at the Comprehensive Housing Division, which includes any requirements for supplemental information required to verify eligibility. Mortgage applications that do not use the form provided by the Nation will not be accepted by the Comprehensive Housing Division.

1.6. Appraisal, Inspection and Closing Costs

1.6-1. Mortgagors are responsible for paying all appraisal and inspection costs.

1.6-2. The Comprehensive Housing Division shall assess administrative closing fees against mortgagors at the rate of one percent (1%) of the total mortgage amount, provided that the Comprehensive Housing Division shall offer a discounted rate of one-half percent (0.5%) to mortgagors that complete a home ownership informational session from the list approved by the Land Commission by written resolution.

1.6-3. Payment may be accepted from a source other than a Comprehensive Housing Division loan for appraisal, inspection and closing costs if including such costs in the mortgage would cause the mortgage to exceed to allowable loan to value ratio provided in article 1.4-4.

1.7. Interest Rates and Payment Terms

1.7-1. *Setting the Interest Rate Annually.* The Land Commission shall approve, by written resolution, the applicable interest rate for all mortgages offered by the Comprehensive Housing Division annually no later than September 30th, provided that veteran loan rates are subject to input from the Oneida Nation Veteran's Affairs Committee.

1.7-2. *Modifying the Interest Rate Program Wide.* The Land Commission may approve a program-wide interest rate change at any time, by written resolution. The Comprehensive Housing Division shall ensure that such interest rate changes are applied to all mortgages offered.

1.7-3. *Payment Terms.* The Comprehensive Housing Division shall base payment terms on the mortgagor's monthly income and expenses and the amount of the total purchase price of the property, provided that the Comprehensive Housing Division staff shall use the same calculation of income that was used for determining the debt to income ratio.

(a) The Comprehensive Housing Division staff shall calculate mortgage payments using the standard requirements provided as follows, provided that nothing in this section may be interpreted as preventing a mortgagor from agreeing to an earlier payoff date.

(1) For mortgages with a total amount less than \$30,000, the loan duration is calculated by providing one (1) payment year for each \$1,000 of the mortgage.

For example, a mortgage for \$14,000 would be required to be paid off in fourteen (14) years.

(2) For mortgages with a total amount of \$30,000 or more, mortgage duration is set at thirty (30) years.

(b) Late payments shall be assessed a late payment fee equal to five percent (5%) of the mortgagor's required monthly principal and interest payment.

1.7-4. *Individual Modifications to Interest Rates and/or Payment Terms.* If the market inhibits the sale, by either the Nation or an individual Tribal member, of a home appraised at \$250,000 or more, the Land Commission may adjust the offered mortgage rate and/or the mortgage duration as applied to an individual piece of real property.

1.8. Subordination Agreement

1.8-1. *Subordination of the Nation's Loan to Secure Refinancing.* The Comprehensive Housing Division may subordinate the Nation's first position mortgage interest to second position mortgage interest in order to allow a mortgagor to secure refinancing through a lender outside of the Nation if the amount financed through the second mortgage from the outside lender is greater than the balance of the Nation's mortgage balance. For example, if a mortgagor has a mortgage balance of \$10,000 with the Nation and is getting an equity loan from Bay Bank in the amount of \$40,000, the Comprehensive Housing Division may agree to subordinate the Nation's mortgage interest from first to second position to allow the mortgagor to secure the equity loan from Bay Bank.

1.9. Reports and Documents Required Prior to Entering a Mortgage

1.9-1. *Required Reports and Documents.* The following reports and documents are required prior to the Comprehensive Housing Division entering any mortgage, provided that when the Nation is the seller, the Comprehensive Housing Division shall provide (a) through (f). When the Nation is not the seller, the buyer and seller may negotiate which parties are responsible for providing the required reports and documents.

(a) Clear title report, where for purposes of this section clear title is synonymous with good title, merchantable title and marketable title and means that the land is free from encumbrances, "good title" being one free from litigation, palpable defects, and grave doubts, compromising both legal and equitable titles and fairly deducible of record;

(b) Survey or lease site information;

(c) Passed well test (for all sites with wells);

(d) Passed septic test (for all sites with septic systems);

(e) Appraisal dated within one (1) year from the Comprehensive Housing Division's approval of the mortgage, provided that, where the home and improvements are upon land leased by the Nation, the appraisal may not include the value of the land;

(f) Home inspection dated within one (1) year from the Comprehensive Housing Division's approval of the mortgage;

(g) Agreement or offer to purchase; and

(h) If the Nation is not the seller, a real estate condition report.

1.9-2. The following reports and documents are optional at the buyer's discretion:

(a) Level 1 environmental report;

(b) Asbestos report;

(c) Lead based paint report; and/or

185 (d) Mold report.

186 1.9-3. The Comprehensive Housing Division may deny financing of a property offered for sale
187 by a party other than the Nation if there are issues with any of the required reports and
188 documents identified in section 1.8-1.

189 (a) In the event that health and safety issues are identified in the home inspection, the
190 Comprehensive Housing Division shall deny financing in the current condition and shall
191 provide the parties with the following options:

192 (1) The seller may complete the required repairs to correct the health and safety
193 issues prior to closing;

194 (2) The seller may lower the purchase price in order to offset the cost of the
195 repairs required to correct the health and safety issues so that the buyer may
196 finance the repairs;

197 (3) The seller may provide the buyer with an allowance upon closing which
198 would allow the buyer to complete the required repairs to correct the health and
199 safety issues; or

200 (4) The buyer may rescind the offer to purchase and walk away from the
201 transaction based on the health and safety issues identified in the home inspection.
202

203 **1.10. Tribal Loan Credit (TLC) Program**

204 1.10-1. *Purpose.* The purpose of the TLC program is to provide Tribal members with available
205 financing for the following:

206 (a) The purchase of a home upon land owned by the Nation, where the selling party may
207 be either by the Nation or an individual Tribal member;

208 (b) The purchase of a home upon land owned by the Nation with financing included for
209 required/recommended home repairs;

210 (c) A down payment to purchase land and/or improvements except where a
211 Comprehensive Housing Division mortgage is financing the purchase;

212 (d) Construction of a new home upon land owned by the Nation;

213 (e) Home repairs or upgrades on an existing home already owned by the Tribal member;
214 and

215 (f) To borrow against the homeowner's equity in the property.

216 1.10-2. *Down Payments.* Tribal members applying for a TLC loan for the purpose of securing a
217 down payment may receive a maximum loan amount of the 2.25% of the total purchase price, as
218 required by HUD's section 184 loan program.

219 1.10-3. *Requirements when Simultaneously Financing the Purchase of a Home and Home*
220 *Repairs.* When simultaneously financing the purchase of a home and home repairs, the loan to
221 value ratio may be a maximum of one hundred percent (100%) of the value subject-to the
222 scheduled repairs plus a construction contingency of five percent (5%) of the amount of the
223 mortgage allocated to the scheduled repairs.

224 (a) *Construction and Payment Plan.* Within five (5) calendar days of an appraisal paid
225 for by the selected mortgagor or mortgagor selection, whichever is later, the mortgage
226 applicant shall submit a construction and payment plan to the Comprehensive Housing
227 Division. The Comprehensive Housing Division may offer extensions for submitting the
228 construction and payment plans provided that, in all circumstances, the construction and
229 payment plan must be submitted within twenty-one (21) days of the date the mortgagor is
230 selected/approved for a mortgage.

Draft 4 – For Public Meeting
2016 11 07

- (1) The construction plan must provide for cosmetic and non-cosmetic improvements to be completed in different phases of construction.
- (2) Licensed contractors are required for all non-cosmetic work. Mortgage applicants shall submit copies of signed contracts with licensed contractors for all non-cosmetic work at the time of submission of the construction plan or, at a minimum, before payments may be released for a non-cosmetic construction phase.
- (3) The first payment provided in the payment plan may not exceed one third (1/3) of the total amount of the mortgage allocated towards the improvements.

(b) *Contingency.* The Comprehensive Housing Division shall issue contingency checks in the form of a one-time lump sum check to the mortgagor. It is the mortgagor's responsibility to manage the contingency as needed for the entire project.

(c) *Release of Payments Subsequent to the First Payment.* Prior to releasing payments subsequent to the first payment for the first phase of construction, a representative of the Comprehensive Housing Division shall verify that the previous phase of construction has been satisfactorily completed. In addition, if the prior phase of construction included non-cosmetic work, prior to releasing payment for the next phase, the mortgagor shall submit lien waivers to the Comprehensive Housing Division.

1.10-4. *Requirements for Financing Mobile, Modular or Pre-fabricated Homes.* In order for the purchase of a mobile, modular or pre-fabricated home that is not a permanent poured foundation/basement to be eligible for a TLC loan, it must be less than five (5) years old based on model year. A mobile, modular or pre-fabricated home that is on a permanent poured foundation/basement is eligible for a TLC loan regardless of the home's model year.

(a) In order for a mobile, modular or pre-fabricated home to be eligible for a TLC loan, regardless of whether it is purchased or newly constructed, it must be placed on one (1) of the following:

- (1) A permanent poured foundation/basement;
- (2) Four foot (4') frost walls with eight inch (8") blocks; or
- (3) An anchored floating slab.

1.10-5. *Requirements for Financing Construction of New Home.* In order for construction of a new home to be eligible for a TLC loan, the beginning construction date must be within ninety (90) calendar days of the loan's closing date and construction must be completed within six (6) months of the construction start date. Construction completion dates may be extended by the director of the Comprehensive Housing Division on a case-by-case basis.

(a) The following additional documents are required to be submitted to the Comprehensive Housing Division in order for an applicant to be eligible for a TLC construction loan:

- (1) Copies of the blueprints and/or plans for the construction;
- (2) Copies of construction contracts with certified contractors;
- (3) A passed percolation test on the vacant land if municipal sewer and water is not available;
- (4) Copies of all Oneida zoning and building permits; and
- (5) Once construction is complete, a copy of the occupancy permit issued by Oneida Zoning.

1.10-6. *Limitation on Equity Loans.* Tribal members with equity in their home and improvements may borrow a maximum amount of \$50,000 against the equity in their home,

provided that equity loans are only available if the home and improvements are located on land owned by the Nation.

1.11. Refinancing a Loan Held by the Nation.

1.11-1. *No Refinancing of Individual Fee Land Mortgages.* Refinancing is not available for mortgages of property that are individual fee lands. For purposes of this section, "individual fee land" means real property held in fee status by an individual or group of individuals.

1.11-2. *When Refinancing is Available.* Refinancing is only available for the consolidation of mortgages or if the refinancing is required to reflect a change in property rights and responsibilities or to maintain home health and safety. Where a refinancing is completed in the case of divorce, any amount required to be paid by the spouse whose name will remain on the mortgage to the spouse whose name is to be removed from the mortgage may be included in the new loan amount.

1.11-3. *Removing a Mortgagor from the Mortgage.* The only way a mortgagor's named may be removed from a loan is through refinancing.

1.11-4. *Refinancing Interest Rate.* The interest rate applicable to the refinancing is the current Land Commission approved interest rate.

1.12. Final Decision

1.12-1. *No Appeal.* The decisions made in regard to Comprehensive Housing Division mortgages are final. Neither the Oneida Judiciary nor any administrative body, including a board, committee or commission is authorized to hear a complaint in regard to Comprehensive Housing Division decisions related to mortgagor selection, the decision of whether or not to provide financing and the terms of the financing.

End.

Original effective date:

Amendment effective date:

Division of Land Management
PO Box 365
Oneida, WI 54155
920-869-1690



Summary Report for: Mortgage Programs, Guidelines and Requirements

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Mortgage Programs, Guidelines and Requirements

Name of law being interpreted: Title 6. Property and Land – Chapter 612
MORTGAGE and FORECLOSURE

Rule Number: 1

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: This rule will identify the mortgages available through the Nation and the requirements and process for applying for such loans. Establishes how interest rates are set and may be amended. The rule also consolidates the loan programs while maintaining all loan services.

Statement of Effect: See Attached.

Financial Analysis: See Attached.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsh.gov



Statement of Effect

Mortgage and Foreclosure Law Rule No. 1 – Mortgage Programs, Guidelines and Requirements

Summary

This rule provides the various mortgage programs offered by the Comprehensive Housing Division and provides additional requirements for participating in such programs than the minimum requirements found in the Mortgage and Foreclosure Law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

Section 612.4 of the Mortgage and Foreclosure Law confers administrative rulemaking authority to the Comprehensive Housing Division and the Land Commission as authorized by the Administrative Rulemaking Law. Section 612.4-1 of the Mortgage and Foreclosure Law states that the Comprehensive Housing Division shall provide mortgage programs and shall establish rules naming said programs and providing the specific requirements for each program. Section 612.4-3 requires that the Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of a mortgage. Section 612.4-4 requires that the Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the requirements of mortgages entered into by the Comprehensive Housing Division. Oneida Business Committee Resolution 08-10-16-L provides that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management.

Mortgage and Foreclosure Law Rule No. 1 – Mortgage Programs, Guidelines and Requirements provides the various mortgage programs offered by the Comprehensive Housing Division and provides additional requirements for participating in such programs than the minimum requirements found in the Mortgage and Foreclosure Law.

Section 1.4 of the Mortgage and Foreclosure Law Rule No. 1 provides mortgage eligibility requirements including what properties are ineligible for mortgages, the required debt to income ratio for a mortgage applicant, the required loan to value ratio of a mortgage, and the maximum total amount of all judgements a mortgage applicant is allowed to have.

Section 1.5 of the Mortgage and Foreclosure Law Rule No. 1 sets the requirement that every tribal member wishing to receive a residential mortgage from the Comprehensive Housing Division must submit the mortgage application form available on the Nation's website and at the Comprehensive Housing Division, which includes any supplemental requirements, to the Comprehensive Housing Division in order to be considered for a mortgage.

Section 1.6 of the Mortgage and Foreclosure Law Rule No. 1 discusses appraisal, inspection and closing costs. This section discusses who is responsible for paying appraisal and inspection costs,

the rate at which the Comprehensive Housing Division will assess closing fees, and from what sources payments may be accepted for appraisal, inspection and closing costs.

Section 1.7 of the Mortgage and Foreclosure Law Rule No. 1 discusses interest rates and payment terms. This section provides how interest rates will be set annually, how the interest rate can be modified program wide, payment terms for mortgages, and how individual modifications to interest rates and/or payment terms can be made.

Section 1.8 of the Mortgage and Foreclosure Law Rule No. 1 provides requirements for a subordination agreement allowing the Comprehensive Housing Division to subordinate the Nation's first position mortgage interest to second position mortgage interest in order to allow a mortgagor to secure refinancing through a lender outside of the Nation.

Section 1.9 of the Mortgage and Foreclosure Law Rule No. 1 describes the reports and documents required prior to entering a mortgage. This section provides which reports and documents are required prior to the Comprehensive Housing Division entering any mortgage, and who is responsible for providing the documents, as well as which reports and documents are optional at the buyer's discretion. This section also states that the Comprehensive Housing Division may deny financing of a property offered for sale if there are issues with any of the required reports and documents and provides parties with options on how to move forward.

Section 1.10 of the Mortgage and Foreclosure Law Rule No. 1 describes the Tribal Loan Credit (TLC) Program, its purpose, loans for the purpose of down payments, and requirements when simultaneously financing the purchase of a home and home repairs. This section also discusses requirements for financing mobile, modular, or pre-fabricated homes, requirements for financing construction of new homes, and limitations on equity loans.

Section 1.11 of the Mortgage and Foreclosure Law Rule No. 1 discusses refinancing a loan held by the Nation. This section provides that refinancing of individual fee land mortgages is not available, discusses when refinancing is available, how to remove a mortgagor from the mortgage, and what the interest rate applicable to refinancing is.

Section 1.12 of the Mortgage and Foreclosure Law Rule No. 1 discusses the fact that the decisions made in regard to Comprehensive Housing Division mortgages are final, and there is no appeal process available.

Conclusion

There are no legal bars to adopting Mortgage and Foreclosure Law Rule No.1: Mortgage Programs, Guidelines and Requirements.

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690



Financial Analysis for Mortgage Programs, Guidelines and Requirements

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		\$0.00
Personnel		\$0.00
Office		\$0.00
Documentation Costs		\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		60 days
Other, please explain		\$0.00
Total		\$0.00

NOTICE OF
PUBLIC MEETING
TO BE HELD
Thursday, December 15, 2016 at 10:00 AM
IN THE
**Division of Land Management Conference Room,
470 Airport Drive, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPICS:

- Comprehensive Housing Division Residential Sales Rule
- Mortgage Programs, Guidelines and Requirements Rule
- General Rental Program Eligibility, Selection and Other Requirements Rule

The Comprehensive Housing Division Residential Sales Rule would:

- Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and
- Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and
- Identify requirements for the notice when the Nation sells a home as is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would:

- Identify the mortgages available through the Nation and the requirements and process for applying for such loans;
- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Thursday, December 22,
2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

Oneida Division of Land Management
470 Airport Drive, Oneida, WI 54155
E-mail: LAND@oneidanation.org
Phone: 920-869-1690
Fax: 920-869-1689

Attachment 4

28 Téken Niwása Téklú • December 1, 2016

Classified

www.kalihwisaks.com

Call the Kalihwisaks at
1.920.496.5631
to place an ad

Oneida's Best Marketplace!

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Post Office Box 365
Oneida, Wisconsin 54155



EMPLOYMENT

NATIVE AMERICAN LIAISON

Pulaski Community School District
20 hrs/week

Position will generally work 4 hours per day, however hours may vary based on student need.

Travel between schools is required.

Valid driver's license and personal vehicle required.

Application and details online at:
www.pulaskischools.org
Click on Employment Opportunities

FOR SALE

China cabinet - dark wood,
glass doors \$55. Dark desk
- \$55, 920-788-4584

TRUCK FOR SALE

'93 Chevy Silverado pickup
4 x 4. Asking \$1,200. FMI,
call: 920.660.9280.

TRUCK FOR SALE

2001 Ford F150XL pickup.
Asking \$1,500. Clean, runs
good, call: 920.425.3562.

HOME FOR SALE

709 Theode St., Green Bay -
2 BR, 1 bath, 2 stall garage,
big yard. 74k OBO 920-713-

Oneida Personnel Commission

Three (3) vacancies

Qualifications:

- Must be enrolled members of the Oneida Nation.
- The entire combined commission may not consist of more than two (2) members from any one division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.
- Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethic Code, the Judicial Code and the Oneida Rules of Civil Procedure.
- A member may not be and employee of the Human Resources Department, any advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.
- Commissioners shall be available for meetings, trainings, interviews, pre-screenings, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OPC.
- Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications are made.

Deadline: 4:30pm Friday, December 16, 2016

NOTICE OF

PUBLIC MEETING

TO BE HELD

Thursday, December 15, 2016 at 10:00 AM

IN THE

**Division of Land Management Conference Room,
470 Airport Drive, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

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- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Thursday, December 22,
2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

Oneida Division of Land Management
470 Airport Drive, Oneida, WI 54155
E-mail: LAND@oneidanation.org
Phone: 920-869-1690
Fax: 920-869-1689

Attachment 5

Public Hearing at Division of Land Management

Sign In Sheet

December 15, 2016

Check if
oral.
testimony

Print Name	Sign Name	
1. Nicole Kommel	32. Nicole Kommel	
2. Becky Skendone	33. [Signature]	
3. Diane Wilson	34. [Signature]	
4.	35.	
5.	36.	
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Meeting: Public Meeting
Where: Division of Land Management Conference Room
470 Airport Drive, Oneida WI 54115
Date: December 15, 2016
Topics: Comprehensive Housing Division Residential Sales Rule
Mortgage Programs, Guidelines and Requirements Rule
General Rental Program Eligibility, Section and Other Requirement Rule

Meeting begun at: 10:00 am

Nicole Rommel This is the Public Meeting of Thursday, December 15, 2016, 10:00 am in the Division of Land Management Conference Room, 470 Airport Drive, Oneida WI 54115. In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting the Public Meeting to gather feedback from the community regarding the following rules.

Topics: Comprehensive Housing Division Residential Sales Rule, Mortgage Programs, Guidelines and Requirements Rule, General Rental Program Eligibility, Section and Other Requirement Rule

The Comprehensive Housing Division Residential Sales Rule would: Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and Identify requirements for the notice when the Nation sells a home as-is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would: Identify the mortgages available through the Nation and the requirements and process for applying for such loans; Establish how interest rates are set and may be amended; Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would: Get rid of the current points system for DOLM rental units and move to a first come, first served process; and identify the requirements to be eligible and apply for a general rental. To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD, OPEN UNTIL Thursday, December 22, 2016, During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax. Oneida Division of Land Management, 470 Airport Drive, Oneida, WI 54155 E-mail: LAND@oneidanation.org, Phone: 920-869-1690, Fax: 920-869-1689

It is now 10:15 am, those present are: myself Nicole Rommel, Becky Skenandore, and

241 of 289
Diane Wilson all is representing the Division of Land Management. At this time there are no community members here to give a public comment. We will be waiting 5 (five) more minutes and we will than consider the meeting closed.

This is a continuation of the Public Meeting of December 15, 2016, it is now 10:23 am, and there aren't any community members that have come to make a comment at this meeting, so we are calling this meeting closed with no community comments at 10:23 am.

**ONEIDA LAND COMMISSION MEETING MINUTES
LITTE BEAR CONFERENCE ROOM
JANUARY 9, 2017 @ 5:00 PM**

I. CALLED TO ORDER @ 5:00 pm by Chair- Rae Skenandore

Present: Chair-Rae Skenandore, Vice Chair- Racquel Hill, Secretary-Jay T. Rasmussen, Lloyd Powless, Commissioner, Donald McLester, Commissioner,

Excused: Sherrole Benton, Commissioner, Rebecca Webster, Commissioner

BUSINESS COMMITTEE LIAISON: Ron "Tehassi" Hill

OTHERS PRESENT: Mary Jo Nash, Lori Elm, Nicole Rommel, Sheila Huntington, Stephanie Skenandore, Diane Wilson, Krystal John, Leanne Doxtater, Sue Doxtator

II. APPROVE/AMEND AGENDA

Motion by Donald McLester to approve the agenda with the correction to executive session, commercial leases, deleting the duplicating request #7 and correct #12201301C and delete #8. Also to add 1496 Riverdale Drive to the Loan. Seconded by Racquel Hill. Motion carried.

III. APPROVE/AMEND MINUTES

A. December 5, 2016

Motion by Racquel Hill to approve the minutes of December 5, 2016 with the edits and changes: IV. Tabled Business, A. LUTU II 0343, last part of motion, to reword to read more clearly; C. LUTU 0346, add defer to January 9th, 2017 meeting; V. Old Business, A. Location of meeting, reword motion, VI. New Business, correct wording Secretary "to" draft; VII. Reports, LUTU-0373, change to include not to be subdivided. LUTU-0279 Summary of items should be attached. What items? VIII Executive Session the S needs to be removed from executives, A. Old Business 1. Add the directive. 2. Change pro to pros and feel to fee. D. Acquisition 10201601C add what is not a conflict.

IV. TABLED BUSINESS

A. Request to name 1940 W. Mason

V. OLD BUSINESS

A. General Rental Program Eligibility Selection and Other Requirements (Rule) Request

B. Mortgage and Foreclosure Guidelines and Requirements (Rule) Request to approve

C. Comprehensive Housing Division Residential Sales (Rule) Request to approve

Motion by Racquel Hill to approve all the rules with the recommendations and to forward with noted revisions and changes recommend by Krystal John and the one adjustment to the rule by financing. Seconded by Jay T. Rasmussen. Motion carried. LOC will need three (3) separate packets with each rule per Krystal John.

D. Leasing Law Update

Accepted as FYI. Krystal submitted a memo that the law is not approved until we receive official approval from the Secretary (BIA). The Real Property Law Public meeting comments were considered by the LOC recently and have been directed by the LOC to be brought forward to consider the adoption on the January 18, 2017 and then forwarded to OBC on the January 25, 2017.

E. Driveway Easement Reaffirm – tribal parcel # 17-0-2165-00 Update

F. Request Easement across former railroad (WPS)

G. WE Energies request for 50ft easement at W2104 HWY 54

Motion by Jay T. Rasmussen to accept E, F and G as FYI. Seconded by Donald McLester. Motion carried.

H. Real Property Law

VI. NEW BUSINESS

A. Electronic Signatures – Rae Skenandore

Discussion that Kelly McAndrews is checking into options and to see what the state statutes are along with the BIA on the Federal level. Kelly will continue to work with the staff and the Land Commission.

B. Joint Meeting and Reporting Memo

Motion by Racquel Hill to change the joint meeting to September 18, 2017. The meeting will be held at LBDC at 5PM. Seconded by Donald McLester. Motion carried.

VII. REPORTS

A. PLANNING

1. LUTU SOP Update

Update on the planning of the LUTU and to invite the LC was given by Susan Doxtator. Motion by Jay T. Rasmussen to accept as FYI. Seconded by Racquel Hill. Motion carried.

2. LUTU 0376 Former Lois Metoxen, N5953 County Road E

3. LUTU 0346 Former Colleen & Kerry Metoxen, 219 Valley Drive (Tribal Fee Land)

4. LUTU 0388 Former Owner Steven Ambrosius, W141 Service Rd

LUTU 0376 bring back to the February 13, 2017 meeting with a formal recommendation to keep this a conservancy area.

LUTU 0346 bring back to the February 13, 2017 meeting for HBO sites,



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 1-18-2017
- 2) Contact Person(s): Nicole Rommel
 Dept: Land Management
 Phone Number: 920-869-6623 Email: nrommel@oneidanation.org
- 3) Agenda Title: Landlord-Tenant Rule #1 - General Rental Program Eligibility etc.
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Newly DRAFTED rule that defines Landlord Tenant Law.

List any supporting materials included and submitted with the Agenda Request Form

- 1) memo includes a list of
- 2) attachments
- 3) _____
- 4) _____

- 5) Please List any laws, ordinances or resolution that might be affected:

Landlord-Tenant Law

- 6) Please List all other departments or person(s) you have brought your concern to:

N/A

- 7) Do you consider this request urgent? ☐ Yes

☒ No

If yes, please indicate why:

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:

Nicole Rommel 1-11-2017

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

A good mind. A good heart. A strong fire.



MEMORANDUM

TO: Legislative Operating Committee
FROM: Division of Land Management and Oneida Land Commission
SUBJECT: Request for Certification of Procedural Compliance – Landlord - Tenant Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements
DATE: January 18, 2017

The Division of Land Management and the Oneida Land Commission are exercising their joint rule making authority to further define sections of the Landlord - Tenant Law.

The rule is newly drafted and is not a revision of a prior rule. In accordance with the Administrative Rulemaking Law, a public meeting was held for these rules on December 15, 2016 for which the comment period expired on December 22, 2016. There were no community members in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Received Land Commission approval of DRAFT rules and direction to proceed with holding a public meeting.	November 7, 2016
Public Meeting notice for the three rules is posted in the Kalihwisaks (see page 28) and on the Oneida Register.	December 1, 2016
Public Meeting held.	December 15, 2016
Public Comment Period closed, there were no comments received.	December 22, 2016
Land Commission approval of LOC submission packet.	January 9, 2017

The following attachments are included for your review:

1. E-mail listing Land Commission motions, changes, and directives from the November 7, 2016 meeting.
2. Summary Report
3. Public Meeting Notice

4. Copy of Public Meeting published in the Kalihwisaks – Page 28 of the December 1, 2016 issue
5. Sign-in sheet from December 15, 2016 Public Meeting
6. Public meeting transcription from the December 15, 2016 Public Meeting
7. Land Commission minutes dated January 9, 2017, approving the rule packet to be submitted to LOC

Action Requested:

Find that the development of the Landlord - Tenant Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements has procedurally complied with the requirements of the Administrative Rulemaking laws and recognize its effective date as February 9, 2016.

Cc: Pat Pelky, Interim Director, Division of Land Management

Nicole A. Rommel

From: Lori A. Elm
Sent: Tuesday, November 22, 2016 6:00 PM
To: Nicole A. Rommel
Cc: Stephanie L. Skenandore; Jacqueline M. Schuman; Rebecca L. Skenandore
Subject: Directive from November 7, 2016 Land Commission meeting - Rules

Directive from November 7, 2016 Land Commission meeting

C. Review & approve Rule: Title 6. Property and Land – Chapter 601 REAL PROPERTY Rule No. 2 – Comprehensive Housing Division Residential Sales (Draft 1) – Krystal John

Overview of 2.4 Advertising and Showing, introducing line 40, where the Nation is offering a home for sale as-is process, clarification on "forms" must be on our form or not accepted.

- Notes. Directed revisions in section 2.7 to clarify that we will only accept offers to purchase that use the Nation's form.

Motion by Jay T. Rasmussen to approve the rules with the modifications were only the Oneida Nations forms are accepted and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

D. Review & approve Rule: Title 6. Property and Land – Chapter 612 MORTGAGE and FORECLOSURE Rule No. 1 – Mortgage Programs, Guidelines and Requirements (Draft 3) – Krystal John

- Notes. Directed revision in the following sections:
- 1.5-1 to clarify that only the Nation's mortgage applications will be accepted;
- 1.9-3 to clarify that this section only applies when the financing is for a property being sold by a party other than the Nation and to fix the numbering of the subsections;
- 1.11 to change the policy from only refinancing the Nation's loans to refinancing any loan so long as the loan does not finance individual fee land.

Motion by Rebecca Webster to approve the rules with the noted revisions accepted, and directs DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Donald Mclester. Motion carried.

F. Review & approve Rule: Title 7. Property and Land – Chapter 710 LANDLORD-TENANT Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements (Draft 1) – Krystal John

- Notes. Directed revisions in section 1.5-2 to clarify that we will only accept rental applications that use the Nation's form.

Motion by Jay T. Rasmussen to approve the rules with the noted revisions accepted, and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

Attachment 2

Draft 2 – For Public Meeting
2016 11 07

Title 7, Property and Land – Chapter 710

LANDLORD-TENANT

Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements

1.1. Purpose and Effective Date

1.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income Tribal members.

1.1-2. *Delegation.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(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.

(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.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

Draft 2 -- For Public Meeting
2016 11 07

(f) "Tenant" means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(g) "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.

1.4. Eligibility Requirements

1.4-1. *Tribal Member Status.* At least one (1) of the tenants named as a party to the rental agreement is required to be a Tribal member.

1.4-2. *Debt to Income Ratio.* In order to be eligible for a rental agreement, applicants shall have a maximum debt to income ratio of fifty percent (50%).

(a) Comprehensive Housing Division staff shall calculate the debt to income ratio by dividing the applicant's monthly debt by the applicant's monthly income.

(b) For purposes of calculating income for the debt to income ratio, the Comprehensive Housing Division staff:

(1) May not include child support payments;

(2) May not include education grants/scholarships;

(3) May not include medical bills; and

(3) Shall include per capita payments to the extent that receipt of per capita payment may be verified for each of the five (5) years prior to mortgage application.

(A) For per capita payments paid by the Nation, the Comprehensive Housing Division staff shall verify with the Trust Enrollment Department that the applicant received the full eligible amount of the per capita payments for each of the five (5) years prior to mortgage application.

(B) For per capita payments paid by other tribes the Comprehensive Housing Division staff shall verify that the applicant received per capita payments for each of the five (5) years prior to mortgage application using the applicant's tax return.

(C) When per capita payments qualify to be considered as part of the income calculation, Comprehensive Housing Division staff shall use an average to the payments the applicant received for the five (5) years prior to mortgage application.

1.4-3. *Utility Bills.* Applicants for a rental agreement may not have any outstanding balance owed to a utility provider.

1.4-4. *Past Due Accounts.* Applicants for a rental agreement are ineligible if a review of the applicant's credit report reveals more than five (5) accounts that are past due and/or in collections, provided that medical bills may not be included in this consideration.

1.5. Advertisings, Application Period and Tenant Selection

1.5-1. *Advertising.* The Comprehensive Housing Division shall advertise all properties for rent in its general rental program both on the Nation's website and at the Comprehensive Housing Division.

(a) The Comprehensive Housing Division list the monthly rent for the property on the advertisement with a note that the security deposit required is equal to one (1) month's rent payment.

(b) The Comprehensive Housing Division shall provide the showing dates and

89 application period in the advertisement.

90 1.5-2. *Application Period.* When the Comprehensive Housing Division offers a property for
91 rent in its general rental program, it shall set an application period during which rental
92 applications may be submitted at the Bay Bank drop box. The Comprehensive Housing Division
93 may extend the application period by providing notice of the extension both on the Nation's
94 website, Bay Bank and the Comprehensive Housing Division. The Comprehensive Housing
95 Division shall disqualify rental applications received outside of the application period.

96 (a) Tribal members wishing to rent a property in the Comprehensive Housing Division's
97 general rental program may submit a rental application at the Bay Bank drop box, in
98 person, using the rental application form available on the Nation's website and at the
99 Comprehensive Housing Division, which includes any requirements for supplemental
100 information required to verify eligibility. Rental applications submitted using any form
101 other than the Nation will be considered ineligible by the Comprehensive Housing
102 Division.

103 (b) Prior to accepting a rental application for the drop box, Bay Bank staff shall date and
104 time stamp all rental applications upon receipt. In the event that multiple parties arrive at
105 the same time to submit a rental application (i.e. if parties are waiting to submit prior to
106 business hours), Bay Bank staff shall determine the order of receipt through a lottery
107 system in which each party receives a number by chance. Bay Bank staff shall number
108 the offers having the same date and time stamps by from lowest drawn number to highest
109 drawn number.

110 (c) Comprehensive Housing Division staff may not collect the rental applications until
111 the business day immediately following the close of the application period.

112 1.5-3. *Tenant Selection.* Upon receipt of submitted rental applications, Comprehensive Housing
113 Division staff shall determine which applicants are eligible and select a tenant based on the
114 eligible rental application that was received earliest based on the date and time stamp.

115

116 1.6. Security Deposits

117 1.6-1. *Standard Security Deposit.* Prior to providing a selected tenant with keys to the property,
118 Comprehensive Housing Division staff shall ensure that the standard security deposit equal to
119 one (1) month's rent payment has been paid by the tenant.

120 1.6-2. *Increased Security Deposit for Pets.* Tenants in the Comprehensive Housing Division's
121 general rental program may have pets in accordance with the Domestic Animal Ordinance,
122 provided that an increased security deposit is required.

123 (a) The standard security deposit does not apply to tenants with pets. Comprehensive
124 Housing Division staff shall require that tenants with pets (excluding fish) pay a security
125 deposit that is equal to two (2) month's rent payments.

126 (b) In the event that a tenant wishes to acquire a pet after the rental agreement has been
127 signed, the tenant shall notify the Comprehensive Housing Division and shall pay the
128 difference between the increased security deposit for pets and the standard security
129 deposit.

130

131 1.7. Annual Inspection and Rental Agreement Renewal

132 1.7-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule
133 tenants' annual inspections for a date that is within thirty (30) calendar days of the expiration of
134 the tenants' rental agreement.

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2016 11 07

135 1.7-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual
136 inspection shall use the checklist that is approved by the Comprehensive Housing Division
137 director. Upon completion of the inspection, Comprehensive Housing Division staff shall
138 request that the tenant(s) sign the completed checklist.

139 1.7-3. *Inspection Findings.* In the event that an inspection reveals conditions that may affect the
140 health and safety of the tenant and/or the community or the integrity and condition of the rental
141 premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure
142 the issue is adequately remedied. If the issue is not adequately remedied based on the schedule
143 determined by the Comprehensive Housing Division, termination and eviction may be necessary.

144 1.7-4. *Damages.* Tenants may be required to pay costs to repair any damages to the rental
145 premises discovered during the annual inspection. Payment for such costs must be received by
146 the Comprehensive Housing Division prior to signing a rental agreement renewal.

147 1.7-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month
148 term. Tenants wishing to remain in the property are required to sign a renewal rental agreement
149 annually. The Comprehensive Housing Division may, in its discretion, decline renewal of a
150 rental agreement if it determines that the renewal is not in the best interest of the Nation. In the
151 event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises
152 within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive
153 Housing Division shall initiate the eviction process pursuant to the Eviction and Termination
154 law.
155

156 1.8. **Rental Agreement Cancellation**

157 1.8-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general
158 rental program are requested to provide the Comprehensive Housing Division with a minimum
159 of two (2) weeks of notice.

160 1.8-2. *Prorated Rent.* In the event of cancellation of a rental agreement, the Comprehensive
161 Housing Division staff shall prorate the last month's rent payment requirement based upon the
162 greater of the following:

- 163 (a) The number of calendar days the unit was occupied in the last month; or
- 164 (b) Two (2) weeks, which is the minimum allowable notice.

165
166 *End.*

167
168 _____
168 Original effective date:

169 Amendment effective date:
170

171

Division of Land Management
PO Box 365
Oneida, WI 54155
920-869-1690



Summary Report for: General Rental Program Eligibility, Selection and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: General Rental Program Eligibility, Selection and Other Requirements

Name of law being interpreted: Title 7. Property and Land – Chapter 710
LANDLORD-TENANT

Rule Number: 1

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Get rid of the current points system for DOLM rental units and move to a first come, first served process. Identify the requirements to be eligible and apply for a general rental.

Statement of Effect: See Attached.

Financial Analysis: See Attached.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54355-0365
 Oneida-nyn.gov



Statement of Effect

Landlord-Tenant Rule No. 1 - General Rental Program Eligibility, Selection, and Other Requirements

Summary

This rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Oneida Nation.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

Section 710.4 of the Landlord-Tenant Law confers administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking Law. Section 710.4-1 of the Landlord-Tenant Law states that the Comprehensive Housing Division shall provide residential rental programs that provide housing to tenants that are elder tribal members, low-income Oneida tribal members and families, and tribal members in general. Section 710.4-1 further states that the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. Oneida Business Committee Resolution 10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements.

Section 710.4-2 of the Landlord-Tenant Law describes rental eligibility requirements and states that in order to be eligible for a rental agreement, one of the conditions the applicants shall meet are any eligibility requirements set by the rental program's rules. Section 710.4-3 of the Landlord-Tenant Law then goes on to state that the Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Nation.

Section 1.4 of Landlord-Tenant Law Rule No. 1 provides eligibility requirements for participation in rental programs for general members of the Nation, which include the requirement of tribal member status, a maximum debt to income ratio of fifty percent (50%), no outstanding utility bills owed to a utility provider, and no more than five (5) accounts that are past due and/or in collections on an applicant's credit report, excluding medical bills.

Section 1.5 of the Landlord-Tenant Law Rule No. 1 provides for advertising, application period and tenant selection requirements. Section 1.5-1 requires that the Comprehensive Housing Division advertise all properties for rent in its general rental programs both in the Nation's website and at the Comprehensive Housing Division, as well as states the required information that must be stated in the advertisement. Section 1.5-2 requires that when the Comprehensive Housing Division offers a property for rent in its general rental program, it shall set an application period during which the rental applications may be submitted at the Bay Bank drop box, and the process in which applications will be accepted. Section 1.5-3 provides that upon receipt of submitted rental applications, Comprehensive Housing Division staff shall determine the eligibility of each applicant and select a tenant based on the eligible rental application that was received earliest.

Section 1.6 of the Landlord-Tenant Law Rule No. 1 provides that Comprehensive Housing Division staff shall ensure that a security deposit equal to one (1) month's rent payment has been paid by the tenant prior to providing the tenant with keys to the property. It is further provided that an increased security deposit is required when the tenant has pets.

Section 1.7 of the Landlord-Tenant Law Rule No. 1 provides requirements for annual inspections and rental agreement renewals. Section 1.7 sets requirements for when the inspection will take place, what inspection checklist shall be used, what process will be followed if an inspection reveals conditions that may affect the premises, who will pay for damages discovered during an inspection, and rental agreement renewal.

Section 1.8 of the Landlord-Tenant Law Rule No. 1 provides requirements for tenants wishing to cancel a rental agreement, including a two (2) week notice requirement for cancellation, and a requirement for prorating the last month's rent payment based on the cancellation.

Conclusion

There are no legal bars to adopting Landlord-Tenant Law Rule No. 1 -- General Rental Program Eligibility, Selection, and Other Requirements.

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690

Financial Analysis for:

General Rental Program Eligibility, Selection
and Other Requirements

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		\$0.00
Personnel		\$0.00
Office		\$0.00
Documentation Costs		\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		N/A
Other, please explain		\$0.00
Total		\$0.00

NOTICE OF
PUBLIC MEETING
TO BE HELD
Thursday, December 15, 2016 at 10:00 AM
IN THE
**Division of Land Management Conference Room,
470 Airport Drive, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPICS:

- Comprehensive Housing Division Residential Sales Rule
- Mortgage Programs, Guidelines and Requirements Rule
- General Rental Program Eligibility, Selection and Other Requirements Rule

The Comprehensive Housing Division Residential Sales Rule would:

- Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and
- Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and
- Identify requirements for the notice when the Nation sells a home as is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would:

- Identify the mortgages available through the Nation and the requirements and process for applying for such loans;
- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Thursday, December 22,
2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

Oneida Division of Land Management
470 Airport Drive, Oneida, WI 54155
E-mail: LAND@oneidanation.org
Phone: 920-869-1690
Fax: 920-869-1689

Attachment 4

Teken Niwása Téklu • December 1, 2016

Classified

www.kalihwisaks.com

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1.920.496.5631
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Palucki Community School District
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Position will generally work 4 hours per day, however
hours may vary based on student need.

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Valid driver's license and personal vehicle required

Application and details online at
www.pulaskischools.org
Click on Employment Opportunities

Oneida Personnel Commission

Three (3) vacancies

Qualifications:

1. Must be enrolled members of the Oneida Nation.
2. The entire combined commission may not consist of more than two (2) members from any one division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.

3. Be free of any and all direct conflicts of interest or appearances of conflict defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethic Code, the Judicial Code and the Tribal Rules of Civil Procedure

4. A member may not be an employee of the Human Resources Department, an advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.

5. Commissioners shall be available for meetings, trainings, interviews, pre-meetings, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OBC.

Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely or required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications shall be made.

Deadline: 4:30pm Friday, December 16, 2016

FOR SALE

China cabinet - dark wood,
glass doors \$55. Dark desk
\$55. 920-788-4584

TRUCK FOR SALE

'93 Chevy Silverado pickup
4 x 4. Asking \$1,200. PMU,
call: 920.660.9280.

TRUCK FOR SALE

2001 Ford F150XLT pickup.
Asking \$1,500. Clean, runs
good, call: 920.425.3562.

HOME FOR SALE

709 Theodor St., Green Bay -
2 BR, 1 bath, 2 stall garage,
big yard 74k OBO 920-713-

NOTICE OF

PUBLIC MEETING

TO BE HELD

Thursday, December 15, 2016 at 10:00 AM
IN THE

Division of Land Management Conference Room,
470 Airport Drive, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Division of
Land Management (DOLM) is hosting this Public Meeting to gather
feedback from the community regarding the following rules.

TOPICS:

- Comprehensive Housing Division Residential Sales Rule
- Mortgage Programs, Guidelines and Requirements Rule
- General Rental Program Eligibility, Selection and Other Requirements Rule

The Comprehensive Housing Division Residential Sales Rule would:

- Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and
- Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and
- Identify requirements for the notice when the Nation sells a home as is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would:

- Identify the mortgages available through the Nation and the requirements and process for applying for such loans;
- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintaining all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings

PUBLIC COMMENT PERIOD

OPEN UNTIL Thursday, December 22,
2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

Oneida Division of Land Management
470 Airport Drive, Oneida, WI 54155
E-mail: LAND@oneidanation.org
Phone: 920-869-1690
Fax: 920-869-1689

Attachment 5

Public Hearing at Division of Land Management

Sign In Sheet

December 15, 2016

Check
 [unclear]
 [unclear]

Print Name	Sign Name
1. Nicole Kammel	32. Nicole Kammel
2. Beck Vandenberg	33. [unclear]
3. David Wilson	34. [unclear]
4.	35.
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31.	62.

Attachment 6

259 of 289

Meeting: Public Meeting
Where: Division of Land Management Conference Room
470 Airport Drive, Oneida WI 54115
Date: December 15, 2016
Topics: Comprehensive Housing Division Residential Sales Rule
Mortgage Programs, Guidelines and Requirements Rule
General Rental Program Eligibility, Section and Other Requirement Rule

Meeting begun at: 10:00 am

Nicole Rommel This is the Public Meeting of Thursday, December 15, 2016, 10:00 am in the Division of Land Management Conference Room, 470 Airport Drive, Oneida WI 54115. In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting the Public Meeting to gather feedback from the community regarding the following rules.

Topics: Comprehensive Housing Division Residential Sales Rule, Mortgage Programs, Guidelines and Requirements Rule, General Rental Program Eligibility, Section and Other Requirement Rule

The Comprehensive Housing Division Residential Sales Rule would: Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and Identify requirements for the notice when the Nation sells a home as-is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would: Identify the mortgages available through the Nation and the requirements and process for applying for such loans; Establish how interest rates are set and may be amended, Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would: Get rid of the current points system for DOLM rental units and move to a first come, first served process; and Identify the requirements to be eligible and apply for a general rental. To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD, OPEN UNTIL Thursday, December 22, 2016, During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax. Oneida Division of Land Management, 470 Airport Drive, Oneida, WI 54155 E-mail: LAND@oneidanation.org, Phone: 920-869-1690, Fax: 920-869-1689

It is now 10:15 am, those present are: myself Nicole Rommel, Becky Skenandore, and

Diane Wilson all is representing the Division of Land Management. At this time there are no community members here to give a public comment. We will be waiting 5 (five) more minutes and we will then consider the meeting closed.

This is a continuation of the Public Meeting of December 15, 2016, it is now 10:23 am, and there aren't any community members that have come to make a comment at this meeting, so we are calling this meeting closed with no community comments at 10:23 am.

Attachment 7

ONEIDA LAND COMMISSION MEETING MINUTES LITTE BEAR CONFERENCE ROOM JANUARY 9, 2017 @ 5:00 PM

I. CALLED TO ORDER @ 5:00 pm by Chair- Rae Skenandore

Present: Chair-Rae Skenandore, Vice Chair- Racquel Hill, Secretary-Jay T. Rasmussen, Lloyd Powless, Commissioner, Donald McLester, Commissioner,

Excused: Sherrole Benton, Commissioner, Rebecca Webster, Commissioner

BUSINESS COMMITTEE LIAISON: Ron "Tehassi" Hill

OTHERS PRESENT: Mary Jo Nash, Lori Elm, Nicole Rommel, Sheila Huntington, Stephanie Skenandore, Diane Wilson, Krystal John, Leanne Doxtator, Sue Doxtator

II. APPROVE/AMEND AGENDA

Motion by Donald McLester to approve the agenda with the correction to executive session commercial leases, deleting the duplicating request #7 and correct #12201301C and delete #8. Also to add 1496 Riverdale Drive to the Loan. Seconded by Racquel Hill. Motion carried.

III. APPROVE/AMEND MINUTES

A. December 5, 2016

Motion by Racquel Hill to approve the minutes of December 5, 2016 with the edits and changes: IV. Tabled Business, A. LUTU 0343, last part of motion, to reword to read more clearly; C. LUTU 0346, add defer to January 9th, 2017 meeting; V. Old Business, A. Location of meeting, reword motion, VI. New Business, correct wording Secretary "to" draft; VII. Reports, LUTU-0373, change to include not to be subdivided LUTU-0279 Summary of items should be attached. What items? VIII Executive Session the S needs to be removed from executives, A. Old Business 1. Add the directive. 2. Change pro to pros and feel to fee. D. Acquisition 10201601C add what is not a conflict.

IV. TABLED BUSINESS

A. Request to name 1940 W. Mason

V. OLD BUSINESS

A. General Rental Program Eligibility Selection and Other Requirements (Rule) Request

B Mortgage and Foreclosure Guidelines and Requirements (Rule) Request to approve

1-9-2017

C. Comprehensive Housing Division Residential Sales (Rule) Request to approve

Motion by Racquel Hill to approve all the rules with the recommendations and to forward with noted revisions and changes recommend by Krystal John and the one adjustment to the rule by financing. Seconded by Jay T. Rasmussen. Motion carried. LOC will need three (3) separate packets with each rule per Krystal John.

D. Leasing Law Update

Accepted as FYI. Krystal submitted a memo that the law is not approved until we receive official approval from the Secretary (BIA). The Real Property Law Public meeting comments were considered by the LOC recently and have been directed by the LOC to be brought forward to consider the adoption on the January 18, 2017 and then forwarded to OBC on the January 25, 2017.

E. Driveway Easement Reaffirm – tribal parcel # 17-0-2165-00 Update

F. Request Easement across former railroad. (WPS)

G. WE Energies request for 50ft easement at W2104 HWY 54

Motion by Jay T. Rasmussen to accept E, F and G as FYI. Seconded by Donald McLester. Motion carried.

H. Real Property Law

VI. NEW BUSINESS

A. Electronic Signatures – Rae Skenandore

Discussion that Kelly McAndrews is checking into options and to see what the state statutes are along with the BIA on the Federal level. Kelly will continue to work with the staff and the Land Commission.

B. Joint Meeting and Reporting Memo

Motion by Racquel Hill to change the joint meeting to September 18, 2017. The meeting will be held at LBDC at 5PM. Seconded by Donald McLester. Motion carried.

VII. REPORTS

A. PLANNING

1. LUTU SOP Update

Update on the planning of the LUTU and to invite the LC was given by Susan Doxtator. Motion by Jay T. Rasmussen to accept as FYI. Seconded by Racquel Hill. Motion carried.

2. LUTU 0376 Former Lois Metoxen, N5953 County Road E

3. LUTU 0346 Former Colleen & Kerry Metoxen, 219 Valley Drive (Tribal Fee Land)

4. LUTU 0388 Former Owner Steven Ambrosius, W141 Service Rd

LUTU 0376 bring back to the February 13, 2017 meeting with a formal recommendation to keep this a conservancy area.

LUTU 0346 bring back to the February 13, 2017 meeting for HBO sites.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: 1-18-2017
- 2) Contact Person(s): Nicole Rommel
 Dept: Land Management
 Phone Number: 920-869-6623 Email: nrommel@oneidanation.org
- 3) Agenda Title: Real Property Law Rule #2-Comprehensive Housing Division Residential Sales
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Newly Drafted rule that defines Real Property Law.

List any supporting materials included and submitted with the Agenda Request Form

- 1) memo has a list of
- 2) attachments
- 3) _____
- 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Real Property Law
- 6) Please List all other departments or person(s) you have brought your concern to:
N/A
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why:

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:

Nicole Rommel 1-11-2017

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
 Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

Division of Land Management
PO Box 365
Oneida, WI 54155
920-869-1690



MEMORANDUM

TO: Legislative Operating Committee
FROM: Division of Land Management and Oneida Land Commission
SUBJECT: Request for Certification of Procedural Compliance – Real Property Rule No. 2 – Comprehensive Housing Division Residential Sales
DATE: January 18, 2017

The Division of Land Management and the Oneida Land Commission are exercising their joint rule making authority to further define sections of the Real Property Law.

The rule is newly drafted and is not a revision of a prior rule. In accordance with the Administrative Rulemaking Law, a public meeting was held for these rules on December 15, 2016 for which the comment period expired on December 22, 2016. There were no community members in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Received Land Commission approval of DRAFT rules and direction to proceed with holding a public meeting.	November 7, 2016
Public Meeting notice for the three rules is posted in the Kalihwisaks (see page 28) and on the Oneida Register.	December 1, 2016
Public Meeting held.	December 15, 2016
Public Comment Period closed, there were no comments received.	December 22, 2016
Land Commission approval of LOC submission packet.	January 9, 2017

The following attachments are included for your review:

1. E-mail listing Land Commission motions, changes, and directives from the November 7, 2016 meeting.
2. Summary Report
3. Public Meeting Notice

4. Copy of Public Meeting published in the Kalihwisaks – Page 28 of the December 1, 2016 issue
5. Sign-in sheet from December 15, 2016 Public Meeting
6. Public meeting transcription from the December 15, 2016 Public Meeting
7. Land Commission minutes dated January 9, 2017, approving the rule packet to be submitted to LOC

Action Requested:

Find that the development of the Real Property Rule No. 2 – Comprehensive Housing Division Residential Sales has procedurally complied with the requirements of the Administrative Rulemaking laws and recognize its effective date as March 9, 2016.

Cc: Pat Pelky, Interim Director, Division of Land Management

Nicole A. Rommel

From: Lori A. Elm
Sent: Tuesday, November 22, 2016 6:00 PM
To: Nicole A. Rommel
Cc: Stephanie L. Skenandore; Jacqueline M. Schuman; Rebecca L. Skenandore
Subject: Directive from November 7, 2016 Land Commission meeting - Rules

Directive from November 7, 2016 Land Commission meeting

C. Review & approve Rule: Title 6. Property and Land – Chapter 601 REAL PROPERTY Rule No. 2 – Comprehensive Housing Division Residential Sales (Draft 1) – Krystal John

Overview of 2.4 Advertising and Showing, introducing line 40, where the Nation is offering a home for sale as-is process, clarification on “forms” must be on our form or not accepted.

- Notes: Directed revisions in section 2.7 to clarify that we will only accept offers to purchase that use the Nation’s form.

Motion by Jay T. Rasmussen to approve the rules with the modifications were only the Oneida Nations forms are accepted and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

D. Review & approve Rule: Title 6. Property and Land – Chapter 612 MORTGAGE and FORECLOSURE Rule No. 1 – Mortgage Programs, Guidelines and Requirements (Draft 3) – Krystal John

- Notes: Directed revision in the following sections:
- 1.5-1 to clarify that only the Nation’s mortgage applications will be accepted;
- 1.9-3 to clarify that this section only applies when the financing is for a property being sold by a party other than the Nation and to fix the numbering of the subsections;
- 1.11 to change the policy from only refinancing the Nation’s loans to refinancing any loan so long as the loan does not finance individual fee land.

Motion by Rebecca Webster to approve the rules with the noted revisions accepted, and directs DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Donald McLester. Motion carried.

E. Review & approve Rule: Title 7. Property and Land – Chapter 710 LANDLORD-TENANT Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements (Draft 1) – Krystal John

- Notes: Directed revisions in section 1.5-2 to clarify that we will only accept rental applications that use the Nation’s form.

Motion by Jay T. Rasmussen to approve the rules with the noted revisions accepted, and direct DOLM staff to prepare and hold a Public Meeting with notice of this rule, and provided to the Land Commission at their first available meeting. Seconded by Rebecca Webster. Motion carried.

Title 6. Property and Land – Chapter 601

REAL PROPERTY

Rule No. 2 – Comprehensive Housing Division Residential Sales

2.1 Purpose and Effective Date

2.1-1. *Purpose.* The purpose of this rule is to provide the requirements for both the Nation and potential buyer when the Comprehensive Housing Division offers a residential property for sale.

2.1-2. *Delegation.* The Real Property law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

2.2. Adoption and Authority

2.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Real Property law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Appraisal Value" means the estimated worth of the property based on a review of the property and market values.

(b) "Nation" means the Oneida Nation.

(c) "Tribal Member" means an individual who is an enrolled member of the Nation.

2.4. Advertising and Showings

2.4-1. *Advertising.* The Comprehensive Housing Division shall advertise all homes for sale by the Nation both on the Nation's website and at the Comprehensive Housing Division.

(a) The Comprehensive Housing Division shall use the home's appraisal value as the listing price on the advertisement.

(b) The Comprehensive Housing Division shall provide the showing dates and prequalification and offer periods in the advertisement.

(c) Where the Nation is offering a home for sale as-is that requires improvements before an occupancy permit may be issued pursuant to the Zoning and Shoreland Protection Ordinance, the advertisement shall also include the costs estimated by the Comprehensive Housing Division for the minimum improvements required to make the residence eligible for an occupancy permit. In addition, the cost estimate shall also include estimated costs to address any health and safety issues which may not amount to a code violation affecting an occupancy permit. The estimate shall include a disclaimer that the estimate

is just that and actual costs of the improvements may exceed the costs estimated by the Comprehensive Housing Division.

2.4-2. *Showings.* For each home sold by the Nation, the Comprehensive Housing Division shall conduct showings over the course of one (1) week with a minimum of two (2) public showings wherein one (1) showing is required to be conducted during the Nation's business hours and one (1) showing is required to be conducted after the Nation's business hours. In addition to the two (2) required public showings, the Comprehensive Housing Division may schedule private showings upon a potential buyer's request at its discretion.

2.5. Right of First Refusal to Current Tenant

2.5-1. *Right of First Refusal to Current Tenant.* If the Nation chooses to cease renting a property with a current tenant and chooses to sell said property as residential property as is, provided that the tenant is in good standing with the rental agreement, the Comprehensive Housing Division shall offer the tenant the right of first refusal to purchase the home subject to the mortgage requirements.

2.6. Prequalification

2.6-1. *Setting the Prequalification Period.* The Comprehensive Housing Division shall set the prequalification period as the week immediately following the showing week.

2.6-2. *Prequalification Required.* All interested buyers shall provide proof of prequalification for the homes listed price in order to be eligible to submit an offer to purchase.

(a) Prequalification may be from the Comprehensive Housing Division or an outside lender.

(b) If an interested buyer plans to finance the purchase through a mortgage from the Comprehensive Housing Division, the interested buyer shall schedule a meeting with the Comprehensive Housing Division during the prequalification week in order to determine eligibility.

(c) Where the Nation is offering a home for sale as-is that requires improvements before an occupancy permit may be issued pursuant to the Zoning and Shoreland Protection Ordinance, an interested buyer is required to be pre-approved for the listed price of the home as-is as well as the costs estimated by the Comprehensive Housing Division for the minimum improvements required to make the residence eligible for an occupancy permit and to address any health and safety issues that may not amount to code violations affecting an occupancy permit.

2.7. Offers to Purchase

2.7-1. *Setting the Offer Period.* When the Comprehensive Housing Division offers a home for sale, it shall set an offer period of one (1) business day during which offers to purchase may be submitted at the Bay Bank drop box. The Comprehensive Housing Division may extend the offer period by providing notice of the extension both on the Nation's website, Bay Bank and the Comprehensive Housing Division. The Comprehensive Housing Division shall disqualify offers to purchase received outside of the offer period.

2.7-2. *Making an Offer to Purchase.* Tribal members wishing to make an offer to purchase on a home for sale by the Nation may do so by submitting an offer to purchase at the Bay Bank drop box, in person, using the offer to purchase form available on the Nation's website and at the Comprehensive Housing Division. Offers to purchase that are not submitted using the Nation's

form will not be accepted by the Comprehensive Housing Division.

(a) Offers to purchase for less than the listing price will not be considered.

(b) Offers to purchase that do not include at least one (1) Tribal member will not be considered.

(c) Prior to accepting an offer to purchase for the drop box, Bay Bank staff shall date and time stamp all offers to purchase upon receipt. In the event that multiple parties arrive at the same time to submit an offer to purchase (i.e. if parties are waiting to submit prior to business hours), Bay Bank staff shall determine the order of receipt through a lottery system in which each party receives a number by chance. Bay Bank staff shall number the offers having the same date and time stamps by from lowest drawn number to highest drawn number.

(d) There is no limit as to how many offers to purchase a Tribal member may submit within an offer period.

2.7-3. Comprehensive Housing Division Receipt of Offers to Purchase. Comprehensive Housing Division staff may not collect the offers to purchase until the business day immediately following the close of the offer period. Upon receipt of the offers to purchase from Bay Bank, the Comprehensive Housing Division shall post the dollar amount of the highest prequalified offer to purchase received on the Nation's website; no personal information of the offeror may be included in this posting. Offers to purchase received for which the Comprehensive Housing Division did not receive proof of prequalification will not be considered.

2.7-4. Buyer Selection. When the Comprehensive Housing Division receives multiple offers to purchase on a home for sale by the Nation, it shall select the buyer based on the highest prequalified offer received within the offer period. In the event there is a tie for the highest prequalified offer to purchase received within the offer period, the Comprehensive Housing Division shall select the offer that was received earliest based on the date and time stamp.

2.7-5. Financing. If financing is required, the selected buyer may choose to finance either through the Nation's mortgage program or through an outside lender.

2.8. Final Decision

2.8-1. No Appeal. The decisions made in regard to Comprehensive Housing Division residential sales are final. Neither the Oneida Judiciary nor any administrative body, including a board, committee or commission is authorized to hear a complaint in regard to Comprehensive Housing Division decisions related to residential sales.

End.

Original effective date:

Amendment effective date:

Division of Land Management
PO Box 365
Oneida, WI 54155
920-869-1690



Summary Report for: Comprehensive Housing Division Residential Sales

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Comprehensive Housing Division Residential Sales

Name of law being interpreted: Title 6 – Property and Land Chapter 601: REAL PROPERTY

Rule Number: 2

Other Laws or Rules that may be affected: Mortgage and Foreclosure Law, Rule No. 1 - Mortgage Programs, Guidelines and Requirements

Brief Summary of the proposed rule: Identify the process required when the Nation is selling a home, including advertising, showing and prequalification period. Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process. Identify requirements for the notice when the Nation sells a home as-is that may require repairs upon purchase.

Statement of Effect: See Attached.

Financial Analysis: See Attached.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
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Statement of Effect

Real Property Law Rule No. 2 – Comprehensive Housing Division Residential Sales

Summary

This rule provides the requirements for both the Nation and potential buyer when the Comprehensive Housing Division offers a residential property for sale.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The current Real Property Law was adopted on February 25, 2015, while the Administrative Rulemaking Law was not adopted until later on February 24, 2016. Although the Real Property Law does not expressly grant the Division of Land Management rulemaking authority, Section 67.16-2(c) of the Real Property Law states that the Land Commission shall have the power and duty to implement and interpret the provisions of this Law. Section 17.3(g) of the Administrative Rulemaking Law defines rulemaking authority as the delegation of authority to authorized agencies in order to implement, interpret and/or enforce a law of the Tribe. Therefore, the Division of Land Management has the authority to promulgate rules that implement and interpret provisions of the Real Property Law.

Real Property Law Rule No. 2 – Comprehensive Housing Division Residential Sales provides the requirements for both the Nation and potential buyer when the Comprehensive Housing Division offers a residential property for sale.

Section 2.4 of the Real Property Law Rule No. 2 discusses advertising and showings of residential properties for sale. This section provides that the Comprehensive Housing Division shall advertise all homes for sale by the Nation both on the Nation's website and at the Comprehensive Housing Division. This section also discusses what should be included in the advertisement such as the listing price and how it is determined, the showing dates and prequalification and offer periods, and the costs estimated for the minimum improvements required to make the residence eligible for an occupancy permit if needed.

Section 2.5 of the Real Property Law Rule No. 2 provides that the Comprehensive Housing Division shall offer a tenant that is currently renting a property the Nation wishes to sell as a residential property the right of first refusal to purchase the home subject to the mortgage requirements, as long as the tenant is in good standing with the rental agreement.

Section 2.6 of the Real Property Law Rule No. 2 discusses prequalification of the sale of a residential property. This section provides that the Comprehensive Housing Division shall set the prequalification period as the week immediately following the showing week and discusses that prequalification, from either the Comprehensive Housing Division or an outside buyer, is required.

Section 2.7 of the Real Property Law Rule No. 2 discusses the offers to purchase. This section provides requirements for the Comprehensive Housing Division when setting an offer to purchase period, discusses how a tribal member can make an offer to purchase, outlines what offers to purchase will not be accepted, and how offers to purchase will be collected. This section also discusses what the Comprehensive Housing Division shall do upon receipt of offers to purchase, how a buyer will be selected, and that financing may be through the Nation's mortgage program or an outside lender.

Section 2.8 of the Real Property Law Rule No. 2 discusses the fact that the decisions made in regard to Comprehensive Housing Division residential sales are final, and there is no appeal process available.

Conclusion

There are no legal bars to adopting the Real Property Law Rule No.2: Comprehensive Housing Division Residential Sales.

Division of Land Management

PO Box 365
 Oneida, WI 54155
 920-869-1690


Financial Analysis for: Comprehensive Housing Division Residential Sales

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		\$0.00
Personnel		\$0.00
Office		\$0.00
Documentation Costs	*Repair completion inspections from Title Company=\$150*5 *Zoning inspections=\$40*5	\$950.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		60 days
Other, please explain		\$0.00
Total		\$950.00

NOTICE OF

PUBLIC MEETING

TO BE HELD

Thursday, December 15, 2016 at 10:00 AM

IN THE

**Division of Land Management Conference Room,
470 Airport Drive, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPICS:

- Comprehensive Housing Division Residential Sales Rule
- Mortgage Programs, Guidelines and Requirements Rule
- General Rental Program Eligibility, Selection and Other Requirements Rule

The Comprehensive Housing Division Residential Sales Rule would:

- Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and
- Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and
- Identify requirements for the notice when the Nation sells a home as is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would:

- Identify the mortgages available through the Nation and the requirements and process for applying for such loans;
- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD**OPEN UNTIL Thursday, December 22,
2016**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Division of Land Management
470 Airport Drive, Oneida, WI 54155
E-mail: LAND@oneidanation.org
Phone: 920-869-1690
Fax: 920-869-1689**

Attachment 4

8 Téken Niwása Téklú • December 1, 2016

Classified

www.kalihwisaks.com

Call the Kalihwisaks at
1.920.496.5631
 to place an ad

Oneida's Best Marketplace!

• BUY • SELL • SHOP • BARTER • TRADE • SEARCH • LEASE •

Mail submissions to:
 Post Office Box 365
 Oneida, Wisconsin 54155



FOR SALE

China cabinet - dark wood,
 glass doors \$55. Dark desk
 - \$55, 920-788-4584

TRUCK FOR SALE

'93 Chevy Silverado pickup
 4 x 4. Asking \$1,200. FMI,
 call: 920.660.9280.

TRUCK FOR SALE

2001 Ford F150XL pickup.
 Asking \$1,500. Clean, runs
 good, call: 920.425.3562.

HOME FOR SALE

709 Theode St., Green Bay -
 2 BR, 1 bath, 2 stall garage,
 big yard. 74k OBO 920-713-

EMPLOYMENT

NATIVE AMERICAN LIAISON

Pulaski Community School District
 20 hrs/week

Position will generally work 4 hours per day, however
 hours may vary based on student need.

Travel between schools is required.

Valid driver's license and personal vehicle required.

Application and details online at:

www.pulaskischools.org

Click on Employment Opportunities

Oneida Personnel Commission

Three (3) vacancies

Qualifications:

- 1) Must be enrolled members of the Oneida Nation.
- 2) The entire combined commission may not consist of more than two (2) members from any one division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.
- 3) Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethic Code, the Judicial Code and the Oneida Rules of Civil Procedure.
- 4) A member may not be and employee of the Human Resources Department, any advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.
- 5) Commissioners shall be available for meetings, trainings, interviews, pre-screenings, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OPC.
- 6) Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications are made.

Deadline: 4:30pm Friday, December 16, 2016

NOTICE OF

PUBLIC MEETING

TO BE HELD

Thursday, December 15, 2016 at 10:00 AM
 IN THE

**Division of Land Management Conference Room,
 470 Airport Drive, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPICS:

- Comprehensive Housing Division Residential Sales Rule
- Mortgage Programs, Guidelines and Requirements Rule
- General Rental Program Eligibility, Selection and Other Requirements Rule

The Comprehensive Housing Division Residential Sales Rule would:

- Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and
- Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and
- Identify requirements for the notice when the Nation sells a home as is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would:

- Identify the mortgages available through the Nation and the requirements and process for applying for such loans;
- Establish how interest rates are set and may be amended;
- Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would:

- Get rid of the current points system for DOLM rental units and move to a first come, first served process; and
- Identify the requirements to be eligible and apply for a general rental.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Thursday, December 22,
2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax.

Oneida Division of Land Management
 470 Airport Drive, Oneida, WI 54155
 E-mail: LAND@oneidanation.org
 Phone: 920-869-1690
 Fax: 920-869-1689

Attachment 5

Public Hearing at Division of Land Management

Sign In Sheet

December 15, 2016

Check for
oral
testimony

Print Name	Sign Name
1. Nicole Kommel	32. Nicole Kommel
2. Becky Skerandone	33. Becky Skerandone
3. Diane Wilson	34. Diane Wilson
4.	35.
5.	36.
6.	37.
7.	38.
8.	39.
9.	40.
10.	41.
11.	42.
12.	43.
13.	44.
14.	45.
15.	46.
16.	47.
17.	48.
18.	49.
19.	50.
20.	51.
21.	52.
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23.	54.
24.	55.
25.	56.
26.	57.
27.	58.
28.	59.
29.	60.
30.	61.
31.	62.

Meeting: Public Meeting
Where: Division of Land Management Conference Room
470 Airport Drive, Oneida WI 54115
Date: December 15, 2016

Topics: Comprehensive Housing Division Residential Sales Rule
Mortgage Programs, Guidelines and Requirements Rule
General Rental Program Eligibility, Section and Other Requirement Rule

Meeting begun at: 10:00 am

Nicole Rommel This is the Public Meeting of Thursday, December 15, 2016, 10:00 am in the Division of Land Management Conference Room, 470 Airport Drive, Oneida WI 54115. In accordance with the Administrative Rulemaking Law, the Division of Land Management (DOLM) is hosting the Public Meeting to gather feedback from the community regarding the following rules.

Topics: Comprehensive Housing Division Residential Sales Rule, Mortgage Programs, Guidelines and Requirements Rule, General Rental Program Eligibility, Section and Other Requirement Rule

The Comprehensive Housing Division Residential Sales Rule would: Identify the process required when the Nation is selling a home, including an advertising, showing and prequalification period; and Get rid of the current points system for choosing recipients for DREAM homes and move to a bidding process; and Identify requirements for the notice when the Nation sells a home as-is that may require repairs upon purchase.

The Mortgage Programs, Guidelines and Requirements Rule would: Identify the mortgages available through the Nation and the requirements and process for applying for such loans; Establish how interest rates are set and may be amended; Consolidate the loan programs while maintains all loan services.

The General Rental Program Eligibility, Selection and Other Requirements Rule would: Get rid of the current points system for DOLM rental units and move to a first come, first served process; and identify the requirements to be eligible and apply for a general rental. To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD, OPEN UNTIL Thursday, December 22, 2016, During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to DOLM by U.S. mail, interoffice mail, e-mail or fax. Oneida Division of Land Management, 470 Airport Drive, Oneida, WI 54155 E-mail: LAND@oneidanation.org, Phone: 920-869-1690, Fax: 920-869-1689

It is now 10:15 am, those present are: myself Nicole Rommel, Becky Skenandore, and

Diane Wilson all is representing the Division of Land Management. At this time there are 278 of 289 no community members here to give a public comment. We will be waiting 5 (five) more minutes and we will than consider the meeting closed.

This is a continuation of the Public Meeting of December 15, 2016, it is now 10:23 am, and there aren't any community members that have come to make a comment at this meeting, so we are calling this meeting closed with no community comments at 10:23 am.

**ONEIDA LAND COMMISSION MEETING MINUTES
LITTE BEAR CONFERENCE ROOM
JANUARY 9, 2017 @ 5:00 PM**

I. CALLED TO ORDER @ 5:00 pm by Chair- Rae Skenandore

Present: Chair-Rae Skenandore, Vice Chair- Racquel Hill, Secretary-Jay T. Rasmussen, Lloyd Powless, Commissioner, Donald McLester, Commissioner,

Excused: Sherrole Benton, Commissioner, Rebecca Webster, Commissioner

BUSINESS COMMITTEE LIAISON: Ron "Tehassi" Hill

OTHERS PRESENT: Mary Jo Nash, Lori Elm, Nicole Rommel, Sheila Huntington, Stephanie Skenandore, Diane Wilson, Krystal John, Leanne Doxtater, Sue Doxtator

II. APPROVE/AMEND AGENDA

Motion by Donald McLester to approve the agenda with the correction to executive session, commercial leases, deleting the duplicating request #7 and correct #12201301C and delete #8. Also to add 1496 Riverdale Drive to the Loan. Seconded by Racquel Hill. Motion carried.

III. APPROVE/AMEND MINUTES

A. December 5, 2016

Motion by Racquel Hill to approve the minutes of December 5, 2016 with the edits and changes: IV. Tabled Business, A. LUTU II 0343, last part of motion, to reword to read more clearly; C. LUTU 0346, add defer to January 9th, 2017 meeting; V. Old Business, A. Location of meeting, reword motion, VI. New Business, correct wording Secretary "to" draft; VII. Reports, LUTU-0373, change to include not to be subdivided. LUTU-0279 Summary of items should be attached. What items? VIII Executive Session the S needs to be removed from executives, A. Old Business 1. Add the directive. 2. Change pro to pros and feel to fee. D. Acquisition 10201601C add what is not a conflict.

IV. TABLED BUSINESS

A. Request to name 1940 W. Mason

V. OLD BUSINESS

A. General Rental Program Eligibility Selection and Other Requirements (Rule) Request

B. Mortgage and Foreclosure Guidelines and Requirements (Rule) Request to approve

C. Comprehensive Housing Division Residential Sales (Rule) Request to approve

Motion by Racquel Hill to approve all the rules with the recommendations and to forward with noted revisions and changes recommend by Krystal John and the one adjustment to the rule by financing. Seconded by Jay T. Rasmussen. Motion carried. LOC will need three (3) separate packets with each rule per Krystal John.

D. Leasing Law Update

Accepted as FYI. Krystal submitted a memo that the law is not approved until we receive official approval from the Secretary (BIA). The Real Property Law Public meeting comments were considered by the LOC recently and have been directed by the LOC to be brought forward to consider the adoption on the January 18, 2017 and then forwarded to OBC on the January 25, 2017.

E. Driveway Easement Reaffirm – tribal parcel # 17-0-2165-00 Update

F. Request Easement across former railroad (WPS)

G. WE Energies request for 50ft easement at W2104 HWY 54

Motion by Jay T. Rasmussen to accept E, F and G as FYI. Seconded by Donald McLester. Motion carried.

H. Real Property Law

VI. NEW BUSINESS

A. Electronic Signatures – Rae Skenandore

Discussion that Kelly McAndrews is checking into options and to see what the state statutes are along with the BIA on the Federal level. Kelly will continue to work with the staff and the Land Commission.

B. Joint Meeting and Reporting Memo

Motion by Racquel Hill to change the joint meeting to September 18, 2017. The meeting will be held at LBDC at 5PM. Seconded by Donald McLester. Motion carried.

VII. REPORTS

A. PLANNING

1. LUTU SOP Update

Update on the planning of the LUTU and to invite the LC was given by Susan Doxtator. Motion by Jay T. Rasmussen to accept as FYI. Seconded by Racquel Hill. Motion carried.

2. LUTU 0376 Former Lois Metoxen, N5953 County Road E

3. LUTU 0346 Former Colleen & Kerry Metoxen, 219 Valley Drive (Tribal Fee Land)

4. LUTU 0388 Former Owner Steven Ambrosius, W141 Service Rd

LUTU 0376 bring back to the February 13, 2017 meeting with a formal recommendation to keep this a conservancy area.

LUTU 0346 bring back to the February 13, 2017 meeting for HBO sites,



FY17 1st Quarter Report October 1, 2016- December 31, 2016 Legislative Operating Committee

SUMMARY OF FIRST QUARTER AGENDA ITEMS

Sponsor	Items
Brandon Stevens, LOC Chair	<ul style="list-style-type: none">-Eviction and Termination (completed)-Employment Law-Business Committee Meetings Law-Budget Management and Control Law-Rules of Administrative Procedure-Corporate Laws-Conflict of Interest (permanent amendments)-Petition: Debraska Per Capita Distribution
Tehassi Hill, LOC Vice Chair	<ul style="list-style-type: none">-Election Law Amendments-Tobacco Ordinance Amendments-Leasing (completed)
Fawn Billie	<ul style="list-style-type: none">-Drug and Alcohol Free Workplace Policy Emergency Amendments
David P. Jordan	<ul style="list-style-type: none">-Landlord-Tenant Emergency Amendments-Community Support Fund Amendments-Real Property Amendments-Back Pay Amendments-(completed)-Per Capita Amendments
Jennifer Webster	<ul style="list-style-type: none">-Drug and Alcohol Free Workplace Policy Emergency Amendments-Oneida Nation Seal and Flag

LOC MEETING DATES

October 5, 2016
October 20, 2016
November 2, 2016
November 16, 2016
December 7, 2016
December 21, 2016

PUBLIC MEETINGS HELD

Real Property Law Amendments: October 20, 2016
Community Support Fund Amendments, November 3, 2016
Oneida Nation Seal and Flag, December 1, 2016
Hunting, Fishing, and Trapping Law Amendments: December 15, 2016
Tobacco Ordinance Amendments: December 15, 2016
Budget Management and Control: December 15, 2016
Per Capita Amendments: December 15, 2016
Business Committee Meetings Law: December 29, 2016

2014-2017 Active Files List as of December 21, 2016:

- 48 open legislative items
- 32 completed items
- 1 item denied by LOC
- 12 outstanding administrative items
- 13 completed administrative items

Legislative Reference Office Activities:

- 2 Legislative Analysts were hired
- Open Records Request SOP was drafted by LRO and accepted by LOC
- Legislative Analysis SOP was drafted by LRO and accepted by LOC
- Post Law Adoption SOP was drafted by the LRO and accepted by the LOC
- Rulemaking Guidebook was drafted by the LRO and accepted by the LOC
- Code of Laws Reorganization Project

Second Quarter Plans:

- Complete the Standard Definitions Project
- Complete the Code of Laws Reorganization Project
- Send the following items to the OBC for consideration;
 1. Real Property Amendments
 2. Employment - to be forwarded to the General Tribal Council March meeting
 3. Hunting, Fishing, and Trapping Amendments
 4. Per Capita Amendments
 5. Tobacco Amendments
 6. Endowments Amendments
 7. Budget Management and Control
 8. Conflict of Interest Permanent Amendments
 9. Drug and Alcohol Free Workplace Permanent Amendments
 10. Oneida Nation Seal and Flag
 11. Landlord-Tenant Permanent Amendments

Upcoming Employment Law Information Meetings

Date	Time	Location
January 30	1:30pm-3:30 pm	Social Services- first floor green room
February 2	9:00am-11:00am	Division of Land Management- Conference Room
February 6	10:00am-12:00pm	Little Bear Development Center- Conference Room
February 6	1:30pm-3:30pm	Oneida Health Center- Main Conference Room
February 9	9:00am-11:00am	Skenandoah Complex- Cafeteria
February 9	2:30pm-4:30pm	Employee Services- Eagle Room
February 13	11:00am-1:00pm	Main Casino- Executive Conference Room
February 16	1:30-3:30pm	Norbert Hill Center-Business Committee Conference Room

CODE OF LAWS REORGANIZATION

Updated : 01/16/2017

- Title 1. Government & Finances
- Title 2. Employment
- Title 3. Health and Public Safety
- Title 4. Environment and Natural Resources

- Title 5. Business
- Title 6. Property and Land
- Title 7. Children, Elders and Family
- Title 8. Judicial System
- Title 9. Education

<div></div>	Current law that is being amended	P	Means currently policy
<div></div>	Proposed law	*	Law requires approval of federal government

<u>Title 1. Government and Finances</u>	Current Chapter	Proposed Chapter	Adopting Entity
This title includes those laws that are related to government function of GTC, OBC, LOC, boards, committees, commissions and tribal agencies.			
Administrative Procedures Act	1	101	OBC
Oneida Election Law	2	102	GTC
Code of Ethics	3	103	GTC
Removal Law	4	104	GTC
Comprehensive Policy Governing Boards, Committees and Commissions	P	105	OBC
Administrative Rulemaking	17	106	OBC
Open Records and Open Meetings	7	107	OBC
Audit Law	8	108	OBC
Legislative Procedures Act	16	109	OBC
Ten Day Notice Policy	P	110	GTC
General Tribal Council Stipend Payment Policy	P	111	GTC
Sovereign Immunity	14	112	OBC
Protection and Management of Archeological & Historical Resources	12	113	OBC
Notary Act	82	114	OBC
Oneida Tobacco Ordinance	60	115	OBC
Oneida Seal and Flag Law	-	116	OBC
Business Committee Meetings Law	-	117	OBC
GTC Meetings Law		118	OBC
Compliance and Enforcement	-	119	OBC

Proposed Reorganization of Oneida Code of Laws

Sanctions and Penalties Law	-	120	GTC
Budget Management and Control Law	-	121	OBC
Research Protection Act Higher Education	--	122	OBC GTC
Per Capita Law	9	123	OBC
Membership Ordinance	10	124	GTC
Community Support Fund	P	125	OBC
Pardon and Forgiveness	5	126	OBC
Cemetery Law	75	127	OBC
Arts Program-Dollars for Arts Project	P	128	OBC
Trust Scholarship Fund Policy, Oneida	P	128	OBC
Children's Burial Fund Policy	P	129	OBC
Hall of Fame	83	130	OBC
Endowments	84	131	OBC
Arts Program Dollars for Arts Project	P	132	OBC
Research Protection Act	-	133	OBC
Title 2. Employment This title includes those laws related to employment with the Nation.	Current Chapter	Proposed Chapter	Adopting Entity
Employment Law	-	201	GTC
Drug and Alcohol Free Work Place Policy	P	202	OBC
Oneida Worker's Compensation Law	13	203	OBC
Garnishment Ordinance	58	204	OBC
Furlough Policy	P	205	OBC
Back Pay Policy	P	206	OBC
Layoff Policy	P	207	OBC
Investigative Leave Policy	P	208	OBC
Early Return to Work	309	209	OBC
Vehicle Driver Certification Policy (Potentially repealed and combined with Fleet Management Policy)	P	210	OBC
Employee Protection Policy (Potentially repealed by Employment Law)	P	211	OBC
Oneida Fleet Management Policy	P	212	OBC
Military Service Employee Protection Act	97	213	OBC
Child Abuse & Neglect, Oneida Policy on Reporting	P	214	OBC
Computer Resources Ordinance	15	215	OBC
Attorney Contract Policy	P	216	OBC
Conflict of Interest Policy	P	217	OBC

Proposed Reorganization of Oneida Code of Laws

Social Media Policy	P	218	OBC
Oneida Travel and Expense Policy	P	219	OBC
Paper Reduction Policy	P	220	OBC
Oneida Early Childhood Program – Internal Investigation of Complaints	P	221	OBC
Parent Policy Leave (Potentially repealed and replaced in the Employment Law)	P	222	OBC
Workplace Violence Prevention	-	223	OBC
Fitness for Duty	-	224	OBC
Whistleblower Law	-	225	OBC
<u>Title 3. Health and Public Safety</u> This title includes those laws related to preserving the health and public safety on the Nation's reservation.	Current Chapter	Proposed Chapter	Adopting Entity
Oneida Nation Law Enforcement Ordinance	37	301	OBC
Emergency Management and Homeland Security	35	302	OBC
Oneida Safety Law	33	303	OBC
Oneida Tribal Regulation of Domestic Animals Ordinance	34	304	OBC
Oneida Food Service Code	36	305	OBC
Tattooing and Body Piercing	32	306	OBC
Anonymous Letter Policy	P	307	OBC
Domestic Animals	-	308	OBC
VAWA/Banishment	-	309	GTC
<u>Title 4. Environment and Natural Resources</u> This title includes those laws related to preservation of the environment and the natural resources found on the reservation.	Current Chapter	Proposed Chapter	Adopting Entity
Tribal Environmental Response	40	401	OBC
Non-Metallic Mine Reclamation	41	402	OBC
Woodcutting Ordinance	42	403	OBC
Well Abandonment Law	43	404	OBC
Recycling and Solid Waste Disposal	44	405	OBC
Hunting, Fishing and Trapping Law	45	406	OBC
On-Site Waste Disposal Ordinance	46	407	OBC
Sanitation Ordinance	47	408	OBC
Water Resources Ordinance	48	409	OBC
All-Terrain Vehicle Law	49	410	OBC
Clean Air Policy	P	411	OBC
Agriculture Law	-	412	OBC
Environmental, Health and Safety Law	-	413	OBC

Proposed Reorganization of Oneida Code of Laws

<u>Title 5. Business</u> This title includes those laws related to Nation enterprises and conducting business with the Nation.	Current Chapter	Proposed Chapter	Adopting Entity
Oneida Nation Gaming Ordinance	21	501	OBC*
Indian Preference in Contracting	57	502	OBC
Independent Contractor Policy	P	503	OBC
Small Business Loans	55	504	OBC
Motor Vehicle Registration	51	505	OBC
Oneida Vendor Licensing	56	506	OBC
Alcohol and Beverage Licensing Law	59	507	OBC
Room Tax Law	61	509	OBC
Industrial Hemp	-	510	OBC
Tribally-owned Business Organization Code	-	511	OBC
Secured Transactions	-	512	OBC
<u>Title 6. Property and Land</u> This title includes those laws related to the use and regulation of land within the reservation.	Current Chapter	Proposed Chapter	Adopting Entity
Real Property Law	67	601	OBC*
Leasing	65	602	OBC*
Building Code	66	603	OBC
Condominium Ordinance	68	604	OBC
Zoning and Shoreland Protection	69	605	OBC
Tribal Environmental Quality Review	200	606	OBC
Local Land Use Regulation Reimbursement Policy	P	607	OBC
Disposition of Excess Tribal Property Policy	P	608	OBC
Public Use of Tribal Lands	38	609	OBC
Eviction	-	610	OBC
Landlord Tenant	-	611	OBC
Mortgage and Foreclosure	-	612	OBC
Probate Code	-	613	OBC
<u>Title 7. Children, Elders and Family</u> This title includes those laws that effect Oneida children, elders and the family unit.	Current Chapter	Proposed Chapter	Adopting Entity
Marriage	71	701	OBC
Divorce, Annulment, Legal Separation	72	702	OBC
Paternity	77	703	OBC

Proposed Reorganization of Oneida Code of Laws

Child Support	78	704	OBC
Child Custody, Placement and Visitation	79	705	OBC
Guardianship	-	706	OBC
Child Welfare	-	707	OBC
<u>Children's Code</u>		<u>708</u>	<u>OBC</u>
<u>Title 8. Judicial System</u> This title includes those laws related to the Oneida Judicial system.	Current Chapter	Proposed Chapter	Adopting Entity
Judiciary	150	801	GTC
Judiciary Canons of Judicial Conduct, Oneida Tribal	152	802	OBC
Rules of Civil Procedure	153	803	OBC
Rules of Evidence, Oneida Judiciary	155	804	OBC
Rules of Appellate Procedure	154	805	OBC
Family Court	151	806	OBC
Family Court Rules, Oneida	156	807	OBC
Capping Damages and Awards from the Judicial System	-	808	OBC
Rules for Administrative Procedure	-	809	OBC
<u>Title 9. Education</u> <u>This title includes those laws related to the education matters, including the Oneida Nation School system and Higher Education</u>	Current Chapter	Proposed Chapter	Adopting Entity
<u>Trust Scholarship Fund Policy, Oneida</u>	<u>P</u>	<u>901</u>	<u>OBC</u>
<u>Higher Education</u>	<u>-</u>	<u>902</u>	<u>GTC</u>

January 2017

January 2017						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 2017						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

	Monday	Tuesday	Wednesday	Thursday	Friday
Jan 2 - 6	Jan 2	3	4	5	6
			9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner		
Jan 9 - 13	9	10	11	12	13
			BC Meeting (BCCR)		
Jan 16 - 20	16	17	18	19	20
	6:00pm 10:00pm GTC Meeting (Annual) (Radisson) - Candice E. Skenandore		9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner		
Jan 23 - 27	23	24	25	26	27
			BC Meeting (BCCR)		
Jan 30 - Feb 3	30	31	Feb 1	2	3

February 2017

February 2017

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March 2017

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Monday	Tuesday	Wednesday	Thursday	Friday
Jan 30 - Feb 3	Jan 30	31	Feb 1	2	3
			9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner		
Feb 6 - 10	6	7	8	9	10
			BC Meeting (BCCR)		
Feb 13 - 17	13	14	15	16	17
			9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner		
Feb 20 - 24	20	21	22	23	24
	6:00pm 10:00pm GTC Meeting (Radisson)		BC Meeting (BCCR)		
Feb 27 - Mar 3	27	28	Mar 1	2	3