

# Oneida Tribe of Indians of Wisconsin

## **Legislative Reference Office**

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
(800) 236-2214  
<http://oneida-nsn.gov/LOC>



## **Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember

## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
March 18, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
  - 1. March 4, 2015 LOC Meeting Minutes
- III. Current Business**
  - 1. Hunting, Fishing and Trapping Law Amendments
  - 2. Petition: Child Care Department Consumer Complaint Policy
  - 3. Motor Vehicle Law Amendments
  - 4. Vehicle Driver Certification and Fleet Management
- IV. New Submissions**
  - 1. Election Board Bylaws Amendments
  - 2. Violence Against Women Act (VAWA)
  - 3. Industrial Hemp Law
  - 4. Personnel Commission Bylaws Amendments
- V. Additions**
- VI. Administrative Updates**
  - 1. Kalihwisaks Article
- VII. Executive Session**
  - 1. Personnel Commission Complaint
- VIII. Recess/Adjourn**

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## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
March 4, 2015 9:00 a.m.

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

**OTHERS PRESENT:** Candice Skenandore, Danelle Wilson, Taniquelle Thurner, Fawn Cottrell, Rae Skenandore, Lynn Franzmeier, Rebecca Webster, JoAnne House, Matt Denny, RC Metoxen, Tim Skenandore

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

Tehassi Hill called the March 4, 2015 Legislative Operating Committee meeting to order at 9:06 a.m.

Motion by Fawn Billie to approve the agenda with the change that the Real Property Law Amendments will be discussed after the Leasing Law; seconded by Jennifer Webster. Motion carried unanimously.

### II. Minutes to be approved

#### 1. February 18, 2015 LOC Meeting Minutes

Motion by Fawn Billie to approve the February 18, 2015 LOC Meeting Minutes; seconded by Tehassi Hill. Motion carried with Jennifer Webster abstaining.

*Brandon Stevens arrived at 9:07 a.m.*

### III. Current Business

#### 1. Leasing Law (01:47 –28:33)

Motion by Jennifer Webster to delete lines 209 through 225 and lines 231 through 245 from the legislative analysis and forward the Leasing Law to an April 2, 2015 public meeting; seconded by Fawn Billie. Motion carried unanimously.

*Noted for the Record: the considerations highlighted in the legislative analysis have been addressed by the LOC.*

#### 2. Marriage Law Amendments (30:02-32:49)

Motion by Jennifer Webster to forward the Marriage Law Amendments to an April 2, 2015 public meeting; seconded by Fawn Billie. Motion carried unanimously.

**3. Rules of Appellate Procedure Amendments (32:50-33:53)**

Motion by Fawn Billie to forward the Rules of Appellate Procedure Amendments to the Oneida Business Committee for consideration; seconded by Tehassi Hill. Motion carried unanimously.

**4. Furlough Policy (33:57-35:20)**

Motion by Jennifer Webster to accept the Furlough Policy public meeting comments and defer those comments to an LOC work meeting to be held immediately following the completion of this LOC meeting, seconded by Fawn Billie. Motion carried unanimously.

**IV. New Submissions**

**1. Real Property Law Amendments (28:33-29:58)**

Motion by Tehassi Hill to add the Real Property Law Amendments to the active files list with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Tehassi Hill to forward the Real Property Law Amendments to an April 2, 2015 public meeting, seconded by Jennifer Webster. Motion carried unanimously.

**V. Additions**

**VI. Administrative Updates**

**1. LOC Priority List (35:23-37:42)**

Motion by Jennifer Webster to accept the LOC Priority List as FYI; seconded by Fawn Billie. Motion carried unanimously.

**2. LOC Update for March 28 GTC (37:42-38:40)**

Motion by Jennifer Webster to retroactively approve the February 25, 2015 Legislative Operating Committee Update memorandum to GTC, seconded by Tehassi Hill. Motion carried unanimously.

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by Fawn Billie to adjourn the March 4, 2015 Legislative Operating Committee Meeting at 9:45 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



# Legislative Operating Committee

## March 18, 2015

# Hunting, Fishing and Trapping Law Amendments

**Submission Date:** January 21, 2015

<input type="checkbox"/> Public Meeting: <input type="checkbox"/> Emergency Enacted:
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**LOC Sponsor:** Tehassi Hill

**Summary:** *Amendments to the Hunting, Fishing and Trapping Law were requested to update and streamline the Law and to separate policy making and management decisions from the Law to avoid yearly/bi-yearly updates.*

**01/21/15 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.*

### Next Steps:

- Accept the update memo on the Hunting, Fishing and Trapping Law Amendments and defer until the legislative analysis and/or fiscal estimate is complete.

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**Committee Members**

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Tehassi Hill, LOC Vice-Chairperson  
**DATE:** March 18, 2015  
**RE:** Hunting, Fishing and Trapping Law Amendments Update

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At the January 21, 2015, Legislative Operating Committee (LOC) meeting, a draft Hunting, Fishing and Trapping Law (Law) was presented to the LOC for consideration. The LOC added this item to the active files list with myself as the sponsor. My office has reviewed the Law and I have requested that the Legislative Reference Office move forward with preparing a legislative analysis. A fiscal estimate has also been requested and it is anticipated that this item will be brought back at the April 15, 2015 LOC meeting for review.

I am requesting that this item be deferred to allow time for the legislative analysis and fiscal estimate to be completed. If you have any questions, please feel free to contact me at (920) 869-4420 or [rhill7@oneidanation.org](mailto:rhill7@oneidanation.org).



# Legislative Operating Committee

## March 18, 2015

# Petition: Child Care Department Consumer Complaint Policy

**Submission Date:** 9/17/14

☐ Public Meeting:  
☐ Emergency Enacted:  
Expires:

**LOC Sponsor:** Jennifer Webster

**Summary:** *A petition was submitted to mandate the OBC review, amend and implement a new complaint process for Oneida Child Care. The intent of the petition is to provide the minimum requirements of the new process which include mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC.*

*This item was added to the active files list on June 6, 2012. A legislative analysis was presented to GTC on November 19, 2012 and GTC approved the petition, directing the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department. Since then a draft was developed and an update was given to GTC on July 1, 2013 as directed. Public meetings were held on October 13, 2013 and February 27, 2014. On April 16, 2014 the sponsor began to develop the Policy through a series of work meetings.*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Child Care Department Consumer Complaint Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.  
*Note: Jennifer Webster will be the sponsor for this item.*

**11/18/14:** Work meeting held. Attendees include: Candice Skenandore, Chenoa Webster, Michelle Mays, Dorothy A. Skenandore, Jenny Webster, Rae Skenandore, Donna Christensen, Jacob Metoxen, Bob Keck and Norbert Hill.

**11/24/14:** Work meeting held. Attendees include: Candice Skenandore, Michelle Mays and Stephen Webster.

**12/5/14:** Work meeting held. Attendees include: Candice Skenandore, Michelle Mays, Jennifer Webster, Dorothy Skenandore and Diane Heim-McLester

**12/12/14:** Work meeting held. Attendees include: Richard Cluckey, Stephen Webster and Candice Skenandore

**2/23/15:** Work meeting held. Attendees include: Norbert Hill, Dorothy Skenandore, Jennifer Webster, Bob Keck, Donna Christensen, Jessica Wallenfang, Rae Skenandore, Susan House, Chenoa Webster, Jacob Metoxen

### Next Steps:

- Review the Child Care Department Consumer Complaint Policy draft and direct that a legislative and fiscal analysis be developed and brought back when ready.

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## Oneida Child Care Department Consumer Complaint Policy

Article I. Purpose and Policy

Article II. Adoption, Amendment, Repeal

Article III. Definitions

Article IV. Filing of a Complaint

Article V. Determination of Severity of Complaint

Article VI. Processing the Complaint – Level 1: Very Mild, Mild,  
or Moderate and Level 2: Serious

Article VII. Processing the Complaint – Level 3: Very Serious

Article VIII. Processing the Complaint - Level 4: Child Abuse or  
Neglect Allegations

Article IX. Appeal

Article X. Video Surveillance

Article XI. Self-Reporting by Department

Article XII. Parent/Teacher Organization

Article XIII. Enforcement

### **Article I. Purpose and Policy**

1-1. The purpose of this Policy is to provide a formal process for addressing consumer complaints for anyone who uses the services of the Oneida Child Care Department. The Policy is not intended to resolve employee complaints or grievances which shall be addressed through the process specified in the Tribe's personnel policies and procedures.

1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide a safe, secure and nurturing environment for all children that are enrolled in the Oneida Child Care Department. It is also the policy of the Tribe to allow any person who utilizes the services of the Oneida Child Care Department to have any and all complaints concerning those services addressed in a timely and professional manner.

### **Article II. Adoption, Amendment, Repeal**

2-1. This Policy is adopted by the Oneida Business Committee by resolution \_\_\_\_\_

2-2. This Policy 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.

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

2-4. In the event of a conflict between a provision of this Policy and a provision of another policy, the provision of this Policy shall control; provided that this Policy repeals Resolution BC-7-26-95-A.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **Article III. Definitions**

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

(a) "Abuse" shall mean any of the following:

- (1) Physical injury inflicted on a child by other than accidental means;
- (2) Sexual intercourse or sexual contact under Wis. Stats. 940.225 or 948.02, which refers to sexual assault and sexual assault of a child;
- (3) Sexual exploitation of a child under Wis. Stat. 948.05;
- (4) Permitting, allowing, or encouraging a child to be involved in prostitution under Wis. Stat. 944.30;

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- 35 (5) Causing mental harm to a child under Wis. Stat. 948.04; or  
 36 (6) Causing a child to view or listen to sexually explicit activity under 948.055. <sup>1</sup>  
 37 (b) “Area Manager” shall mean the Area Manager of Education and Training within the  
 38 Governmental Services Division.  
 39 (c) “Complaint” shall mean an allegation of certain wrongdoing against an Oneida Child  
 40 Care staff member or the Department.  
 41 (d) “Complaint Investigator” shall mean any of the following:  
 42 (1) the Supervisor of an Oneida Child Care staff member that has a complaint  
 43 against him or her;  
 44 (2) the Supervisor’s substitute;  
 45 (3) the Area Manager of the Oneida Child Care Department; and/or  
 46 (4) an outside agency as deemed necessary by the Ombudsperson  
 47 (e) “Days” shall mean calendar days unless otherwise specified.  
 48 (f) “Department” shall mean the Oneida Child Care Department.  
 49 (g) “Director” shall mean the Oneida Child Care Department Director.  
 50 (h) “Neglect” shall mean a failure, refusal or inability of an Oneida Child Care staff member  
 51 to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger  
 52 the physical health of a child, lack of supervision, or total abandonment.  
 53 (i) “Ombudsperson” shall mean an individual employed by the Oneida Tribe of Indians of  
 54 Wisconsin who functions as a designated confidential, independent, neutral and informal  
 55 dispute resolution resource that does not represent the organization or any specific party, but  
 56 advocates for fairness and the application of a fair and equitable process.  
 57 (j) “Substantiated” shall mean a finding that the complaint or allegation in the complaint is  
 58 valid because there is proof by a preponderance of the evidence.  
 59 (k) “Supervisor” shall mean the person in charge of the other Oneida Child Care staff, which  
 60 shall include the Director.  
 61 (l) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.  
 62 (m) “Unsubstantiated” shall mean that the complaint or allegation in the complaint is  
 63 inconclusive because there is not proof by a preponderance of the evidence.  
 64

#### 65 **Article IV. Filing of a Complaint**

66 4-1. *Who May File.* The following people may file a complaint within sixty (60) days of the alleged  
 67 incident: <sup>2</sup>

- 68 (a) Any parent or guardian who is currently utilizing the services of the Department.  
 69 (b) Any person who is on the child’s emergency contact list.  
 70 (c) Any person who witnesses an act of child abuse or neglect.

71 4-2. *Format.* A complaint shall be filed by either:

- 72 (a) using the specific form provided for by the Department, which shall at all times be made

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<sup>1</sup> Wisconsin State Statutes can be found at <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>

<sup>2</sup> While a complaint can be filed within 60 days of the alleged incident, surveillance footage is only available to capture for ten (10) days after the alleged incident.



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available at the facility as well as on the Department's webpage; or

(b) in writing following the requirements of Section 4-3.

4-3. *Statement of Facts.* The complaint filed shall contain specific allegations, which shall include, if known, but is not limited to the following information:

(a) The name(s) of the child(ren) involved;

(b) The name(s) of the Oneida Child Care staff member(s) involved;

(c) The specific date(s) and time(s) of the alleged incident(s);

(d) The specific details of the alleged incident;

(e) Name(s) of any witness(es) to the alleged incident and a written statement by the witness(es) as to what he or she witnessed; and

(f) Any noted impacts.

(g) The contact information for the person filing the complaint, which at minimum shall include an address and telephone number.

4-4. *Where to File Complaint.* All fully completed complaints shall be delivered to the Ombudsperson, or if the Ombudsperson is unavailable, to the Area Manager. If it a complaint is delivered to the Area Manager due to the absence of the Ombudsperson, the Area Manager shall immediately forward a copy of the complaint to the Ombudsperson so it is available upon the Ombudsperson's return.

4-5. *Responsibilities of the Ombudsperson.*

(a) The Ombudsperson shall immediately secure the appropriate video surveillance footage that is relevant to the complaint.

(b) Upon receipt of the complaint, the Ombudsperson shall immediately forward a copy of the complaint to the Director and the Area Manager, as well as notify the person filing the complaint by mail or e-mail that the complaint was received and what the next steps will be.

If the complaint is a severity level 2, 3 or 4, the Ombudsperson shall forward a redacted copy of the complaint to the Risk Management Department.

(c) The Ombudsperson shall have five (5) business days to refer the matter to the investigator unless the parties agree to mediate the matter with the Ombudsperson and extend that time limit for an additional five (5) days.

(d) The Area Manager shall have the same responsibilities of the Ombudsperson should the Ombudsperson be unavailable.

4-6. *Repeat Complaints.* A complaint that was deemed unsubstantiated or rejected on appeal shall not be re-filed unless new facts or new evidence have been discovered.

## **Article V. Determination of Severity of Complaint**

5-1. *Who Investigates.* Upon receipt of the complaint, the Ombudsperson shall make a determination as to the severity of the complaint and recommend an appropriate complaint investigator to conduct an investigation pursuant to the following chart:

LEVEL	CATEGORY	DESCRIPTION	WHO INVESTIGATES
1	Very Mild, Mild and Moderate	Complaints such as poor business practices, inadequate equipment/furnishings, ratio	Supervisor if not resolved through the Ombudsperson

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		violations or lack of supervision.	
2	Serious	Complaints that are listed on the Serious Violations List with the Wisconsin Department of Children and Families that do not pose a risk of direct harm to children.	Supervisor; may also include the Wisconsin Department of Children and Families and the Oneida Indian Child Welfare Department as determined by the investigator.
3	Very Serious	Complaints that are listed on the Serious Violations List with the Wisconsin Department of Children and Families that pose a risk of harm to children.	Supervisor and/or the Oneida Police Department as determined by the investigator. May also include the Wisconsin Department of Children and Families and the Oneida Indian Child Welfare Department as determined by the investigator.
4	Child Abuse or Neglect	Imminent danger to children.	Wisconsin Department of Children and Families; Police Department and the Oneida Indian Child Welfare Department.

5-2. *Oneida Child Care Department.* The Ombudsperson shall recommend an appropriate Complaint Investigator based on the chart found in Section 5-1.

(a) *Conflict of Interest.* If the Complaint Investigator has a conflict in conducting the investigation, he or she shall immediately notify the Ombudsperson who shall recommend a new Complaint Investigator to conduct the investigation.

## **Article VI. Processing the Complaint – Level 1: Very Mild, Mild, or Moderate and Level 2: Serious**

6-1. The Ombudsperson shall facilitate a meeting(s) between the person who filed the complaint and the Department if the person who filed the complaint agrees. The intent of this meeting(s) is to resolve the complaint prior to commencing a full investigation.

(a) If a resolution is reached, the Ombudsperson shall inform the Department that a corrective action plan shall be prepared, if necessary, based on the agreement.

(b) If the matter is not resolved at the meeting(s), a full investigation shall be completed.

6-2. Once the complaint investigator is assigned, he or she shall have five (5) business days to complete a thorough investigation. The Ombudsperson may grant a five (5) business day extension for extenuating circumstances. If an extension is granted, the Ombudsperson shall send written

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notice to the person filing the complaint within twenty-four (24) hours of that extension being granted.

6-3. Upon completion of the investigation, the Complaint Investigator shall either substantiate or not substantiate the complaint and forward copies of all documents and findings to the Ombudsperson, Area Manager and Director for review. The Ombudsperson, Area Manager and Director shall complete a review within five (5) business days of receiving the investigation findings.

(a) Not Substantiated Findings: The Ombudsperson, Area Manager and/or Director may over-ride the Complaint Investigator's decision to not substantiate the complaint. If the decision is over-ridden, the Director shall complete a corrective action plan within five (5) business days of over-riding the decision to not substantiate the complaint.

(1) The Director's corrective action plan shall be finalized by the Ombudsperson and Area Manager within five (5) business days. The Area Manager shall forward a copy of the corrective action plan to Internal Audit within 24 hours of finalizing the plan.

(b) Substantiated Findings: The Complaint Investigator shall create a corrective action plan within five (5) business days of forwarding the investigation findings.

(1) A decision to substantiate the complaint cannot be over-ridden.

(2) The corrective action plan shall be finalized by the Director and Ombudsperson within five (5) business days.

6-4. All Oneida Child Care staff members shall comply with the corrective action plan.

6-5. The Ombudsperson shall notify the person who filed the complaint of the results of the investigation in writing by U.S. or private mail using a delivery tracking feature within five (5) business days of receiving the finalized corrective action plan or findings that do not substantiate the complaint. The information provided to the person filing the complaint shall include, but is not limited to the following:

(a) Details of the investigation which would not compromise the legally-protected confidentiality of any other person; and

(b) Whether or not the complaint was substantiated; and

(c) Any corrective action plan prepared to resolve the complaint, redacting specific employee related matters or information; or

(d) An explanation as to why the complaint is unsubstantiated, if necessary.

6-6. The Ombudsperson shall provide the corrective action plan to the Area Manager who shall immediately forward the corrective action plan to the Audit Department.

6-7. Within thirty (30) days of receiving the corrective action plan, the Audit Department shall work with the Department to complete a plan to improve the conditions and or processes to ensure the concerns brought up in all substantiated complaints are being adequately addressed. The Audit Department shall have the right to monitor the continuous improvement plan as they deem necessary.

## **Article VII. Processing the Complaint – Level 3: Very Serious**

7-1. When a complaint involving an allegation under Level 3 is filed against an Oneida Child Care staff member(s):

(a) The person receiving the complaint shall immediately refer the matter to the appropriate investigator and/or agency for investigation and follow through.

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(b) The Oneida Child Care staff member(s) may be placed on investigative leave and/or transferred to another department pursuant to the Investigative Leave Policy until the investigation is completed by the appropriate agency. If placed on investigative leave, the staff member(s) shall be returned to work if the complaint allegations are found to be unsubstantiated.

#### **Article VIII. Processing the Complaint - Level 4: Child Abuse or Neglect Allegations**

8-1. When a complaint involving an allegation under Level 4 is filed against an Oneida Child Care staff member(s):

(a) The person receiving the complaint shall immediately refer the matter to the appropriate investigator and/or agency for investigation and follow through.

(b) The Oneida Child Care staff member(s) may be placed on investigative leave and/or transferred to another department pursuant to the Investigative Leave Policy until the investigation is completed by the appropriate agency. If placed on investigative leave, the staff member(s) shall be returned to work if the complaint allegations are found to be unsubstantiated. A substantiation of a complaint for child abuse or neglect shall result in immediate termination of the Oneida Child Care staff member(s).

#### **Article IX. Appeal**

9-1. If the person who filed the complaint is dissatisfied with the finding that the complaint is unsubstantiated, or is dissatisfied with the corrective action plan, that person may appeal the matter to the Area Manager, in writing, within ten (10) business days of receiving the results of the investigation and, if applicable, the corrective action plan. The Area Manager shall complete his or her review of the appeal within five (5) business days of receiving the written appeal and inform the person filing the complaint in writing of his or her decision.

9-2. If the person filing the complaint is dissatisfied with the Area Manager's decision, he or she may appeal to the Tribe's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure.

#### **Article X. Video Surveillance**

10-1. The Department, for security purposes, shall have daily video surveillance. The video surveillance footage shall not be erased by anyone in the Department. The Records Department shall retain the video surveillance footage for at least ten (10) business days and dispose of the video surveillance footage in accordance with their standard operating procedures.

10-2. Only the Ombudsperson, Department, Complaint Investigator, Area Manager, Governmental Services Division Director, police department, Oneida Indian Child Welfare Department, Oneida's Risk Management Department, and/or the Wisconsin Department of Children and Families shall have access to the video surveillance footage. The video surveillance footage shall be viewed at the Records Department with a Records Department personnel present.

10-3. The Records Department shall follow a standard operating procedure for disposal of video surveillance that complies with the child care industry standard.

#### **Article XI. Self-Reporting by Department**

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11-1. If any Oneida Child Care staff member witnesses another staff member behaving in an unethical or otherwise inappropriate manner as defined by the State of Wisconsin licensing requirements, that person shall immediately document and report such behavior to the Ombudsperson, who shall immediately report the behavior to the parent or guardian of the child(ren). An investigation shall be conducted as if a complaint was filed. If the behavior witnessed constitutes child abuse or neglect, the staff member shall report in accordance with Section 8-1.

## **Article XII. Parent/Teacher Organization**

12-1. The Department shall form a parent/teacher organization for the purpose of gathering and sharing information, addressing concerns, and planning activities to enhance or improve the Department. The first meeting shall be set by the Department. Thereafter, those involved in the parent/teacher organization shall agree to a convenient time and place for all future meetings.

## **Article XIII. Enforcement**

13-1. Any Tribal employee found violating this Policy or retaliating against the children or family involved in a complaint shall be subject to discipline in accordance with the Tribe's personnel policies and procedures.

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*End.*



# Legislative Operating Committee

## March 18, 2015

# Motor Vehicle Law Amendments

**Submission Date:** November 5, 2014

☒ Public Meeting: 2/19/15  
☐ Emergency Enacted:

**LOC Sponsor:** Tehassi Hill

**Summary:** *Amendments to the Motor Vehicle Law were proposed by the Licensing Department to remove the registration prices from the Law so they could be changed without amending the Law and to update the Law, which has not been updated since 1999.*

**11/05/14 LOC:** Motion by Jennifer Webster to add the Motor Vehicle Law Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Tehassi Hill will be the sponsor.*

**1/21/15 LOC:** Motion by Jennifer Webster to approve the public meeting date of February 19, 2015 regarding the Motor Vehicle Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

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

### Next Steps:

- LOC to review the public meeting comment review memo, consider making changes to the draft and defer to the LRO for an updated draft and analysis and to prepare for OBC consideration.

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquele J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Lynn A. Franzmeier, Staff Attorney  
**DATE:** March 10, 2015  
**RE:** Motor Vehicle Law Amendments: Public Meeting Comment Review

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On February 19, 2015, a public meeting was held regarding amendments to the Motor Vehicle Law (Law). The Law would remove specific fees from the Law and require the Oneida Business Committee to adopt the motor vehicle registration fee schedule upon recommendation of the Licensing Department; require records to be retained in accordance with the Open Records and Open Meetings Law and remove language creating a record retention schedule; allow the Licensing Department to determine the vehicle registration period; and remove process language from the Law to streamline the Law and give the Department the responsibility for determining how the Law will be carried out.

This memorandum is submitted as a review of the written comments received during the public meeting process; there were no oral comments received at the public meeting itself. The public meeting draft with comments, as well as the comments received, have been attached for your review.

**Comment 1. Comment on removing Records Management from the Law.**

**Tonya Webster:** Were we taking out Records Management because we now save them onto On-Base? So we don't need to send to records management anymore.

*Response*

The comment is referring to the following amendments:

51.4-~~5.3~~. Records Retention. All registration applications and registrationsrenewal requests shall be retained byin accordance with the department for one year after the application has been submitted or registration filed, thereafter all applicationsOpen Records and registrations shall be retained by Oneida Records Management for seven yearsOpen Meetings Law.

The current Law requires all applications and registrations to be retained by Oneida Records Management for seven years. The proposed amendments would update this section to require all registration applications and renewal requests to be retained in accordance with the Open Records and Open Meetings Law. The Open Records and Open Meetings Law designates Records Management as the body responsible for collecting, storing and disposing of records created throughout the Tribe. The Law is now requiring records to be kept in accordance with the Open Records and Open Meetings Law, which could include the saving

of these records into On-Base, which is Records Management's tool for collecting/storing records. Whether the Licensing Department will need to continue to send Records Management the actual records is something the two departments can work out between themselves, without needing to spell it out in the Law.

There are no recommended changes based on this comment.

**Comment 2. Comment on personalized collector plates.**

**Tonya Webster:** Currently we do not do this. We simply issue them the next collector plate we have unless they would like a Personalized Collector plate. This is something the State of Wisconsin does, but they do not issue personalized collector plates.

*Response*

The comment is referring to the underlined section of 51.7-7(b):

51.7-7. *Special Interest Vehicles.* Any owner who has a motor vehicle registered through the Tribe and uses for regular transportation at least one (1) vehicle that has regular registration plates may apply to register a vehicle he or she owns as a special interest vehicle if the vehicle is at least twenty (20) years old.

(a) The Department shall furnish the owner of the vehicle with registrations plates of a distinctive design in lieu of the usual registration plates, and those shall show that the vehicle is a special interest vehicle owned by a collector. Upon application, the owner may re-register the vehicle without the payment of any additional fee.

(b) Each collector applying for special interest vehicle registration plates will be issued a collector's identification number which will appear on each plate. Second and all subsequent registrations under this section by the same collector will bear the same collector's identification number followed by a suffix letter for vehicle identification.

(c) The vehicle may be used as are other vehicles of the same type except:

- (1) Motor vehicles may not transport passengers for hire.
- (2) Trucks may not haul material weighing more than five hundred (500) pounds.
- (3) No special interest vehicle may be operated upon any highway within the Reservation during the month of January unless the owner of the vehicle re-registers the vehicle with regular registration plates or transfers regular registration plates to the vehicle.

(d) Unless inconsistent with this section, the provisions applicable to other vehicles shall apply to special interest vehicles.

The second sentence under section 51.7-7(b) can be deleted as recommended by the commenter.

**Comment 3. Comment on removing the Reservation restriction from section .**

**Tonya Webster:** Do you think we should take out within the Reservation because they wouldn't be valid on any highway not just within the reservation?

*Response*

The comment is referring to section 51.7-7(c)(3) which states:

No special interest vehicle may be operated upon any highway within the Reservation during the month of January unless the owner of the vehicle re-registers the vehicle with



regular registration plates or transfers regular registration plates to the vehicle.

This Law would not apply to a person operating a vehicle on a highway outside of the Reservation, so removing that part of the section would not change the application of the Law. This suggestion can be implemented and the phrase “within the Reservation” should then also be removed from sections 51.5-8 and 51.5-9.

### **Conclusion**

Minor changes are being suggested based on the public meeting comments received. After review of the public meeting comments by the LOC, this item can be deferred to the LRO to prepare for OBC consideration.

**Chapter 51**  
**MOTOR VEHICLE REGISTRATION-ORDINANCE**  
Tehalaht@tst k@sleht olihw@ke  
matters concerning operating a vehicle

51.1. Purpose and Policy  
51.2. Adoption, Amendment, Repeal  
51.3. Definitions  
51.4. Department Authority and Responsibilities  
51.5. Registration of Motor Vehicles

51.6. Grounds For Refusing Registration  
51.7. Design, Procurement and Issuance of Registration Plates  
51.8. Display of Registration Plates  
51.9. Penalties and Appeals

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Motor Vehicle Registration (Law)				
<b>Requester</b>	Licensing Administrator	<b>Drafter</b>	Lynn A. Franzmeier	<b>Analyst</b>	Candice E. Skenandore
<b>Reason for Request</b>	The Licensing Department would like to change the motor vehicle registration prices without having to amend the Law. In addition, the Law has not been updated since 1999.				
<b>Purpose</b>	The purpose of this Law is to create a system for Tribal members who reside on the Reservation to register their motor vehicles within the Tribe [See 51.1-1].				
<b>Authorized/ Affected Entities</b>	Tribal members who reside on the Reservation and need to register their motor vehicles; Licensing Department or any other department of the Tribe that has the authority to implement and administer this Law (Department); Oneida Business Committee (OBC); Oneida Police Department/Law Enforcement and Tribal Judiciary				
<b>Due Process</b>	A person who received a fine under this Law can appeal to the Tribal Judiciary [See 51.9-3].				
<b>Related Legislation</b>	Open Records and Open Meetings Law, Wisconsin Statutes 341.05 (22), 341.409, 110.20 (6)				
<b>Policy Mechanism</b>	Issuance of registration plates and renewal decals for a motor vehicle [See 51.7-1 & 51.7-2].				
<b>Enforcement</b>	The Department has the authority to suspend registration and issue fines [See 51.9-1 & 51.9-2].				

**Overview**

This Law was adopted by the OBC pursuant to OBC Resolution 04-08-97-D and was amended by OBC Resolution 12-07-99-E. This Law:

- Authorizes the Department to administer and implement this Law [See 51.3-1 (b) & 51.4-1].
- Allows the OBC, upon recommendation of the Department, to adopt a motor vehicle registration fee schedule [See 51.4-2].
- Requires the Department to maintain a list of registrations [See 51.4-4].
- Allows the Tribe to enter into reciprocal agreements [See 51.5-1].
- Permits Tribal members, who live on the Reservation, to have their automobiles registered with the Department [See 51.5-2 & 51.5-9].
- Sets out how registrations are handled including applications renewal requests and re-registrations [See 51.5-3 through 51.5-8].
- Specifies when the Department must refuse a vehicle registration [See 51.6-1].
- Identifies the process in which the Department issues registration plates and registration renewal tags, decals or other identifications including the Department's authority to

determine the size, color and design of the registration plates *[See 51.7-1 through 51.7-4]*.

- Allows the Department to issue the following types of registration plates: special plates (disabled person plates, veteran plates and other special plates), antique motor vehicle plates, special interest plates and personalized plates *[See 51.7-5 through 51.7-8]*.
- Explains when the Department may issue replacement plates and the process for doing so *[See 51.7-9]*.
- Dictates the placement of the registration plates and decals on motor vehicles *[See 51.8]*.
- Specifies when the Department must suspend the registration of vehicle *[See 51.9-1]*
- Gives the Department the authority to issue a fine of no more than \$500 for any person who violates this Law unless otherwise specified within the Law *[See 51.9-2]*.

### **Proposed Amendments**

The following are proposed amendments to the Law:

- The title of this legislation has been changed; this legislation will no longer be an ordinance but a law.
- This Law no longer states that the General Tribal Council can amend or repeal this Law *[See 51.2-2]*.
- The Department is no longer responsible for enforcing this Law *[See Redline 51.3-1 (b)]*.
- The definition section has been expanded and the definitions for “automobile”, “moped” and “motorcycle” have been amended. An automobile is, among other things, a motor vehicle that has a curb weight of at least 1500 pounds, not 1600 pounds, which is currently specified. For a bicycle-type vehicle to be considered “moped”, the engine size cannot be more than 130 centimeters which is greater than the current maximum allowed engine size of 50 cubic centimeters. In addition, this Law clearly states that a utility terrain vehicle is not considered a motorcycle *[See 51.3-1 (a) (2), 51.3-1 (f) (1) and 51.3-1 (i)]*.
- The Department will no longer have the authority to draft policies to implement this Law; however, the Department can now create rules for implementation *[See Redline 51.4-1]*.
- Specific fees (i.e. annual registration fee, application fee, personalized plates fee, etc.) are removed from the Law and language has been added to clarify that the OBC, upon recommendation of the Department, will adopt the motor vehicle registration fee schedule. This amendment will allow the fee schedule to change without having to amend the Law. *[See 51.4-2 and redline 51.10-5, 51.18-1(b), 51.11-3, 51.11-5, 51.13-1(a), 51.15-1 through 51.19-1, 51.22-1 through 51.27-1 and 51.33-1]*.
- Language has been added that states that registration fees are nonrefundable; the current Law does not address refundable fees *[See 51.4-2]*.
- The Department can recommend separate fees based on different scenarios listed within this Law *[See 54.4-2 (a-c)]*.
- The Open Records and Open Meetings Law will dictate how registration applications and renewal requests will be retained *[See 51.4-3]*. The current Law requires the Department to hold on to the applications and requests for one year before forwarding them to Records to hold for an additional seven years *[See Redline 51.4-5]*.
- The Law now specifies the types of reciprocal agreements the Tribe can enter into with the State of Wisconsin (State); they include, but are not limited to, registration and licensing of any motor vehicle like automobiles, trucks, motorcycling, busses or official vehicles with government jurisdiction pursuant to State law *[See 51.5-1 (a)]*.
- The Department will have the authority to determine the registration period. The current

65 Law requires 12 registration periods designated by a calendar month as well as special  
66 registration periods of vehicles other than private automobiles [*See 51.5-2 and redline*  
67 *51.20-1 & 51.21-1*].

- 68 ■ Many of the fines (i.e. failure to notify of new address, obtaining guardian consent  
69 violations, operating an unregistered/improperly registered vehicle, etc.) have been removed  
70 from the Law. Unless otherwise specified in this Law, the Department can now issue a  
71 fine of up to \$500 for violating this Law [*See redline 51.25-1 (b), 51.7-4, 51.5-1 (a) (1) &*  
72 *51.5-1 (a) (2)*].
- 73 ■ If a vehicle is registered in another jurisdiction, it does not have to be registered with the  
74 Tribe. The current Law requires Tribal members that live on the Reservation to register  
75 their vehicles with the Tribe [*See 51.5-9 (a) and redline 51.1-1 & 51.21-1 (b)*].
- 76 ■ Language has been added that requires a vehicle to be kept on the Reservation for six  
77 months out of the year in order for it to be registered with the Department. This Law also  
78 specifies that if an applicant has an unpaid citation for any nonmoving traffic violations,  
79 the Department can refuse registration [*See 51.6-1 (f)*].
- 80 ■ The Department will continue to offer disabled person plates and veteran plates but the  
81 Law no longer specifies that a disabled veteran, Oneida Veteran/Congressional Medal of  
82 Honor or Prisoner of War plate will be available. The Department can; however, issue  
83 additional special plates which may include these special plates [*See 51.7-5 (a) (3) and*  
84 *redline 51.10-1 (b) through 51.10-4*].
- 85 ■ Before the Department can issue personalized registration plates the proper paperwork, as  
86 determined by the Department must accompany the required fee [*See 51.7-8 (a) (1)*].
- 87 ■ A person who was issued a fine can appeal to the Tribe's judiciary [*See 51.9-3*].
- 88 ■ Process language has been removed from the Law. For example the current Law spells  
89 out exactly what information needs to be on a registration application but amendments  
90 remove the process and simply state that the Department will prescribe the form.  
91 Similarly, the process for how the Department creates and maintains the registration list  
92 was removed as well as plate designs and what happens when a person fails to appear in  
93 court [*See 51.4-3 (a) & (b) and 51.5-3, redline 51.7-1, 51.11-1 and 51.32-1*].

### 94 95 **Considerations**

96 The LOC may want to consider the following:

- 97 ■ This Law only allows Tribal members that reside on the Reservation and customarily  
98 keep their vehicles on the Reservation for at least six months out of the year to register  
99 their vehicles with the Department [*See 51.6-1 (a)*]. Lac du Flambeau Band of Lake  
100 Superior Chippewa Indians (Lac du Flambeau) allows non-members to register their  
101 vehicles with the Tribe so long as the non-members reside on the reservation [*See Lac du*  
102 *Flambeau Motor Vehicle Code, 71.103 (1)*]. By expanding those eligible to register their  
103 vehicles with the Tribe may increase revenue generation.
- 104 ■ This Law does not specify how often the registration fees need to be reviewed, just that  
105 the OBC, upon recommendation by the Department, must adopt a fee schedule. The  
106 current Law requires the Department to submit annualized fees to the OBC for approval  
107 but this language was omitted in the proposed Law [*See 51.4-2 and redline 51.33-3*].

### 108 109 **Miscellaneous**

110 A public meeting has not been held. Minor language and formatting changes have been  
111 made in order to comply with the Legislative Procedures Act. The Oneida Licensing  
112 Department supports these proposed amendments.

**51.1-1. Purpose and Policy**

~~51.1-1.~~ The purpose of this ~~L~~aw is to create a system for ~~enrolled Oneida Tribal~~ members who reside on the ~~Oneida Nation~~ Reservation ~~in Wisconsin~~ to register their motor vehicles ~~exclusively~~ with the ~~Oneida Nation, for the issuance of Oneida license plates to qualified applicants, and for the Oneida Nation to regulate the public roads within its sovereign jurisdiction~~ ~~Tribe~~.

51.1-2. It is the policy of this ~~L~~aw to clarify jurisdictional sovereignty and to generate revenue for the ~~Oneida Nation~~ ~~Tribe~~.

~~51.2. 51.2-1. Adoption, Amendment, Repeal, Review.~~ The Oneida Nation, a sovereign nation and federally recognized Indian tribe, has the authority to enter into reciprocal agreements regarding the registration and licensing of any motor vehicle, including but not limited to, automobiles, trucks, motorcycles, buses or official vehicles with any governmental jurisdiction and pursuant to Section 341.05 (22) and 341.409, Wis. Stats.

~~51.2-2.~~ The Oneida Nation has the power and authority to license and register motor vehicles pursuant to the sovereign jurisdiction status of the Oneida Nation and a reciprocal registration exemption agreement that has been entered into between the Oneida Nation and the State of Wisconsin with parallel laws and statutes for cross administration and enforcement purposes.

**Adoption, Amendment, Repeal**

~~51.2-1. 51.2-3.~~ This ~~law may be~~ Law was adopted by the ~~Oneida~~ Business Committee ~~and is effective contingent upon the reciprocal agreement by resolution BC # 3-27-96-B, entered into and signed by the State of Wisconsin and the Oneida Tribe of Indians of Wisconsin.~~

~~-04-02-97-D and 51.2-4.~~ This law may be amended by resolutions BC-12-07-99-E and

\_\_\_\_\_.  
~~51.2-2.~~ This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the ~~Oneida Administrative~~ Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council.~~

~~51.2-5. 51.2-3.~~ Should a provision of this ~~L~~aw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~L~~aw which are considered to have legal force without the invalid portions.

~~51.2-4. 51.2-6.~~ All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy.

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

51.2-~~75~~. This ~~L~~aw is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**51.3. Definitions**

51.3-1. ~~Definitions.~~ This ~~article~~ section shall govern the definitions of words and phrases used within the ~~L~~aw. All words not defined herein shall be used in their ordinary and everyday sense.

~~51.3-2. "Oneida Nation" means Oneida Tribe of Indians of Wisconsin.~~

~~51.3-3.(a)~~ "Automobile" means any of the following:

(a~~1~~) A motor vehicle designed and used primarily for carrying persons but which does not come within the definition of a motor bus, motorcycle, or moped.

(b~~2~~) A motor vehicle capable of speeds in excess of thirty (30) miles per hour on a dry, level, hard surface with no wind, designed and built to have at least three (3) wheels in contact with the ground, a power source as an integral part of the vehicle, a curb weight of at least ~~1,600~~one thousand, five hundred (1,500) pounds, and a passenger and operator area with sides permanently enclosed with rigid construction and a top which may be convertible.

~~51.3-4.(b)~~ “Department” means the Licensing Department, or any other department of the ~~Oneida Nation~~Tribes, with the authority to implement, and administer ~~and enforce~~ this ~~law~~.

~~51.3-5. “Oneida member” means a member of the Oneida Nation who is on the Oneida enrollment list and has an Oneida enrollment number.~~

~~51.3-6.(c)~~ “Gross weight” means the weight of the vehicle equipped for service plus the weight which the vehicle is carrying as load.

~~51.3-7.(d)~~ “Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel.

~~51.3-8.(e)~~ “Identification number” means the numbers, letters or combination of numbers and letters assigned by the manufacturer of a vehicle or vehicle part or by the ~~d~~Department and stamped upon or affixed to a vehicle or vehicle part for the purpose of identification.

~~51.3-9. “Junked” means dismantled for parts or scrapped.~~

~~51.3-10.(f)~~ “Moped” means any of the following motor vehicles capable of speeds of not more than thirty (30) miles per hour with a one hundred fifty (150-) pound rider on a dry, level hard surface with no wind, excluding a tractor, a power source as an integral part of the vehicle and a seat for the operator:

(a~~1~~) A bicycle-type vehicle with fully operative pedals for propulsion by human power and an engine certified by the manufacturer at not more than ~~50~~one hundred thirty (130) cubic centimeters or an equivalent power unit.

(b~~2~~) A Type 1 motorcycle with an automatic transmission and an engine certified by the manufacturer at not more than fifty (50) cubic centimeters or an equivalent power unit.

~~51.3-12.(g)~~ “Motor home” means a motor vehicle designed to be operated upon a highway for use as a temporary or recreational dwelling and having the same internal characteristics and equipment as a mobile home.

(h) “Motor vehicle” means every device in, upon or which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile shall not be considered a motor vehicle.

~~51.3-11.(i)~~ “Motorcycle” means a motor vehicle, excluding a tractor ~~or an~~, all-terrain vehicle or a utility terrain vehicle, which is capable of speeds in excess of thirty (30) miles per hour with a one hundred fifty (150-) pound rider on a dry, level, hard surface with no wind, with a power source as an integral part of the vehicle, and which meets any of the following conditions ~~under par. (a) or (b):~~

(a~~1~~) Type 1 is a motor vehicle which meets either of the following conditions:

(~~1~~A) Is designed and built with two (2) wheels in tandem and a seat for the operator, and may be modified to have no more than three (3) wheels

by attaching a sidecar to one of the side the wheels in tandem without changing the location of the power source.

(a)(2B) Is designed and built to have no more than three (3) wheels, seating for the operator and no more than three (3) passengers, and does not have the operator area enclosed.

(b2) Type 2 is a motor vehicle designed and built to have at least three (3) wheels in contact with the ground, a curb weight of less than one thousand five hundred (1,500) pounds, and a passenger and operator area with sides permanently enclosed with rigid construction and a top which may be convertible.

(j) "Nonmoving traffic violation" means a citation for parking a motor vehicle in violation of a statute, ordinance or resolution of the Tribe or the state of Wisconsin.

51.3-13.(k) "Nonresident" means a person who is not a resident of the Reservation.

51.3-14.(l) "Other jurisdiction" or "another jurisdiction" means territory other than the ~~Oneida Nation~~ Reservation, including the State of Wisconsin and any State other than Wisconsin.

51.3-15.(m) "Owner" means a person who holds the legal title of a motor vehicle, except that if legal title is held by a secured party with the immediate right of possession of the motor vehicle vested in the debtor, the debtor is the owner for the purposes of this Law.

51.3-17.(n) "Person with a disability that limits or impairs the ability to walk" means any person with a disability as defined by the ~~federal~~-Americans ~~with disabilities~~ Act of 1990, 42 USC 12101 et. seq., so far as applicable, or any persons who meet the following conditions:

(a1) Cannot walk ~~200~~two hundred feet (200') or more without stopping to rest.

(b2) Cannot walk without the use of, or assistance from, another person or brace, cane, crutch, prosthetic device, wheelchair or other assistive device.

(c3) Is restricted by lung disease.

(d4) Uses portable oxygen.

(e5) Has cardiac condition to the extent that functional limitations are present.

(f6) Is severely limited in the ability to walk due to an arthritic, neurological or orthopedic condition.

(g7) Has a degree of disability equal to that specified in ~~pars. (a)(1) to (f)(6)~~ above.

51.3-16.(o) "Personal identifier" means a name, street address, post office box number or nine (9) digit extended zip code.

(p) "Personalized registration plates" means registration plates for a motor vehicle registered under this Law which display a registration composed of letters or numbers, or both, requested by the applicant.

(q) "Registrant" means a person who has applied for and received registration plates for a motor vehicle under this Law.

51.3-21.(r) "Reservation" means ~~the Reservation of the Oneida Tribe of Indians of Wisconsin and includes all lands within the exterior boundaries and any other lands owned by the Oneida Nation~~ all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(s) "Special interest vehicle" means a motor vehicle of any age which has not been altered or modified from original manufacturing specifications and, because of its historic interest, is being preserved by hobbyists.



253 ~~51.3-19. "Vehicle" means every device in, upon or which any person or property is or~~  
254 ~~may be transported or drawn upon a highway, except railroad trains. A snowmobile shall~~  
255 ~~not be considered a vehicle except for purposes made specifically applicable by this law.~~  
256 51.3-20. (t) "Tribal member" means an enrolled member of the Oneida Tribe of Indians  
257 of Wisconsin.  
258 (u) "Tribe" means the Oneida Tribe of Indians of Wisconsin.  
259 (v) "Truck" means every motor vehicle ten thousand (10,000) pounds or underless  
260 designed, used or maintained primarily for the transportation of property.  
261

#### 262 51.4. Department Authority and Responsibilities

263 ~~51.4-41. The dDepartment shall be responsible for the administration of this ordinanceLaw and~~  
264 ~~is delegated the authority to draft policiescreate rules to allow for the full implementation of this~~  
265 ~~Law.~~

266 51.4-32. Fees. The Oneida Business Committee, upon recommendation of the Department,  
267 shall adopt a motor vehicle registration fee schedule. The fee schedule shall be published in the  
268 Kalihwisaks upon adoption and whenever fees are changed. All registration fees , applicable  
269 finest, penalties, forfeitures and assessments shall be non-refundable and shall be paid to and  
270 retained by the dDepartment, for the operation of such department. The Department may  
271 recommend separate fees based on any combination of the following:

272 (a) The type of motor vehicle being registered.

273 (b) The maximum gross weight of the motor vehicle. Upon payment of the fee, a motor  
274 vehicle subject to registration on the basis of gross weight may be registered at a weight  
275 in excess of the manufacturer's maximum gross weight rating, but such registration does  
276 not exempt such vehicle from compliance with weight limitations imposed by law or by  
277 state, local or tribal authorities pursuant to authority of law.

278 (c) Whether the motor vehicle's registration was previously suspended under this Law.

279 51.4-5-3. Records Retention. All registration applications and registrationsrenewal requests  
280 shall be retained byin accordance with the department for one year after the application has been  
281 submitted or registration filed, thereafter all applicationsOpen Records and registrations shall be  
282 retained by Oneida Records Management for seven yearsOpen Meetings Law.<sup>1</sup>

283 ~~51.14-1. Department to Compile4-4. Registration Lists. Maintaining of Lists:~~

284 ~~(a) At intervals selected by the department, tThe dDepartment shall compilemaintain a list of~~  
285 ~~registrations made during that interval pursuant to the monthly series system of registering~~  
286 ~~automobiles. The list shall give the name and address of each registrant, the registration number~~  
287 ~~assigned, and other identifying information as the dDepartment deems necessary.~~

288 ~~(b) The department shall compile a list of new automobile and motor truck registrations.~~  
289 ~~Registrations for other new vehicles may be included if deemed necessary by the~~  
290 ~~department. Such lists shall be compiled at such intervals during the month as is deemed~~  
291 ~~necessary by the department but the final list compiled each month shall include the~~  
292 ~~listing of the last day of the month. Such list shall contain only those vehicles being~~  
293 ~~registered for the first time after sale by a dealer. Such list shall contain the name and~~  
294 ~~address of the owner, the make, body type, identification number of the vehicle, and the~~  
295 ~~date of sale.~~

296 51.14-2. Access to Lists:

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<sup>1</sup> Tonya Webster, written comment: Were we taking out Records Management because we now save them onto On-Base? So we don't need to send to records management anymore.



(a) Upon request, the ~~d~~Department shall distribute, free of charge, registration lists compiled under this section ~~as follows~~ to the following:

(1) ~~To t~~The Oneida Police Department, ~~one copy of each automobile registration list under sec. 14-1.~~

(2) ~~To a~~Any other person, agency or public officer ~~or agency~~ that provides, in writing, a reasonable requests for the lists, ~~one copy of each automobile registration list under sec. 14-1.~~

(b) ~~Except as provided in sec. 14-3(c) public officers and agencies receiving free copies of registration lists under par. (a) shall keep such lists current and open to public inspection.~~

~~51.14-3. Limitations in Disclosure.~~

(a) ~~In providing copies under this section of any written information collected or prepared under this law which consists in whole or in part of the personal identifiers of 10 or more persons, the department may not disclose~~ Any person who has received a personal identifier of any person ~~who has made under 51.4-4(a) designation that his or her~~ shall keep the personal ~~identifiers~~ identifier confidential and may not ~~be disclosed as provided in this Article.~~ disclose it except:

(b) ~~Paragraph (a) does not apply to any of the following:~~

(1) ~~A person receiving a registration list under sec. 14-2(a-b) to~~ (1) To perform a legally authorized function;

(2) ~~A law enforcement agency~~

(3) ~~An insurer authorized to write~~ To issue or renew a property and/or casualty insurance ~~in the State of Wisconsin or an agent of the insurer, if the insurer or agent uses the personal identifier designated for non-disclosure under sec. 7-1(b) for purposes of issuing or renewing a policy and related underwriting, billing or processing or paying a claim;~~ or

(4) ~~A person obtaining registration or title information for use in the~~ (3) To conduct of a vehicle recall by the manufacturer of ~~the vehicle or an agent of the manufacturer, if the person uses the personal identifiers designated for non-disclosure under sec. 7-1(b).~~ a vehicle or his or her agent.

(c) ~~Any person who has received under par. (b) a personal identifier of any person who has made a designation under sec. 7-1(b) shall keep the personal identifier confidential and may not disclose it except for a purpose applicable to that person under par. (b).~~

(~~1c~~) Any person who ~~willfully~~ discloses a personal identifier in violation of this section may be subject to a fine of not more than five hundred dollars (\$500.00) for each violation.

(~~2d~~) Any person who ~~wilfully~~ requests or obtains a personal identifier from the ~~d~~Department ~~under this subsection~~ under false pretenses may be required to forfeit not more than five hundred dollars (\$500.00) for each violation.

**51.285. Registration of Motor Vehicles**

**51.4-1. Reciprocal agreements.** ~~The Oneida Nation may~~ Tribe has the authority to enter into a reciprocal agreements regarding:

(a) the registration and licensing of any motor vehicle, including but not limited to automobiles, trucks, motorcycles, buses or official vehicles with any governmental jurisdiction and pursuant to Sections 341.05 (22) and 341.409, Wis. Stats; and

(b) the exemption agreement with the State of from Wisconsin. ~~The reciprocal agreement may exempt~~ state registration requirements of designated classes of motor

vehicles registered by the ~~department from the registration requirements of the State of Wisconsin~~Department.

347 **51.4-1. Registration of Automobiles.**

348 ~~Regular~~5-2. Except as provided in 51.5-9, all automobiles-

349 (a) ~~All automobiles customarily~~ owned by Oneida Tribal members residing on the  
350 Reservation shall be registered with the ~~d~~Department in accordance with the registration  
351 period determined by the Department.

352 (b) ~~The annual fee for each automobile registered in this jurisdiction and under this~~  
353 ~~Article shall be \$40 for two plates~~

354 **51.4-2. Registration Periods for Private Automobiles.**

355 (a) ~~All automobiles shall be registered by the department according to a monthly series~~  
356 ~~system of registrations.~~

357 (b) ~~There are established 12 registration periods, each to be designated by a calendar~~  
358 ~~month and to start on the first day of such month and end on the last day of the twelfth~~  
359 ~~month from the date of commencing. The department shall so administer the monthly~~  
360 ~~series system of registration so as to distribute the work of registering automobiles as~~  
361 ~~uniformly as practicable throughout the calendar year.~~

362 (c) ~~All automobiles subject to registration under monthly series systems shall be~~  
363 ~~registered by the department for a period of twelve consecutive calendar months except~~  
364 ~~as follows:~~

365 (1) ~~If the applicant holds current registration plates which were removed from an~~  
366 ~~automobile which the applicant no longer owns or which has been junked, is no~~  
367 ~~longer used on the highways or has been registered as a special interest vehicle or~~  
368 ~~a reconstructed, replica, street modified or homemade vehicle and the plates were~~  
369 ~~issued under the monthly series system, the department shall register the~~  
370 ~~automobile which is the subject of the application for the remainder of the~~  
371 ~~unexpired registration period.~~

372 (2) ~~If the applicant does not hold current registration plates under the~~  
373 ~~circumstances described in par. (a) and the application is an original rather than~~  
374 ~~renewal application, the department may register the automobile which is subject~~  
375 ~~to the application for such period or part thereof as the department determines will~~  
376 ~~help to equalize the registration and renewal work load of the department.~~

377 **51.7-1. Application For**5-3. Registration. Applications in General.

378 applications and for registration renewal ~~of registration requests~~ shall be madesubmitted to the  
379 ~~d~~Department upon forms prescribed by itthe Department and shall be accompanied by the  
380 required fee.

381 (b) ~~The forms for application for original registration and for renewal of registration~~  
382 ~~shall be provided by the department and shall include a place for an applicant or~~  
383 ~~registrant under this chapter to designate that the applicant's or registrant's name, street~~  
384 ~~address, post office box number and 9 digit extended zip code may not be disclosed, a~~  
385 ~~statement indicating the effect of making such a designation and a place for an applicant~~  
386 ~~or registrant who made a designation under this subsection to reverse the designation.~~

387 51.2-8. (a) Applications for original(a) All information given for purposes of obtaining a  
388 license obtained by the Department for purposes of registering a motor vehicle under the  
389 Oneida Motor Vehicle Ordinance this Law shall may be subject to review or internal  
390 audit.

391 (b)(1) ~~The application form or an accompanying document shall include a list of any~~  
392 ~~unpaid citations for nonmoving traffic violations, or any violations of administrative rules~~

of the department, or parking violations, entered against the registrant which remain unpaid.

(b)(2) If ~~there is a citation~~ the registrant has an unpaid citation for any non-moving traffic violation ~~entered against the registrant which is unpaid~~, he or she shall be notified that the ~~vehicle may not be registered~~ registration may not be issued or renewed until the citation is paid or the registrant appears in court to respond to the citation.

~~51.25-1. Notice of Change of Address.~~ *Change of Address.*

~~(a)(c)~~ Whenever any person, after applying for and receiving registration plates, ~~moves from the~~ has a change of address ~~named in the application for the registration plates or when the of his or her name of the licensee is changed by marriage or otherwise~~, the person shall, within ten (10) days of such change, notify the ~~d~~Department in writing of the old and new address or of such former and new names and of all registration plate numbers held.

~~(b) Any person who fails to comply with any of the requirements of par. (a) may be required to forfeit not more than \$25.~~

~~51.7-25-4. Original Applications~~ Registration.

(a) Applications for original registration of a motor vehicle shall contain the following information:

~~(a)(1)~~ The name of the owner.

~~(a)(2)~~ A description of the vehicle, including make, model, identification number and any other information which the ~~d~~Department may reasonably require for proper identification of the vehicle.

~~(a)(3)~~ Such further information as the ~~d~~Department may reasonably require to enable it to determine whether the vehicle is by law entitled to registration or to enable it to determine the proper registration fee for the vehicle.

(b) The ~~d~~Department may accept an application and complete registration of a motor vehicle when the evidence of ownership is held by a nonresident lien holder or for other reasons not immediately available if the ~~d~~Department is satisfied as to ownership of the vehicle. ~~The title fee shall be collected at the time of registration and retained even though certificate of title is not issued.~~

~~51.7-4. Applicants Under 18:~~ (c) Minors. If the applicant for ~~a certificate of~~ registration is under eighteen (18) years of age, the application shall be accompanied by a notarized statement made and signed by ~~either of the applicant's parents, if such parent has custody of the minor; or if neither parent has custody, then by the person having custody~~ a guardian of the applicant, stating that the applicant has the ~~signer~~ guardian's consent to register the motor vehicle in the applicant's name. The signature on the statement shall not impute any liability for the negligence of misconduct of the applicant while operating such motor vehicle on the highways. ~~Any person who violates this section may be required to forfeit not more than \$200.~~

~~51.7-35-5. Registration~~ Renewal Applications.

~~(a)(b)~~ At least thirty (30) days prior to the expiration of a motor vehicle's registration, the ~~d~~Department shall mail to the last-known address of the registrant a notice of the date upon which the registration must be renewed and ~~an application form~~ instructions for renewal of registration.

~~(a)(b)~~ Applications for ~~In order to renew a renewal of~~ registration, the registrant shall ~~contain~~ provide the Department with any updates to the information required ~~in sec.7-2(a) for original applications, or such parts thereof as the department deems necessary on the application for registration~~ to ~~as~~ ensure the proper registration of the motor vehicle. The

Department may require that ~~applications~~requests for renewal of registration be accompanied by the certificate of title issued for the motor vehicle ~~only when the if~~ true ownership or proper registration of the motor vehicle is in doubt and cannot be resolved from records maintained by the Department.

51.23-15-6. *Re-registration Required For Motor Vehicles Subject To A Different Fee.* Whenever the construction or the use of a registered motor vehicle is changed in a manner ~~making which makes~~ the motor vehicle subject to a different registration fee ~~than the fee for which the vehicle currently is registered~~, the owner shall immediately ~~make application~~apply for a new registration. The fee payable upon such re-registration shall be computed as ~~for if the a~~ motor vehicle was not previously registered ~~in this jurisdiction by the Tribe~~, but a credit shall be allowed for the unused portion of the fee paid for the previous registration ~~if so long as~~ the registration plates issued upon the previous registration are returned to the ~~d~~Department. The credit shall be computed on the basis of one-twelfth (1/12) of the annual registration fee or one twenty-fourth (1/24) of the biennial registration fee prescribed for the vehicle as previously registered multiplied by the number of months of registration which have not fully expired on the date the motor vehicle became subject to the different fee. The credit may be applied toward the re-registration of the motor vehicle only up to the date when the previous registration would have expired.

51.5-17. *Operating Unregistered or Improperly Registered Motor Vehicle. ~~Penalty for Operating Unregistered or Improperly Registered Vehicle.~~*

~~(a)~~ It is unlawful for any person to operate or for an owner to consent to being operated on ~~any highway of this jurisdiction~~the Reservation any motor vehicle, ~~mobile home, trailer, or any other vehicle~~ for which a registration fee is specifically prescribed unless at the time of operation the motor vehicle in question either is registered ~~in this jurisdiction by the Department~~, or, a complete application for registration, including evidence of any inspection required by the ~~jurisdiction~~Department, accompanied by the required fee has been delivered to the ~~d~~Department or deposited in the mail properly addressed with postage prepaid, and if the motor vehicle is an automobile, ~~station wagon~~ or ~~motor~~ truck having a registered weight of eight thousand (8,000) pounds or less, the motor vehicle displays a temporary operation plate issued by the Department for the motor vehicle unless the operator or owner of the ~~vehicle displays a temporary operation plate issued for the vehicle unless the operator or owner of the~~motor vehicle produces proof that operation of the motor vehicle is within two (2) business days of the motor vehicle's sale or transfer, or the motor vehicle in question ~~or~~ is exempt from registration.

~~(1a)~~ A motor vehicle may be operated ~~by a private person~~ after the date of purchase of such vehicle ~~by such private person~~ or after the date ~~such person~~the owner moved to ~~this jurisdiction~~the Reservation if application for registration and certificate of title has been made.

~~(2b)~~ All motor vehicles subject to renewal ~~or registration~~ may be operated provided that ~~application for re-a~~ registration renewal request has been made.

~~(1c)~~ Any person who violates ~~par. (a) or (b), 51.5-7~~, where the motor vehicle used is an automobile, station wagon, or any other motor vehicle having a gross weight of ten thousand (10,000) pounds or less, may be required to forfeit not more than two hundred dollars (\$200.00).

~~(2d)~~ Any person who violates ~~par. (a) or (b), 51.5-7~~, where the motor vehicle used is ~~vehicle~~ not enumerated under ~~sub. (1) 51.5-7(c)~~, may be required to forfeit not more than five hundred dollars (\$500.00).

~~(b) 51.5-8.~~ Unless application for re-registration has been made as required by ~~sec. 23-1~~51.5-6, it is unlawful for any person to operate or for the owner to consent to being operated on any

highway of ~~this jurisdiction~~ the Reservation any registered motor vehicle the construction or use of which has been changed so as to make the vehicle subject to a higher fee than the fee at which it currently is registered or which is carrying a greater load than that permitted under the current registration.

51.6-15-9. *Vehicles Exempt From Registration.* A motor vehicle ~~even though~~ operated on a highway of the Reservation, is exempt from registration when such vehicle:

(a) Is registered in another jurisdiction and the vehicle has a registration plate indicating it is validly registration in such other jurisdiction.

(b) Is operated in accordance with ~~the provisions~~ 51.7-6 exempting ~~nonresident or foreign registered motor~~ vehicles from registration, or

(~~b~~c) Is a farm tractor used exclusively in agricultural operations, ~~including threshing~~, or used exclusively to provide power to drive other machinery, or to transport from job to job machinery driven by such tractor; or

(~~e~~d) Is a trailer or semi-trailer used exclusively for the transportation of farm machinery, implements, produce or supplies on a farm or between farms; or

(~~d~~e) Is a fork-lift truck, a specially constructed road or truck tractor used for shunting trailers; ~~or semi-trailer used exclusively for the transportation of farm machinery, implements, produce or supplies on a farm or between farms; or~~

(~~e~~-f) Is a trailer or camping trailer having a gross weight of three thousand (3,000) pounds or less and not used for hire or rental; or

(~~f~~g) Is a trailer not operated in conjunction with a motor vehicle; or

(~~g~~h) Is a new motor vehicle being operated only across a highway from point of manufacture or assembly; or

(~~h~~i) Is a piece of road machinery.

#### 51.8-16. Grounds For Refusing Registration

51.6-1. The ~~d~~Department shall refuse registration of a vehicle under any of the following circumstances:

(a) The ~~vehicle~~ owner applying for registration is not ~~an Oneida~~ a Tribal member, does not reside on the Reservation ~~and/or~~ the motor vehicle is not customarily kept on the Reservation for at least six (6) months out of the year.

(b) The required motor vehicle registration fee ~~imposed by the department for a vehicle customarily kept on the Reservation and owned by an enrolled Oneida member~~, has not been paid for the specific vehicle, ~~and the department may refuse registration of a vehicle ifor~~ such fees ~~for the current period or for any previous period for which payment of a registration fee is required by law~~ have not been paid on any other vehicles owned ~~or leased~~ by the applicant ~~for registration~~.

(c) The applicant has failed to furnish any of the following:

(1) Unless exempted by rule of the document, the mileage disclosure from the most recent titled owner and of all subsequent non-titled owners of the motor vehicle.

(2) Other information or documents required by law or by the ~~d~~Department pursuant to authority of law.

(3) Proof of Oneida membership by enrollment card or number.

(d) ~~Where t~~The applicant does not hold a valid certificate of title and is not entitled to the issuance of a certificate of title.

(e) The applicant's registration has been suspended ~~or revoked~~ and such suspension ~~or revocation~~ is still ~~is~~ in effect.



(f) The applicant has an unpaid citation for any nonmoving traffic violation.  
(g) The vehicle is exempt from registration ~~and voluntary registration of the vehicle is~~  
~~not expressly authorized.~~

**51.9-17. Design, Procurement and Issuance of Registration Plates**

51.7-1. The ~~d~~Department, upon registering a motor vehicle ~~pursuant to Article IV and Article XIX,~~ shall issue to the applicant two (2) registration plates for an automobile, truck, or motor home, and one (1) plate for other motor vehicles. ~~The department upon registering a vehicle pursuant to any other section shall issue one plate unless the department determines that two (51.7-2) plates will better serve the interests of law enforcement.~~

51.9-4. In lieu of issuing a new plate upon each renewal of registration of a motor vehicle, the ~~d~~Department may issue ~~one insert~~ a tag, decal or other identification per motor vehicle to indicate the period of registration. The tag, decal or other identification shall be ~~provided by the department and~~ used only if the outstanding plate is in suitable condition for further usage.

51.9-27-3. The ~~d~~Department shall determine the size, color and design of registration plates with a view toward making ~~them~~ the following visible ~~evidence of:~~ the period for which the motor vehicle is registered and the fee class into which the motor vehicle falls ~~as well as making them.~~ The registration plates shall also be a ready means of identifying the specific motor vehicle or owner for which the ~~plated~~ plates were issued.

51.9-37-4. All registration plates shall have displayed upon them the following:

- (a) The registration number assigned to the motor vehicle or owner. The registration number ~~shall~~ may be composed of numbers or letters or both.
- (b) The name "Oneida Nation."
- (c) An indication of the period for which the specific plate is issued or the date of expiration of registration.

**51.10-1. Application For and Issuance of 7-5. Special Plates.**

(a) The ~~d~~Department ~~shall~~ may issue ~~special plates as specified in this section under the following circumstances~~ special plates:

~~(a) Disabled Oneida Residents. If any Oneida member, who is a resident of the Reservation and who is registering or has registered an automobile or truck or a motor home,~~ (1) Disabled Person Plates. If a registrant submits a statement once every four (4) years, from a physician licensed to practice medicine in any state, or from a chiropractor licensed to practice chiropractic in any state, that the ~~resident~~ registrant is a person with a disability that limits or impairs the ability to walk, the ~~d~~Department shall ~~procure, issue and deliver to the disabled person or renew~~ plates of a special design in lieu of plates which ordinarily would be issued for the motor vehicle, ~~and shall renew the plates.~~ The plates shall be so designed as to readily ~~apprize~~ apprize law enforcement officers of the fact that the motor vehicle is owned by a ~~non-veteran~~ disabled person and is entitled to parking privileges specified in other laws. No charge in addition to the registration fee shall be made for the issuance or renewal of such plates.

(2) Veterans Plates. The Department shall issue special veteran plates for veterans of the various branches of the military, specific wars or military conflicts.

(3) Other Special Plates. The Department may issue additional special plates if the Department determines the demand for such special plates would justify the issuance of such plates and the Department has the ability to determine who is qualified to receive the plates.

~~(b) *Disabled Oneida Veterans.* If any resident of the Reservation who is registering or has registered an automobile, truck, or a motor home submits a statement once every four (4) years, from the Oneida Nation Department of Veterans Affairs certifying to the department that the resident is, by reason of injuries sustained while in the active U.S. military service, a person with a disability that limits or impairs the ability to walk, the department shall procure, issue and deliver to the veteran, plates of a special design in lieu of the plates which ordinarily would be issued for the vehicle, and shall renew the plates. The plates shall be so designed as to readily apprise law enforcement officers of the fact that the vehicle is owned by a disabled veteran and is entitled to parking privileges specified in other laws. No charge in addition to the registration fee shall be made for the issuance or renewal of such plates.~~

~~51.10 2. *Oneida Veteran/Congressional Medal of Honor.* Upon application by any person awarded the congressional medal of honor and submission of proper proof thereof, the department shall issue special plates so designed as to indicate such award. No charge whatever shall be made for the issuance of such plates.~~

~~51.10 3. *Prisoner of War:*~~

~~(a) Upon application to register an automobile or truck by any Oneida member residing on the Reservation who was a member of any of the U.S. armed services and who was held as a prisoner of war during any of the conflicts described as World War II, Vietnam, Persian Gulf, Operation Desert (Shield) Storm, or in Grenada, Lebanon, Panama, Somalia or a Middle East crisis, and upon submission of a statement from the Oneida Nation Department of Veterans Affairs certifying that the person was a prisoner of war during one of the conflicts described, the department shall issue to the person a special plate which is colored (to be determined by the department) and which has the words "ex-prisoner of war" placed on the plate in the manner designated by the department.~~

~~(b) If a registration plate has been issued to a person under par (a), upon application by the surviving spouse of the person, the department may permit the surviving spouse to retain the plate. If the plate has been returned to the department or surrendered to another state, the department may reissue the plate to the surviving spouse. The department shall charge an additional fee of \$10 to reissue the plate.~~

~~(c) A person who maintains no more than one registration under this subsection at one time shall not be charged a fee for registration of the vehicle or issuance of plates.~~

~~(d) For each additional vehicle, a person who maintains more than one registration under this subsection at one time shall be charged a fee of \$10 for issuance of the plates in addition to the annual registration fee for the vehicle.~~

~~(e) The department shall charge a fee of \$10 for re-issuance of any plate under par. (d).~~

~~51.10 4. *Veterans Plates.* The department shall issue special veterans/military plates under this subsection for the following authorized special groups:~~

~~(a) World War II veterans~~

~~(b) Korean War veterans~~

~~(c) Vietnam War veterans~~

~~(d) Persian Gulf War veterans~~

~~(e) Air force Retired~~

~~(f) Air force Veteran~~

~~(g) Army Retired~~

~~(h) Army Veteran~~

~~(i) U.S. Coast Guard~~

~~(j) Marine Corps Retired~~

~~(k) Marine Corps Veteran~~

~~(l) Navy Retired~~

~~(m) Navy Veteran~~

~~(n) Purple Heart~~

~~(o) Medal of Honor~~

~~51.10-5. The annual registration fee shall be \$40.00. There shall be an additional fee of \$10.00 for the issuance of the initial registration of Special Veteran/Military plates. \$40.00 plus \$10.00 for the first plate. Renewal fees for these plates shall be \$40.00.~~

~~51.10-6.(b) If an individual in possession of special plates or of personalized plates under this article does not maintain membership in the applicable authorized special groups during the year which is not a plate issuance year~~no longer qualifies for the special plates,  
the individual shall:

~~(a)1~~ (a)1 Dispose of the special plates in a manner prescribed by the ~~d~~Department;  
and

~~(b) In addition to the regular~~2) Submit an application and registration fee; for  
plates he or she qualifies for and pay a ~~\$4~~-fee for the issuance of replacement  
plates; and

~~(c) Return the certificate of title to the department for correction.~~

~~51.17-17-6. Antique Motor Vehicles; Registration, Vehicle Plates, Use. Antique Motor Vehicles.~~

~~(a) Any person who is a resident of the Reservation and the owner or subsequent transferee of a~~  
A motor vehicle which has a model year of 1945 or earlier and which has not been altered or  
modified from the original manufacturers' specifications may ~~upon, application~~ register the  
~~same~~vehicle as an antique motor vehicle upon payment of a fee ~~of \$5~~, and be furnished  
registration plates of a distinctive design, in lieu of the usual registration plates, which shall  
show, in addition to the ~~registration number~~requirements of 51.7-4, that the motor vehicle is an  
antique. The registration shall be valid while the motor vehicle is owned by the applicant  
without payment of any additional fee. The motor vehicle shall only be used for special  
occasions such as display and parade purposes or for necessary testing, maintenance and storage  
purposes.

~~(b)a~~ (b)a Any person who registers an antique motor vehicle ~~under par. (a)~~ may furnish and  
display on the motor vehicle a historical plate from or representing the model year of the  
motor vehicle if the registration and plates issued by the ~~d~~Department are simultaneously  
carried in the motor vehicle and are available for inspection.

~~(e)b~~ (e)b Unless inconsistent with this section, the provisions applicable to other motor  
vehicles apply to antique motor vehicles.

~~51.18-17-7. Special Interest Vehicles: Registration, Plates, Use. Special Interest Vehicle/Collectors Special Vehicle.~~

~~(a) Any person who is the owner of who has a special interest~~motor vehicle ~~which is 20 or more~~  
~~years old at the time of making application for registration or transfer of title of the vehicle and~~  
~~who, has~~ registered in Oneida through the Tribe and uses for regular transportation at least one  
(1) vehicle that has regular registration plates may ~~upon application~~apply to register ~~the~~a vehicle  
he or she owns as a special interest vehicle ~~upon payment of a fee under par. (b).~~if the vehicle is  
at least twenty (20) years old.

~~(b) The fee to register a vehicle under par. (b) is twice the regular annual fee for this type~~  
~~of vehicle, except that the fee for a vehicle that has a gross weight of more than 8,000~~  
~~pounds may be no more than twice the annual fee for a similar vehicle that has a gross~~



~~weight of not more than twice the annual fee for a similar vehicle that has a gross weight of not more than 8,000 pounds.~~

(~~e~~a) The ~~d~~Department shall furnish the owner of the vehicle with registrations plates of a distinctive design in lieu of the usual registration plates, and those shall show that the vehicle is a special interest vehicle owned by a collector. Upon application, the owner may re-register the vehicle without the payment of any additional fee.

(~~d~~b) Each collector applying for special interest vehicle registration plates will be issued a collector's identification number which will appear on each plate. Second and all subsequent registrations under this section by the same collector will bear the same collector's identification number followed by a suffix letter for vehicle identification.<sup>2</sup>

(~~e~~c) The vehicle may be used as are other vehicles of the same type except:

(1) Motor vehicles may not transport passengers for hire.

(2) Trucks may not haul material weighing more than five hundred (500) pounds.

(3) No special interest vehicle may be operated upon any highway within the Reservation during the month of January unless the owner of the vehicle re-registers the vehicle with regular registration plates or transfers regular registration plates to the vehicle.<sup>3</sup>

(~~f~~d) Unless inconsistent with this section, the provisions applicable to other vehicles shall apply to special interest vehicles.

51.~~11-17-8~~. Personalized LicenseRegistration Plates. ~~In this article, "personalized registration plates" means either of the following:~~

(a) ~~A registration plate for a motor vehicle registered under this ordinance which displays a registration composed of letters or numbers, or both, requested by the applicant. Personalized registration plates under this paragraph shall be of the same color and design as regular registration plates and shall consist of numbers or letters, or both, not exceeding 5 positions and not less than one position for a plate issued for a motorcycle or not exceeding 7 positions and not less than 1 position for all other plates.~~

(b) ~~A registration plate of the same color and design as provided in Article X for (a vehicle specified under Article X which displays the applicable symbol of the authorized special group to which the person belongs and a registration number composed of letters or numbers, or both, not exceeding 6 positions and not less than 1 position, requested by the applicant.~~

~~51.11-2.~~ The ~~d~~Department shall issue personalized registration plates only upon request and if:

(a) ~~The request and alternate thereto is received by the department in writing by mail by the 15th day of the month in which the vehicle is to be registered;~~

(~~b~~1) The request is accompanied by the proper fee, ~~an application for original or renewal vehicle registration and the proper registration fee;~~ and paperwork as required by the Department; and

(~~e~~2) The requested combination of numbers or letters has not already been issued.

<sup>2</sup> Tonya Webster, written comments: Currently we do not do this. We simply issue them the next collector plate we have unless they would like a Personalized Collector plate. This is something the State of Wisconsin does, but they do not issue personalized collector plates.

<sup>3</sup> Tonya Webster, written comments: Do you think we should take out within the Reservation because they wouldn't be valid on any highway not just within the reservation?

~~51.11-3. In addition to the regular application fee provided for in this ordinance, the applicant for a personalized registration plate issued on an annual basis shall pay a fee of \$15 for the issuance of the plate and \$15 in each succeeding year to maintain the plate.~~

~~51.11-5. If an individual in possession of a personalized registration plate does not maintain the personalized registration plate during a year which is not plate issuance year, the individual shall:~~

~~(a) Dispose of the personalized plate in a manner prescribed by the department;~~

~~(b) In addition to the regular application fee, pay a \$4 fee for the issuance of replacements plates; and~~

~~(c) Return the certificate of title to the department for correction.~~

~~51.11-6.(b)~~ The ~~d~~Department may refuse to issue any combination of letters or numbers, or both, which carry connotations offensive to Oneida heritage or traditions, to good taste or decency, or which would be misleading or in conflict with the issuance of any other registration plates. All decisions of the ~~d~~Department with respect to personalized registration plate applications shall be final and not subject to judicial review.

~~51.11-4.(c)~~ Each personalized registration plate issued shall be reserved for the recipient in succeeding registration periods and shall not be duplicated for issuance to any other person if the recipient maintains the plate, unless the recipient authorizes the issuance of the plate to another person. If the recipient does not maintain the plate for two (2) successive years ~~which are not plate issuance years~~ or if the recipient does not specifically request re-issuance of the personalized ~~license registration~~ plate by the end of the month in which the plate expires ~~in a plate issuance year~~, the ~~d~~Department may reissue the personalized registration plate to another applicant.

~~51.11-7.(d)~~ The ~~d~~Department may cancel and order the return of any personalized registration plates issued which contain any combination of letters or numbers, or both, which the ~~d~~Department determines may carry connotations that are offensive to the Oneida heritage or traditions, good taste and decency or which may be misleading. Any person ordered to return such plate shall either be reimbursed for any additional fees they paid for the plates for the registration year in which they are recalled, or be given at no additional cost replacement personalized registration plates, the issuance of which is in compliance with this ~~ordinance~~ Law. A person who fails to return personalized registration plates upon request of the ~~d~~Department may be required forfeit not more than two hundred dollars (\$200.00).

~~51.13-1. Issuance of~~ 7-9. *Replacement Plates.*

(a) Lost or Destroyed Plates.

~~(a)~~ Whenever a current registration plate is lost or destroyed, the owner of the motor vehicle to which the plate was attached shall immediately apply to the ~~d~~Department for a replacement. Except as further provided in this ~~article~~ Law, upon satisfactory proof of the loss or destruction of each plate and upon payment of a fee ~~of \$2~~ for each plate, the ~~d~~Department shall issue a replacement.

~~(b) Upon satisfactory proof of the loss or destruction of a specialized plate or a personalized plate issued under sec.10, and upon payment of a fee of \$5 for each plate, the department shall issue a replacement.~~

~~51.13-2.~~ Illegible Plates. Whenever a current registration plate becomes illegible, the owner of the motor vehicle to which the plate is attached shall apply to the ~~d~~Department for a replacement. Upon receipt of satisfactory proof of illegibility, and upon payment of a fee ~~of \$2~~ for each plate, the ~~d~~Department shall issue a replacement. Upon receipt of a

replacement plate, the applicant shall return the illegible plate to the ~~d~~Department for recycling.

~~51.13 3. Replacement Plates. (c)~~ When issuing ~~a~~replacement plates, the ~~d~~Department may assign a new number and issue a new plate rather than a duplicate of the original if in its judgment that is in the best interests of economy or prevention of fraud. Upon receipt of a replacement plate, the applicant shall return the illegible plate to the ~~d~~Department for recycling.

~~51.13 4. Any person issued replacement plates who fails to return the original plates to the department as required by this Article may be required to forfeit not more than \$200.~~

## **51.12-18. Display of Registration Plates**

### **51.8-1. Placement of Plates or Decals on Motor Vehicles.**

(a) Whenever two (2) registration plates are licensed for a motor vehicle, one (1) plate shall be attached to the front and one (1) to the rear of the motor vehicle. Whenever only one (1) registration plate is issued for a motor vehicle, the plate shall be attached to the rear of the motor vehicle.

(b) Any registration decal or tag issued by the ~~d~~Department shall be placed on the rear registration plate of the vehicle in the manner directed by the ~~d~~Department.

~~51.12 2.~~ Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly read. Any peace law enforcement officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

~~51.12 3. Any of the following may be required to forfeit not more than \$200:~~

~~(a) A person who operates a vehicle for which a current registration plate or insert tag has been issued without such plate or tag being attached to the vehicle.~~

~~(b) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;~~

~~(c) A person who operates a vehicle with the registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.~~

## **51.9. Penalties and Appeals**

### **51.9-1. Suspension of Registration**

(a) The Department shall suspend the registration of a vehicle when:

(1) The registration was completed through fraud or error and the person who registered the vehicle does not or cannot register the vehicle properly; or

(2) Any applicable test or inspection requirements of the State of Wisconsin under s.110.20(6)Wis. Stats have not been met.

(b) Any registration suspended pursuant to this section continues to be suspended until reinstated by the Department. The Department shall reinstate the registration when the reason for the suspension has been removed.

(c) Whenever the registration of a vehicle is suspended under this section, the Department may order the owner or person in possession of the registration plates to return them to the Department.

(d) No owner may transfer the ownership or registration of any vehicle whose registration is suspended under this section until the registration is reinstated or until the

Department is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of 51.12-1(a).

(f) This section does not apply to or affect the registration of any vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such vehicle from a person who registration has been suspended under 51.12-1(a).

51.9-2. Any person who violates a provision of this Law, the violation of which does not have a specified fine may be subject to a fine issued by the Department of not more than five hundred dollars (\$500.00).

51.9-3. Appeals. A person issued a fine under this Law may appeal such fine to the Tribe's Judiciary in accordance with applicable rules of appellate procedure.

~~51.15-1. Annual Registration Fees; Biennial Motorcycle Fees. Unless a different fee is prescribed for a particular vehicle under this ordinance, the following registration fees shall be paid to the department for the annual registration of each vehicle not exempted by Article VI of this ordinance.~~

Maximum gross weight in pounds	Annual Fee
Not more than 4,500	\$ 45
Not more than 6,000	\$ 57
Not more than 8,000	\$ 72
Not more than 10,000	\$ 111
In excess of 10,000	\$ 150

Figure 1

~~(a) For each automobile or station wagon, a fee of \$40.~~

~~(b) For each motorcycle or moped with a curb weight of 1,499 pounds or less, which is designed for the transportation of persons rather than property, a biennial fee of \$20.~~

~~(1) Registration plates under this article expire on April 30 of even numbered years.~~

~~(2) One license plate is sent by the department of each cycle registered.~~

~~51.15-2. Calculation of Registration Fees Relating to Gross Weight: Trucks.~~

~~(a) Unless otherwise noted, for each truck under this article, a yearly registration fee is to be determined on the basis of the maximum gross weight of the vehicle. Each vehicle registered will receive one license plate. Maximum gross weight shall be determined by adding together the weight in pounds of the vehicle when equipped to carry a load as a motor truck and the maximum load in pounds which the applicant proposes to carry on the vehicle when used as a motor truck.~~

~~(b) The following schedule shall be used in determining fees based on gross weight, provided that a surcharge of \$18 shall be added to and collected with the fee for each truck as listed in Figure 1.~~

~~51.15-3. Motor Homes.~~

~~(a) For each motor home, including any vehicle which is converted to be used as a motor home, an annual fee based on gross weight as set out in Figure 2.~~

<del>Gross weight in pounds:</del>	<del>Annual Fee:</del>
<del>Not more than 5,000</del>	<del>\$ 45</del>
<del>Not more than 8,000</del>	<del>\$ 51</del>
<del>Not more than 12,000</del>	<del>\$ 63</del>
<del>Not more than 16,000</del>	<del>\$ 75</del>
<del>Not more than 20,000</del>	<del>\$ 87</del>
<del>Not more than 26,000</del>	<del>\$ 99</del>
<del>More than 26,000</del>	<del>\$ 111</del>

~~Figure 2~~

~~51.15-4. Upon payment of the fee prescribed by law, a vehicle subject to registration on the basis of gross weight may be registered at a weight in excess of the manufacturer's maximum gross weight rating, but such registration does not exempt such vehicle from compliance with weight limitations imposed by law or by state, local or tribal authorities pursuant to authority of law.~~

~~51.16-1. Special Registration Fees For Certain Vehicles. Oneida Government Vehicles.~~

~~(a) A fee of \$5 shall be paid to the department for the original issuance of a registration plate for any vehicle owned by the Oneida Nation and operated exclusively in service of the public.~~

~~(b) A fee of \$5 shall be paid to the department for the original issuance of a registration plate for vehicles used by the Oneida Police Department exclusively in the performance of their duties.~~

~~51.19-1. Part Year Fees For Private Automobiles. Calculation of Partial Fees.~~

~~(a) The applicant for registration of an automobile under the monthly series system shall pay in full the annual registration fee prescribed by law, except as otherwise provided in this article.~~

~~(b) If the applicant for registration holds current registration plates which were removed from an automobile which the applicant no longer owns or which has been junked, is no longer being used on the highways or has been registered as a special interest vehicle the applicant is exempt from the payment of a registration fee, except in the following cases:~~

~~(1) If the annual fee prescribed for the automobile being registered is higher than the annual fee prescribed for the automobile from which the plates were removed, the applicant shall pay a fee computed on the basis of one-twelfth of the difference between the two annual fees multiplied by the number of months~~

for which the automobile which is the subject of the application is being registered. The start of the new registration, for the purpose of computing the fee, shall be determined in accordance with par. (c).

(c) For the purpose of computing the registration fee payable upon registration of an automobile under circumstances described in par. (b) & (c), the beginning of the current registration period shall be determined as follows:

(1) If the first operation of an automobile under circumstances making the owner liable for its registration by the Oneida Nation occurs on or before the 15th day of a given month, the registration period commences on the first day of such month. If the first operation occurs on or after the 16th day of a given month, the registration period commences on the first day of the following month. "First operation" means operation of an automobile for the first time after it was transferred to the applicant or after it was registered in another jurisdiction or after the expiration of 12 months of non-operation since expiration of the last registration by the Oneida Nation or after it was no longer used on the highways.

(2) In the case of an automobile which has not previously been registered or which has not been registered by the Oneida Nation by the present owner since the last owner last acquired ownership of the automobile, the department shall assume that the date of first operation within the meaning of sub. (1) is the date of the bill of sale evidencing the transfer of ownership to the applicant unless the applicant files with the department a statement that the automobile was not so operated until a later date, specifying the date of such first operation. In the case of at least 12 months of non-operation of an automobile previously registered by the applicant, the applicant must file with the department a statement that he or she did not operate or consent to the operation of the automobile under circumstances making it subject to registration in this state during such 12 month period and must specify the date following such period when the automobile was first so operated. The department may refuse to accept a statement which projects the date of first operation into the future.

**51.20-1. Special Registration Period for Vehicles Other Than Private Automobiles.** *Special Registration Periods.*

(a) The department shall require that any vehicle other than private automobiles, shall be registered according to the monthly series system of registration prescribed by this section.

(b) There are established 12 registration periods, each to be designed by a calendar month and to start on the first day of such month and end on the last day of the 12th month from the date of commencing. The department shall so administer the monthly series system of registration as to distribute the work of registration throughout the calendar year.

(c) All vehicles subject to registration under the monthly series system under this section shall be registered by the department for a period of 12 consecutive calendar months except as follows:

(1) If the applicant holds registration plates which were removed from a vehicle under section 22 and the plates were issued under the monthly series system, the department shall register a replacement vehicle of the same type and gross weight which is the subject of the application for the remainder of the unexpired registration period.



(2) ~~If the applicant does not hold current registration plates under the circumstances described in par. (1) and the application is an original rather than renewal application, the department may register the vehicle which is the subject of the application for such period or part of a period as the department determines will help to equalized the registration and renewal workload of the department.~~

(d) ~~Section 22 applies to any vehicles registered according to the monthly series system under this section.~~

**51.21-1. Biennial Registration.** ~~The following vehicles shall be registered on a biennial basis:~~

(a) ~~A motorcycle or moped, as specified in sec. 15-1(b). The registration period for a motorcycle or moped begins on May 1 of an even numbered year and ends on April 30 of the next even numbered year.~~

**51.22-1. ~~When Part-Period Fees Payable for Vehicles Other Than Automobiles; Computation of Part-Period Fees.~~** ~~The annual registration fee shall be paid in full on all vehicles registered pursuant to section 20, unless the vehicles comes within one of the following categories, in which event the applicant is liable for the payment of only a part period fee to be computed in accordance with sec. 22-2(a):~~

(a) ~~The vehicle has not previously been registered within this Reservation; or~~

(b) ~~The vehicle previously was registered within this Reservation; but~~

(1) ~~The vehicles in the meantime has been registered in another jurisdiction and such foreign registration was in effect during or subsequent to the expiration of the previous registration in this state; or~~

(2) ~~The vehicles was transferred to the applicant after the expiration of the last registration in this state; or~~

(3) ~~At least 12 months have elapsed since the end of the period for which the vehicles previously was registered and the applicant files with the department a statement that did not, during such 12-month period, operate or consent to the operation of the vehicle under circumstances making the vehicle subject to registration in this state; or~~

(4) ~~The vehicle is a motorcycle which has been transferred to the applicant and for which current registration plates had been issued to the previous owner; or~~

(5) ~~The vehicle which has been transferred to the applicant is a motor home or a truck; or~~

(6) ~~The vehicle is subject to the provisions of sub. (5); or~~

(c) ~~The vehicle is a replacement for a registered vehicle which has been junked or is no longer used on the highway; or~~

(d) ~~The vehicle is owned by a person who has been in active military service and less than 12 months of non-operation have elapsed since the end of the period for which the vehicle was previously registered, provided the applicant files with the department a statement of such non-operation.~~

**51.22-2.** ~~Part period registration fees shall be computed as follows:~~

(a) ~~For vehicles registered under the conditions in sec. 22-2(a), (b), or (d), the fee for the current registration period shall be computed on the basis of one twelfth of the annual registration fee or one twenty fourth of the biennial registration fee prescribed for the vehicle multiplied by the number of months of the current registration period which have not fully expired on the date the vehicle first is operated by or with the consent of the applicant under circumstances making it subject to registration by the Oneida Nation. In~~

the case of a vehicle which has not previously been registered or which has not been registered within this Reservation by the present owner since the owner last acquired ownership of the vehicle, the department shall assume that the date of first operation bill of sales evidencing transfer of ownership to the applicant unless he or she files with the department a statement that the vehicle was not so operated until a later date, specifying the date of such first operation. The department may refuse to accept any statement which projects the date of first operation into the future.

(b) For the registration of a replacement vehicle under the conditions set forth in sec. 22-1(c), or the fee shall be computed as for a vehicle not previously registered in this state but a credit shall be allowed for the unused portion of the fee paid for the vehicle being replaced. Such credit shall be computed on the basis of one twelfth of the annual registration fee or one twenty fourth of the biennial registration fee prescribed for the vehicle being replaced multiplied by the number of months of registration which have not fully expired at the time the vehicle being replaced was junked, traded, sold or removed from jurisdiction of the Oneida Nation. Except for a vehicle registered on a biennial basis, it is not necessary that the replacement vehicle be of the same type as the one being replaced in order for the applicant to take advantage of the credit but the credit may be applied toward registration of the replacement vehicle only up to the date when the registration of the vehicle being replaced would have expired.

~~51.22-3. Transferred Plates or Plates no Longer in Use.~~

(a) The transferee of a vehicle registered as provided in Article XX is not subject to the payment of any registration fee for the remainder of the period for which the vehicle is registered unless, by reason of his or her status or the use to which the vehicle is put, the fee prescribed by law is higher than that paid by the former owner. In such event, the fee shall be computed on the basis of one twelfth of the difference between the two (2) annual fees multiplied by the number of months of the current registration period which have not fully expired on the date, after the vehicle is acquired by the applicant, when such vehicle is first operated by him or her with his or her consent under circumstances making it subject to registration by the Oneida Nation.

(b) A person retaining a set of plates removed from a vehicle which was junked or transferred, is no longer used on the highways or has been registered as a special interest vehicle under sec. 18-1(b) may receive credit for the unused portion of the registration fee paid when registering a replacement vehicle of the same type and gross weight.

(c) A person retaining a set of plates removed from a motorcycle may receive credit for the unused portion of the registration fee paid when registering a replacement motorcycle.

~~51.22-4. This section does not apply to vehicles registered at a fee of \$5 under Article XVI. Such vehicles, whether registered for a full period or part thereof and whether or not previously registered, shall be registered at the full fee. If a person authorized to register a vehicle at a fee of \$5 under Article XVI transfers the vehicle to a person not so authorized, the fee payable by the transferee shall be computed as for a vehicle not previously registered by the Oneida Nation.~~

~~51.22-5. The credit or plate transfer provisions authorized under this section do not apply if the applicant has, within the preceding 12 months, transferred or received credit for registration plates removed from the motor vehicle which is the subject of the application.~~

**51.24-1. Refundable Fees. Refundable Fees.**

(a) The department shall not refund a fee paid to it except when expressly authorized or directed by this section or some other provision of this ordinance to do so.



~~(b) Upon request, the department shall refund 50 percent of a registration fee paid for a vehicle registered on a biennial basis if the person who registered the vehicle furnishes such proof as the department requires that the person has transferred his or her interest in the vehicle before the beginning of the second year of the period for which the vehicle is registered or that the vehicle will not be operated within the jurisdiction of the Oneida Nation after the beginning of the second year of the period for which the vehicle is registered. The department may require the person to return the certificate of registration and registration plates for the vehicle to the department.~~

~~**51.26-1. Fee to Reinstate Suspended or Revoked Registration.** *Reinstatement of Suspended or Revoked Registration.*~~

~~(a) Except as provided in par. (b), the department shall charge a fee of \$25 to reinstate a registration previously suspended or revoked under this law. The fee under this subsection is in addition to any other fee required to complete the registration of the vehicle.~~

~~(b) Par. (a) does not apply to the reinstatement of a registration suspended or revoked as a result of an error by the department.~~

~~**51.27-1. Exemption of Nonresidents And Foreign Registered Vehicles.** Any vehicle which is registered in another jurisdiction is exempt from the Oneida Nation Motor Vehicle Registration Ordinance providing for the registration of such vehicles if:~~

~~(a) The vehicle carries a registration plate indicating the registration in such other jurisdiction, and~~

~~(b) The vehicle is owned by a nonresident of the Reservation.~~

~~**51.27-2.** If the owner of such vehicle moves within the jurisdiction Oneida Nation or if the vehicle is purchased by an Oneida member, the vehicle immediately becomes subject to the laws of the Oneida Nation providing for registration of vehicles.~~

~~**51.29-1. Penalties. Fraudulent Applications.** Any person who gives a false or fictitious name, address or location where a vehicle is customarily kept in an application for license or registration or who makes application for license or registration in the name of a person other than the true owner, or true owner and lessee, may be fined not more than \$200.~~

~~**51.29-2. Improper Use of Evidence of Registration.** Any person who does any of the following may be subject to a fine of not more than \$500:~~

~~(a) Lends to another a registration plate for display upon a vehicle for which the plate has not been issued.~~

~~(b) Displays upon a vehicle a registration plate not issued for such vehicle or not otherwise authorized by law to be used thereon.~~

~~(c) Willfully twists, paints, alters or adds to or cuts off any portion of a registration plate or sticker; or who places or deposits, or causes to be placed or deposited on such plate or sticker any substance to hinder the normal reading of such plate; or who defaces, disfigures, covers, obstruct, changes or attempts to change any letter or figure thereon; or who causes such plate or sticker to appear to be a different color.~~

~~**51.29-3. Special Registration Plates.** Any person who fraudulently procures or uses special registration plates issued under Article XX of this ordinance shall forfeit not less than \$200, nor more than \$500.~~

~~**51.30-1. When Registration Is to Be Suspended.** *When Suspended.*~~

~~(a) The department shall suspend the registration of a vehicle when:~~

~~(1) The registration was completed through fraud or error and the person who registered the vehicle does not or cannot register the vehicle properly.~~

~~(2) The required fee has not been paid and the same is not paid upon reasonable notice and demand.~~

~~(3) Suspension of registration is specified by an authority under section 32.~~

~~(4) The applicant fails, upon reasonable notice and demand, to furnish proof of payment, in the form prescribed by the U.S. Secretary of Treasury, that the federal heavy vehicle use tax imposed by section 4481 of the Internal Revenue Code has been paid.~~

~~(5) The licensee of a vehicle registered under section 14 has not been compiled with the test or inspection requirements of the State of Wisconsin under s.110.20(6)Wis. Stats.~~

~~(b) Any registration suspended pursuant to this section continues to be suspended until reinstated by the department. The department shall reinstate the registration when the reason for the suspension has been removed.~~

~~(c) Whenever the registration of a vehicle is suspended under this section, the department may order the owner or person in possession of the registration plates to return them to the department. Any person who fails to return the plates when ordered to do so by the department may be required to forfeit not more than \$200.~~

**~~51.31-1. Transfer Of Vehicle Ownership While Registration Is Suspended. *Transfer of Vehicle Ownership While Registration Suspended.*~~**

~~(a) No owner may transfer the ownership or registration of any vehicle whose registration is suspended under Article XXX until the registration is reinstated under sec. 30-1(b) or until the department is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of sec. 30-1(a)(3).~~

~~(b) An person violating this section may be subject to a fine of not more than \$200.~~

~~(c) This section does not apply to or affect the registration of any vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such vehicle from a person who registration has been suspended under sec. 30-1(a)(3).~~

**~~51.32-1. Nonmoving Violations.~~**

~~*Non Moving Violation.*~~

~~(a) As used in this section:~~

~~(a)(1) "Authority" means a Tribal Authority, a local authority, or a state agency.~~

~~(a)(2) "Forfeiture" includes a fine established under this ordinances.~~

~~(a)(3) "Nonmoving traffic violation" is any parking of a vehicle in violation of a statute, an ordinance, or a resolution of the Oneida Nation or the state of Wisconsin.~~

~~(b) If the person does not pay the forfeiture or appear in court in response to the citation for a nonmoving traffic violation on the date specified in the citation or, if no date is specified in the citation, within 28 days after the citation is issued, the authority which issued the citation may issue a summons to the person and, in lieu of or in addition to issuing the summons, may proceed but, except as provided in this section, no warrant may be issued for the person. If the person appears in response to a summons for a~~

~~nonmoving traffic violation, the procedures under the current Oneida Court rules and regulations shall apply.~~

~~(c) If the person does not pay the forfeiture or appear in court in response to the citation for a nonmoving traffic violation on the date specified in the citation or, if no date is specified in the citation, within 28 days after the citation is issued, the authority may notify the department in the form and manner prescribed by the department that a citation has been issued to the person and the citation remains unpaid. The authority shall specify whether the department is to suspend the registration of the vehicle involved under Article XXX or refuse registration of any vehicle owned by the person.~~

~~51.33 1. ***In Reference to All License Fees of the Oneida Nation Motor Vehicle Registration Ordinance.*** This Article supersedes all prior references to license fee dollar amounts within the Oneida Motor Vehicle Registration Ordinance. Specifically, sections 4-1, 10-5, 10-6, 11-3, 13-1, 13-2, 15-1, 15-2, 15-3, 16-1, 17-1, 22-4, and 26-1.~~

~~51.33 2. All license fees of this Ordinance will be reviewed and set by the Department annually.~~

~~51.33 3. The Department will submit the annualized fees to the Oneida Business Committee for approval.~~

~~51.33 4. Upon approval, the fees will be placed on the policy and procedures manual of the Department.~~

~~51.33 5. The approved fees will be published on the Oneida Nation's newspaper.~~

*End.*

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Permanent Adoption - BC-4-2-97-D  
Reciprocal Agreement with WI DOT: - BC-07-29-98-C  
Amendment - BC-1-27-99-E  
Related Resolutions - BC-1-27-99-D (Fee Schedule)

**Lynn A. Franzmeier**

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**From:** Lynn A. Franzmeier  
**Sent:** Tuesday, January 27, 2015 8:10 AM  
**To:** Tonya L. Webster  
**Subject:** RE: Motor Vehicle Ordinance

Hi Tonya-

I think this makes sense – I will submit these as your public meeting comments and we will work on making the changes – thanks for the input!

Lynn

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**From:** Tonya L. Webster  
**Sent:** Monday, January 26, 2015 5:00 PM  
**To:** Lynn A. Franzmeier  
**Subject:** Motor Vehicle Ordinance

Hi Lynn, Not sure how to address three areas of the law I think should be changed.. I think we talked about the first section but had a question about it. I'm pretty sure we talked about the second section listed, and I believe you were going to reword to what we do because currently we do not do what it says – Please see three sections below:

51.4-5.3. *Records Retention*. All **registration** applications and **registrations renewal requests** shall be retained **by in accordance with** the department for one year after the application has been submitted or registration filed, thereafter all applications **Open Records** and registrations shall be

Were we taking out Records Management because we now save them onto On-Base? So we don't need to send to records management anymore?

282 retained by Oneida Records Management for seven years **Open Meetings Law**.

Line 686 -(db) Each collector applying for special interest vehicle registration plates will be issued a collector's identification number which will appear on each plate. Second and all subsequent registrations under this section by the same collector will bear the same collector's identification number followed by a suffix letter for vehicle identification.

Currently we do not do this. We simply issue them the next collector plate we have unless they would like a Personalized Collector plate. This is something the State of Wisconsin does, but they do not issue personalized collector plates.

Line 693 -(3) No special interest vehicle may be operated upon any highway **within the Reservation** during the month of January unless the owner of the vehicle registers the vehicle with regular registration plates or transfers regular registration plates to the vehicle.

Do you think we should take out within the Reservation because they wouldn't be valid on any highway not just within the reservation?

Thanks and please call if this does not make sense...



# Legislative Operating Committee

## March 18, 2015

# Vehicle Driver Certification and Fleet Management

**Submission Date:** 9/17/14

☒ Public Meeting: 2/19/15  
☐ Emergency Enacted:  
 Expires:

**LOC Sponsor:** Jennifer Webster

**Summary:** *To develop a new law to govern employee/Tribal official use of vehicles while on Tribal business which would replace the Vehicle Driver Certification Policy and the Fleet Management Policy.*

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

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

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

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

### Next Steps:

- Accept the public meeting comments and defer to an LOC work meeting to review and bring back when ready

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquele J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Lynn A. Franzmeier, Staff Attorney  
**DATE:** March 12, 2015  
**RE:** Vehicle Driver Certification and Fleet Management: Public Meeting Comment Review

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On February 19, 2015, a public meeting was held regarding adoption of the Vehicle Driver Certification and Fleet Management Law (Law). The Law would update and amend the current vehicle driver certification requirements, including provisions regarding the granting, suspension and reinstatement of vehicle driver certification; govern the use of Tribal vehicles and personal vehicles on Tribal business; require most Drivers to attend training before being eligible to drive a Tribal vehicle; set out when vehicle driver certification can be suspended, including upon a motor vehicle operation *citation* involving drugs or alcohol; clarify a Driver's responsibilities when involved in an accident and prohibit individuals from traveling in Tribal vehicles unless 1) on Tribal business, 2) have permission through OBC motion to travel in a Tribal vehicle, 3) or are being transported as part of a Tribal program or service.

This memorandum is submitted as a review of the oral and written comments received during the public meeting process. The public meeting draft with comments, as well as the comments received, have been attached for your review.

**Comment 1. Comment on required training.**

From line 48-50 of the analysis: Training is not required for Personal Vehicle certification or for Tribal Vehicle Drivers who are already governed by – and satisfy - other federal/state agency requirements for driver safety training.

**Lisa Summers:** No, says in addition to 330.7. Where is the rollout plan?

*Response*

Section 330.7-1(c) states that in order to be vehicle driver certified to operate a Tribal vehicle, Drivers shall “Complete all driver training requirements imposed by the Tribe or an individual Tribal entity or by any federal or state agency regulations. There are no recommended changes based on this comment.

Based on comments 21 & 22 below, there will be time after the adoption of the Law before it becomes effective to ensure there is adequate time to implement the requirements of the Law.

**Comments 2, 3 & 68. Comments on what convictions or citations make a driver ineligible.**

From line 63-68 of the analysis: Currently, for Tribal Vehicle Certification, a driver must not have been convicted, within the past three years, of various driving violations listed within the Vehicle Driver Certification Policy. This Law no longer lists specific driving violations – instead, for both Tribal and Personal Vehicle Certification, the driver must pass a driving record check by HRD to verify the Driver has not been cited for, or convicted of, a violation which would make the Driver ineligible under this Law.

From Chart starting after line 83: What to report: Any convictions affecting their eligibility to be certified.

**Lisa Summers:** What is that? How does someone know what to report.

**Wendy Alvarez:** What citations and/or convictions will make individuals ineligible? HRD currently has a list of violations to look for when running a Driver's Abstract

*Response*

The intent of the Law is that only driving citations and convictions involving drugs or alcohol would make a driver ineligible for driver certification. If an individual has other citations and/or convictions on their record and still hold a valid license from the State, they can obtain clearance as a Driver by the Tribe. Sections 330.7-1(b) and 330.10-1(b) should be clarified that a driving citation or conviction involving drugs or alcohol are the only citations/convictions that would result in a driver failing a driving record check.

**Comment 4 & 60. Comment on reporting all accidents to law enforcement**

From Chart starting after line 90 of the analysis:

*Accident Reporting*

	<b>Tribal Vehicle Drivers [330.12-2]</b>	<b>Personal Vehicle Drivers [330.12-6]</b>
What must be reported to law enforcement:	Accidents or damage to <u>Tribal Vehicles</u> that resulted in: <ul style="list-style-type: none"> <li>• Death</li> <li>• injury requiring medical intervention</li> <li>• damage to property not belonging to the Driver/ Tribe</li> <li>• The Tribal Vehicle being disabled or towed.</li> </ul>	All accidents

330.12-2(d) report the accident or damage to local law enforcement if the accident or damage:

**Lisa Summers:** Both [Tribal vehicle Drivers and Personal Vehicle Drivers] should require all accidents be reported to law enforcement..

**Lisa Summers:** All accidents should be reported to law enforcement.

*Response*

During discussions that occurred during the drafting of the Law, it was determined that not all accidents involving Tribal vehicles needed to be reported to law enforcement. For instance, if a Driver backs into a light pole in the parking lot of a Tribal building and there are no physical injuries, law enforcement intervention may not be necessary. This is due to various factors, including the cost of the deductible of the Tribe's insurance and whether repairs will be made to

the vehicle(s) and/or any property involved in the accident. The Law does not prohibit reporting these sorts of accidents to law enforcement, but it is not required. There are no changes recommended based on these comments.

**Comment 5. Comment on Travel and Expense Policy.**

From the analysis, lines 101-104: New provisions are added to address rental vehicles, which are considered Tribal Vehicles for the purpose of this Law. Drivers must be Tribal Vehicle driver certified; cars must be rented in accordance with the Tribe's Travel and Expense Policy; and the maximum collision damage waiver offered by rental companies must be purchased.

**Lisa Summers:** 8-3 and 8-10 of the Travel and Expense Policy– what if both employees?

*Response*

Section 8-3 of the Travel and Expense Policy states that insurance on car rentals is covered by the Tribe's insurance policy and the driver must be on the approved Tribal vehicle drivers list before departure. Section 8-10 states that insurance coverage or charges beyond one driver will be the employee's responsibility and additional drivers will not be approved who are not approved as drivers of Tribal vehicles. There are no changes recommended based on this comment.

**Comment 7. Comment on the length of suspensions.**

From Chart starting after line 132 of the analysis,

<b>Length of Suspension [330.13 and 330.3-1(j)]</b>	
<i>*“Workday” is defined as “a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend.”</i>	
<b>First suspension</b>	At least 5 workdays
<b>Second suspension</b>	At least 10 workdays
<b>Third Suspension</b>	At least 15 workdays
<b>Fourth or more</b>	3 years

**Lisa Summers:** Too short; 10 should be 30; 15 should be 45.

*Response*

Earlier drafts of the Law had higher suspension time frames; however, discussion among the work group determined that lowering the required minimum and leaving it open ended gave supervisors the most flexibility depending on the situation that led to a suspension being necessary. For instance, a supervisor could impose a 30-day suspension for a second suspension, the Law leaves it open, as long as the suspension is at least 10 workdays. There are no changes recommended based on this comment.

**Comment 8. Comment on whether a break in employment clears a driver's record.**

From line 134 of the analysis: The Law also adds that a break in employment/service of 180 days or more will clear the Driver's record of any prior suspensions.

**Lisa Summers:** No.

*Response*



The comment seems to be requesting that a Driver's record not be cleared of any prior suspensions, even if there is a break in employment/service. This is a policy call for the LOC.

**Comments 9, 50 & 57. Comments on driving requirement contained within job descriptions.**

From lines 157-159 of the analysis: Currently, a supervisor may accommodate an employee by removing the driving requirement from the employee's job description. This language was specifically excluded from the new Law with the intent that this would no longer be an option that could be exercised.

330.9-2. *Vehicle Driver Certification Suspensions Affecting Employment Status.* Individuals who have their vehicle driver certification suspended for more than five (5) days and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their Supervisor and a Human Resources Department representative determine what, if any, options may be available to them.

**Lisa Summers:** HRD Supervisors may need to rework job descriptions to see who needs driving requirements. Needs to be a BFQ (bonafide qualification).

**Shannon Stone:** In instances where the suspension of the vehicle driver certification impacts an individual to perform their job duties the law states that the employee may request in writing that their supervisor and HRD jointly decide the options for the employee. Matt Denny pointed out that HRD will under the law contact the supervisor to notify them that the employee's certification has been suspended and this would be a good time for the supervisor and the HRD representative to discuss the option in all cases where an employee loses their certification regardless of duration or request by the employee.

330.10-4. During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by the Human Resources Department.

**Lisa Summers:** This is why we need to have HR/supervisors go through each job description to ensure its required.

*Response*

Discussions have occurred with HRD during the drafting of the Law and they have indicated that job descriptions should be reviewed to determine whether a driving requirement is a necessary part of each job. Follow-up with HRD is recommended to determine whether this is something that can be completed after the Law is adopted and before it goes into effect.

**Comment 10 & 55. Comment on showing proof of consent to use Tribal vehicle if no supervisor.**

From the analysis, lines 165, 173-174: Tribal Vehicle drivers are now responsible for: Providing proof to Fleet Management of any necessary consent to use a non-permanently-assigned Tribal Vehicle.

330.5-1(c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.

330.10-3. *Mileage Reimbursement.*

(a) A Driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven in his or her personal vehicle if he or she:

...

(3) Had prior consent from the applicable board, committee or commission, if an official

**Lisa Summers:** How will this be done when there is no supervisor?

**Lisa Summers:** How are you going to track this?

*Response*

The Law requires the Driver to show he or she had consent from the applicable entity to use a Tribal vehicle or a personal vehicle on Tribal business. There are no other specific requirements; however, permission could be shown through meeting minutes, email, and/or other approval from the entity or authorized member of the entity, like the Chairperson. The Driver is responsible for providing the proof and the Law does not limit or define what that proof must consist of.

**Comments 11 & 49. Comment on appeal of disciplinary or suspension actions.**

From lines 239-240 of the analysis: The Law does not identify whether or how any disciplinary or suspension actions could be appealed.

**Bob Keck:** This isn't a disciplinary Law. If discipline stemming from the enforcement of the Law is given, it would be under a Blue Book policy. Appeals of disciplinary actions would follow Blue Book policy. Regarding appeals, this is true. In going by State rules, there aren't appeals expected if the State revokes/suspends a license. In 330.9- of the proposed Law, it's possible that under 330.9-1(b) and (f) could be appealed, perhaps (g). Recommendation, add to the Law that appeals can be made to the Supervisor's Supervisor. This would mirror an existing process.

**Shannon Stone:** Could a person appeal the suspension of their vehicle driver certification? This was less clear. Matt Denny made one point that if the state said a person was not licensed or had their license to drive revoked there is nothing to appeal because people cannot drive for the Tribe without a valid driver's license. However, in cases where the Tribe may determine it is in the best interest of the Tribe to revoke an individual's vehicle drive certification there was less clarity but Matt suggested that it should still be unappealable. Discussion with Bob Keck revealed that he may feel that there should be consideration for an appeal process where the suspension results do not originate from the state removing driver privileges.

*Response*

If the LOC wishes to allow appeals be made under this Law, the commenter's recommendation could be incorporated into the Law.

**Comments 12. Comment on notifying officials and volunteers of ineligibility.**

From lines 243-247 of the analysis: 330.10-4 states that "During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by [HRD]. Drivers who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility by their Supervisor and in writing by [HRD]." There is no hiring process for officials or volunteers, and they do not have supervisors.

**Bob Keck:** Recommendation – Add clause stating that HRD, the area responsible for driving record checks, also notify officials and volunteers in writing of ineligibility.

*Response*

If the LOC agrees, the commenter's recommendation could be incorporated into the Law.

**Comment 13. Comment on options for volunteers/officials when a suspension affects their duties.**

From the analysis lines 248-251: 330.9-2 sets out how an employee whose vehicle driver certification is suspended can request a meeting with HRD and their supervisor to determine what options are available to them if the suspension affects their ability to perform their duties, but there is no similar provision for officials and volunteers.

**Bob Keck:** Correct. Recommendation – Clarify that elected officials can also meet with HRD the same as an employee can. Other officials such as those who serve on boards, and volunteers, would not have this option.

*Response*

If the LOC agrees, the commenter's recommendation could be incorporated into the Law. However, the comment seems to say that appointed officials wouldn't have this option, but it may be more appropriate to treat all officials, whether elected or appointed, consistently.

**Comment 14. Comment on disciplinary action officials or volunteers.**

From the analysis, lines 252-254: 330.15-1(i) requires supervisors to implement disciplinary action against Drivers who violate this Law, in accordance with the Personnel Policies. However, those do not apply to officials or volunteers, and again, they may not have supervisors.

**Bob Keck:** Correct. I don't believe there is an answer for this consideration. In lieu of discipline, officials or volunteers may simply not be an approved/certified driver.

*Response*

There are no recommended changes based on this comment.

**Comment 15. Comment on officials/volunteers and drug/alcohol testing.**

From the analysis, lines 255-262: 330.12-2(c) requires Tribal Vehicle drivers to comply with any alcohol/drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy (DAFWP). However, that Policy specifically only applies to employees, and not to officials, and it appears it would not apply for volunteers. Under the DAFWP [section 8-3], employees involved in a work-related accident are required to immediately undergo drug and alcohol testing and cannot refuse to submit to any post-accident testing requested by certified drug and alcohol technicians, police, or Employee Health Nursing. In short, this requirement would not extend to officials or volunteers.

**Bob Keck:** Correct. I don't believe there is an answer for this consideration. No testing. In a situation involving an official or volunteer, and it is determined that drugs or alcohol are involved, the result in a 3-year suspension of driving certification. Generally, it is assumed that if an incident occurs, the Law requires immediate reporting. The responding police jurisdiction would (should) be the point for determining if drugs or alcohol are involved and that result would be documented. A 3-year suspension would follow.

*Response*

There are no recommended changes based on this comment.

**Comments 16 & 59. Comment on personal vehicle drivers and being under the influence.**

From the analysis, lines 263-267: 330.5-7(a) strictly prohibits Tribal Vehicle Drivers from being under the influence of alcohol, illegal drugs, or prescription or over-the-counter medicine used in an unauthorized or unlawful manner. 330.5-3 authorizes some persons who are not employees, officials or volunteers, to ride in Tribal Vehicles, in some situations. However, are no similar provisions governing Personal Vehicles. This is a policy call.

330.12-2. Drivers operating a Tribal vehicle shall:

...

(c) comply with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy

**Shannon Stone:** I noticed that the law requires that Tribal Vehicle Drivers are required to comply with the Tribe's DAFWP policy in the event of an accident with a tribal vehicle, but there is no requirement for Personal Vehicle Drivers or passengers to comply with the policy if they have an accident while driving on tribal business. Is there a reason for this when anyone driving for the Tribe should be held in compliance with the policy.

**Bob Keck:** Law constructed to be silent on this and the recommendation is to leave it silent.

*Response*

There are no recommended changes based on this comment.

**Comments 17 & 18. Comment on whether this should be a law or a policy**

**Environmental, Health and Safety Division:** Law vs Policy. Laws are the standard rules and regulations that everyone under the jurisdiction of the government is required to follow. Laws are minimum standards that protect people, property, and the environment. Laws are enforced through governmental judicial systems. Oneida derives the authority to make laws under the status of a sovereign nation. Policies reflect the mission and objectives of an organization and are prescriptive and operational. Policies set standards above and beyond minimum standards. Policies are enforced through organizational disciplinary procedures and by-laws. Oneida sets policy and workplace rules that apply to employees under the tribe's status as an employer.

☐ Recommendation – the Vehicle Driver Certification and Fleet Management law should be a policy.

**Bob Keck:** I'm good either way on law v. policy. Looking big picture, policy might be easier to amend should the need arise in the future

**Lisa Summers:** Is it a law (applies to all tribal members); or a policy?

*Response*

This is a policy call for the LOC. This was discussed at the January 21, 2015 LOC meeting and the LOC determined to leave it as a law.

**Comment 19. Comment on changing the policy statement.**

330.1-2. It is the policy of the Tribe to:

- (a) minimize the Tribe's liability when physical damage to vehicles and/or property damage occurs as a result of vehicle accidents; and
- (b) improve the efficiency and effectiveness of the use of Tribal vehicles.

**Environmental, Health and Safety Division:** Add – the first policy statement should be about protecting Oneida employees and the community.

**Bob Keck:** Good suggestion

*Response*

This can be incorporated, if the LOC agrees with the recommendation.

**Comment 20. Comment on use of “motor vehicle crash” instead of “accident.”**

**Environmental, Health and Safety Division:** Every place it says “accident” it should say “motor vehicle crash.” MVC’s are rarely accidents, and can almost always be prevented. By calling them “accidents”- it implies the driver has no influence or ability to prevent the situation.

**Bob Keck:** I don’t oppose using motor vehicle crash v. accident....good point made.

*Response*

This can be incorporated, if the LOC agrees with the recommendation.

**Comments 21 & 22. Comment on implementation of the Law.**

**Shannon Stone:** Is there an established timeframe between the date of implementation and the date that the law will become effective?

**Tehassi Hill:** This is a question in regards to the Vehicle Driver Certification or the vehicle law amendments?

**Shannon Stone:** The Vehicle Driver Certification?

**Rae Skenandore:** Wouldn’t that be in the Resolution?

**Tani Thurner:** Well there’s something in there about the training requirement, it states in there when it would become effective, the law itself...

**Shannon Stone:** Well the Safe Driver Training but then we still have to train the workforce on the law, and so we need time in there to develop that. I’m from Human Resources Training Department, and we’re to put together the training for the workforce. So we know that there’s policy training that has to be done, and that’s not addressed within anything that I read so far. Environmental Health is going to do the safety training, they have 180 days after the law comes into effect, I believe, but we need to train the employees on the policy. So we just want to make sure there’s time for us to do that between the implementation and the effectiveness.

**Bob Keck:** Yeah, that period of time between passage and we have to have it in the hands of every employee that would be affected by it, is a piece that we asked our Training Department to assist with it, and so that department is where the question is coming from. It won’t be able to be done overnight, and I think to facilitate this what a safe number might be... if that law was passed today, that we be allowed at least sixty and maybe 90 days to be able to accomplish this, because this affects anybody that drives a tribal vehicle, and they need to.... The process of receiving information, and verifying that they’ve received it, and verification of understanding, is really, really important and we want to do it right, we don’t want to rush it. I think I can speak for HR Training on that. So if we were to throw a number out there, 60 at minimum, and 90 preferred. I think that would be ample time, if you agree.

**Shannon Stone:** Yes. Ninety days, would be great.

**Written comment: Shannon Stone:** To begin, Training and Development would like to request that there would be a 90 day interval between the date of implementation and the effective date

to allow for development of training and training of all employees on the law. During this time we will be working with the various stakeholders to determine the training needs and delivery methods. After training we will also be getting acknowledgements of receipt of training and understanding of the law from tribal employees.

*Response*

This can be incorporated in the adopting Resolution, if the LOC agrees with the recommendation.

**Comment 23. Comment on application of the Law.**

330.3-1(c) “Employee” means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe 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 and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

**Lisa Summers:** If it is a law, then it should apply to all

*Response*

This is a policy call for the LOC. At the very least, the LOC may want to consider amending the definition as was suggested during the Furlough Policy public meeting review, which was as follows:

(c) “Employee” means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe 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 and political appointees, ~~but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.~~

**Comment 24. Comment on Fleet Management being responsible for Tribal vehicles.**

330.4-2. Fleet Management shall: (a) Purchase, manage and monitor the use of Tribal vehicles including the removal of unsafe vehicles from the fleet

**Lisa Summers:** Looks like we are displacing the manager’s role a bit here

*Response*

This is a policy call as to whether Fleet Management should have this responsibility.

**Comment 25. Comment on HRD’s responsibilities under the Law.**

330.4-5. *Human Resources Department.* The Human Resources Department shall:

- (a) Maintain the list of Drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;
- (b) Perform driving record checks and approve or deny vehicle driver certification based on the review of an individual’s driving record;

- (c) Notify supervisors of the vehicle driver certification status of his or her employees or volunteers;
- (d) Assist supervisors with the administration of vehicle driver certification suspensions;
- (e) Request proof of insurance on personal vehicles driven on Tribal business;
- (f) Participate in accident investigations;
- (g) Approve vehicle driver certifications; and
- (h) Maintain documentation of all required driver training and regulatory compliance.

**Wendy Alvarez:** 330.4-5: (b) same as (g); (f) Participate in accident investigations? – why and how? They are not the experts; (g) same as (b)

*Response*

The second half of (b) could be deleted as follows: (b) Perform driving record checks ~~and approve or deny vehicle driver certification based on the review of an individual's driving record~~; As to HRD participating in investigations, this is also a responsibility of Risk Management and Fleet Management and is a policy call for the LOC to determine whether HRD should also be included.

**Comments 26 & 27. Comment on Driver safety training.**

330.4-6 *Environmental Health & Safety Division.* The Environmental Health & Safety Division shall provide Driver safety training as included herein, and provide the Human Resources Department with the names of Drivers who have completed training after each training session.

**Environmental, Health and Safety Division:** The course that EHSD uses for training should be a training module developed by a professional/public agency. The National Safety Council trains and certifies instructors and sells Defensive Driver Safety Training materials. Web link: <https://www.google.com/#q=driving+safety+training+for+employees>

**Bob Keck:** Looks fine

**Environmental, Health and Safety Division:** Training options should include web base tutorials that are offered and monitored by EHSD.

**Bob Keck:** Yes, it needs a home. Maybe additional discussion between EH&S and Training/Barb needed? Your call.

*Response*

330.7-1(c)(1) states:

Drivers of Tribal vehicles who are not governed by federal or state agency regulations for driver safety training shall complete driver safety training, as required by the Environmental Health & Safety Division, every three (3) years.

(A) The training program shall be administered, scheduled, rescheduled and documented by the Environmental Health & Safety Division.

This gives EH&S the ability to institute the type of training they believe necessary for Drivers. There are no limitations within the Law that would prevent EH&S from implementing training as suggested by the comment. No changes are recommended based on this comment.

**Comment 28. Comment regarding volunteer process and consent from entities.**

- (c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.

**Lisa Summers:** There is a process to be a tribal volunteer. Why don't we use it here? What constitutes consent from elected or appointed officials?

*Response*

It is a policy call to determine whether to incorporate volunteer processes in this Law, although it is unclear what the value would be. As to the question governing "consent," see Comments 10 & 55 above.

**Comment 29. Comment on providing written proof.**

330.5-1

- (c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.
- (d) An employee shall provide proof to Fleet Management that he or she has the consent of his or her Supervisor before using a Tribal vehicle.
- (e) Upon receiving proof that a Driver has the required consent to use a Tribal vehicle and any other individuals are eligible to travel in a Tribal vehicle, Fleet Management shall determine whether a Tribal vehicle is available.

**Wendy Alvarez:** 330.5(c), (d) and (e) request "Written" proof

*Response*

This is a policy call for the LOC to decide whether to require written proof or leave it up to Fleet Management to determine what type of proof is sufficient.

**Comment 30. Comment on application of this Law to officials.**

330.5-3. The following individuals may travel in a Tribal vehicle:

- (a) Employees, officials or volunteers who are on Tribal business.

**Lisa Summers:** But this doesn't apply to officials.

*Response*

One of the purposes of the Law is to "establish standards that certify employees, officials and volunteers to drive a Tribal vehicle or drive a personal vehicle on Tribal business." Officials are subject to the Law and there are no changes recommended based on this comment.

**Comment 31. Comment on need for an OBC SOP.**

330.5-3. The following individuals may travel in a Tribal vehicle:

- (b) Individuals who receive permission, through Oneida Business Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet Management before making a determination on these requests.

**Lisa Summers:** BC SOP is needed here.

*Response*

The LOC may want to consider forwarding this recommendation to the OBC for consideration.

**Comment 32. Comment on BC Vehicle Policy.**



330.5-4(a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy, as approved on August 17, 1990 and amended by the Oneida Business Committee.

**Lisa Summers:** Why isn't this being updated too?

*Response*

This is a policy call for the LOC if they want to take up this "policy" which seems to be more of an SOP for the use of what is now commonly referred to as the Chairperson's vehicle.

**Comment 33. Comment on side effects of prescription on over-the-counter drugs.**

330.5-7(a) A Driver of a Tribal vehicle shall not be under the influence of alcohol; illegal drugs; or prescription or over-the-counter medicine used in an unauthorized or unlawful manner.

**Lisa Summers:** Even when lawful has side effects.

*Response*

If the LOC wants to elaborate on this section as recommended by the comment, it can be expanded; however, it may be difficult to enforce.

**Comment 34. Comment on entity responsible for equipping vehicles with GPS.**

330.5-11. The Tribe may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.

**Environmental, Health and Safety Division:** 330.5-11 "The Tribe may equip tribal vehicles with GPS" On page 6, line 210-it says "Fleet Management is responsible for installation/removal" referring to GTP technology. The two should probably both say "Fleet Management"

**Bob Keck:** Yes, to be consistent.

*Response*

The change can be incorporated as recommended.

**Comment 35. Comment on travel policy application.**

330.6-1. Rental vehicles are considered Tribal vehicles for the purpose of this Law. All provisions of this Law apply to rental vehicle usage. Cars shall be rented in accordance with the Tribe's Travel and Expense Policy and Drivers of rental vehicles shall be vehicle driver certified according to the terms and conditions of this Law.

**Lisa Summers:** Double check with travel policy and what about officials?

*Response*

Section 8-3 of the Tribe's Travel and Expense policy require driver's to be on the approved Tribal vehicle drivers list with HRD. Parts of the Travel and Expense policy seems to apply to employees only, while other sections specifically refer to the Business Committee and Boards, Committees and Commissions. The LOC may want to consider this comment if the Travel and Expense policy is amended in the future. There are no recommended changes based on this comment.

**Comment 36. Comment on purchasing collision damage waivers from rental companies.**

330.6-2. Every vehicle rental shall include the purchase of the maximum collision damage waiver offered by rental companies.

**Lisa Summers:** Why?

*Response*

A financial analysis conducted on this provision explains the usefulness of this section:

The policy requires the purchase of the maximum collision damage waiver on all rental vehicles. Generally, the cost runs approximately \$25 per day. According to Purchasing, the Tribe utilizes rental vehicles 30 days a year on average. The cost would therefore be approximately \$750 annually. Oneida's physical damage (PD) deductible per accident is \$5000. Reviewing Oneida's historical claims, a car accident has an average cost of \$3,089. This amount would be paid out of pocket as it is under the deductible. Without the additional insurance from the rental agency, one accident would result in up to \$5,000 payable as the deductible. By taking the agency insurance, Oneida would realize a cost savings of \$4,250 if there is just one accident in a year. The practice pays for itself if there is one accident with a rental car in the next 6 years.

There are no changes recommended based on this comment.

**Comment 37. Comment on eligibility based on having a driver license.**

330.7-1(a) Hold a valid, non-probationary Wisconsin driver license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department.

**Shannon Stone:** The next concern was gaining an understanding of what would determine in a person's driving record that they would not be eligible or lose eligibility to maintain vehicle drive certification. Discussion with Bob Keck determined that as long as the state said the driver was eligible to drive, the driver would be able to drive for the Tribe. If the state said the driver is not eligible to drive then they would not be eligible to drive for the Tribe. This brought out the question how would a driver be impacted if they received an Occupational driver's license? Bob Keck suggested that they would have their vehicle driver certification suspended for the period identified within the law based upon whether it was the first, second, third, four or more suspensions. Then the individual could have their vehicle driver certification reinstated under the provision given within the law.

*Response*

There are no recommended changes based on this comment.

**Comment 38. Comment on restricting drivers with CDL's to the state of Wisconsin.**

330.7-1(a)(1) Drivers with commercial driver licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.

**Lisa Summers:** Why?

*Response*

This restriction was added because other states may have additional requirements that drivers with commercial driver licenses under the Tribe's law do not meet. There are no recommended changes based on the comment.

**Comment 39. Comment on length of time a person has to obtain a WI driver license.**

330.7-1(a)(3) Individuals with a driver license from a state other than Wisconsin shall obtain a Wisconsin driver license within thirty (30) days after their first day of actual employment or service and provide a copy to the Human Resources Department.

**Lisa Summers:** Should be 60 days.

*Response*

Under Wisconsin Law, a driver with a commercial driver license is required to apply for a Wisconsin driver license within thirty days of becoming a resident of the state; other drivers have sixty days. This is a policy call for the LOC as to whether they wish to make any changes based on this comment.

**Comment 40. Comment on what citations/convictions makes a Driver ineligible under the Law.**

330.7-1(b) Pass a driving record check to verify the Driver has not received a citation or been convicted of a violation which would make the Driver ineligible under this Law.

**Lisa Summers:** Cite section.

*Response*

If the LOC makes the changes recommended based on comments 2, 3 & 68, no further changes should be necessary based on this comment.

**Comment 41.**

Complete all driver training requirements imposed by the Tribe or an individual Tribal entity or by any federal or state agency regulations.

**Lisa Summers:** Approved regs for all; Any entity under (c) is included, but under (c)(1)(A), EH&S is in charge of the Training Program.

*Response*

The Law allows Tribal entities, other than the Environmental, Health & Safety Division to implement driving certification procedures that are stricter than those implemented by EH&S, as long as they do not conflict with EH&S's standards and they are approved by Fleet Management and HRD. In addition, if federal or state agency training requirements apply to a Driver, it has been determined that these training requirements sufficiently meet the intent of the training requirements contained within this Law. No changes are recommended based on this comment.

**Comment 42. Comment on creating a new section.**

330.7-1(c)(1)(C) A break in employment or service of one hundred eighty (180) days or greater requires retraining. Drivers shall be paid their regular wage by their home department for all required training.

**Lisa Summers:** This [the last sentence] should be made a new section (D).

*Response*

This change can be made and would not have a significant impact on the Law.

**Comments 43, 54 & 58. Comments on the term "immediately."**

- 330.8-1. Drivers shall notify the Human Resources Department, in writing, immediately upon:
- (a) Issuance of a driving citation involving drugs or alcohol.
  - (b) Any suspension of driving privileges by any State or regulatory agency.
  - (c) Reinstatement of driving privileges by any State or regulatory agency, if applicable.

330.10-2(b)(1) A Driver shall immediately notify the Human Resources Department of any cancelation or lapse in his or her insurance coverage.

**Lisa Summers:** What is immediately?

330.12-2. Drivers operating a Tribal vehicle shall:

- (a) report all accidents or damage involving the vehicle immediately to his or her Supervisor, Fleet Management and Risk Management.

**Lisa Summers:** Within 24 hours.

#### *Response*

This is a policy call if the LOC wants to remove the use of the term “immediately” from the Law and replace it with more definite time frames, such as “within 24 hours.”

#### **Comment 44. Comment on next steps after notification to Fleet Management regarding vehicle problems.**

330.8-2(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal vehicle to complete a trip.

**Lisa Summers:** Then what?

#### *Response*

This is a policy call as to whether to include next steps in the Law as to how Fleet Management should respond to these notifications. The intent was that Fleet Management would make determinations based on the location of the vehicle and the incident regarding: whether to tow the vehicle and who would tow it; whether to fix the vehicle and who would fix it; how to get another vehicle to a stranded driver or if a vehicle should be rented by the driver, etc.

#### **Comment 45. Comment on using communication devices in a Tribal vehicle.**

330.8-2. When a Driver uses a Tribal vehicle, he or she shall

...

- (d) Safely stop the vehicle when using devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios. This does not include authorized emergency vehicle communication equipment or on-board computers used for communication or navigation.

**Shannon Stone:** There is a lot of new technology in new vehicles including blue tooth enabled and hands free communication equipment it sounds like as long as it is on-board equipment that it is acceptable to use. For instance, my car will automatically sync up with my cell phone to the on-board computer in the car. If the phone rings, the driver may answer the call through voice activation using the car’s system. However, the phone by its design has hands free operation that is essentially identical to the capability of the vehicle. Can drivers use hands free devices while driving?

#### *Reponse*

The LOC should clarify whether hands free devices are acceptable to use while driving a Tribal vehicle as requested by the comment.

**Comment 46. Comment on time frame for notifying Supervisor/HRD of citation involving drugs or alcohol.**

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

...

(b) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol.

**Wendy Alvarez:** 330.9-1(b) within established timeframe – 5 days etc...

*Response*

Section 330.8-1 requires a driver to immediately notify HRD of receiving a driving citation involving drugs or alcohol or a suspension of driving privileges. It is a policy call for the LOC whether to change this time frame. In addition, either 330.8-1, 330.9-1, or both should be updated to reflect the same notification requirements.

**Comment 47. Comment on disciplines and other violations of the Law.**

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

(f) Knowingly driving a Tribal vehicle without being certified under the provisions of this Law.

**Shannon Stone:** Under suspension of Tribal vehicle driver certification, the law states that the driver may lose their Tribal vehicle driver certification for driving a Tribal vehicle without certification. This should probably say that drivers may be disciplined for driving a Tribal vehicle without certification. Additionally, the individual should lose their personal vehicle certification as well for the specified time in the law. There should also be a remark under suspension of personal vehicle driver certification that driving a Tribal vehicle without Tribal vehicle certification is prohibited.

*Response*

330.13-7 states: “Drivers who violate this Law may be subject to disciplinary action, in accordance with Tribal policies and procedures, whether or not the violation results in the suspension of their vehicle driver certification.”

In addition, 330.11-1 states: “A Driver shall have his or her personal vehicle driver certification suspended and shall be prohibited from driving a personal vehicle on Tribal business upon any of the following: (f) Violating any other provision of this law.” This would include violating 330.10-1, which states: “Drivers of personal vehicles on Tribal business shall be vehicle driver certified by the Human Resources Department to operate a personal vehicle on Tribal business.”

There are no changes recommended based on the comment.

**Comment 48. Comment on a waiting period before suspending vehicle driver certification.**

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

**Lisa Summers:** Is there a waiting period. How does one get instated?

*Response*

There is no waiting period included in the Law; the suspensions would be carried out immediately upon any of the violations occurring.

**Comment 51.**

330.10-2. *Insurance.* Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.

**Lisa Summers:** Distinguish between non-work related activities.

*Response*

The comment seems to be requesting that a Driver could have different minimum insurance requirements for activities that are conducted while on personal business. There are no recommended changes to the Law based on this comment as this does not seem like a reasonable request of employees; however, the LOC may want to obtain more clarification from the commenter as to the request being made in the comment.

**Comment 52. Minimum insurance requirements.**

330.10-2. *Insurance.* Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.<sup>1</sup>

(a) The minimum insurance requirements on a personal vehicle are:

- (1) \$100,000 Per Person;
- (2) \$300,000 Per Accident for Bodily Injury; and
- (3) \$25,000 Property Damage.

**Lisa Summers:** Why?

*Response*

These limits have been determined by Risk Management to be prudent minimum requirements.

**Comment 53. Comment on notifying supervisors of proof of vehicle insurance.**

330.10-2(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.

**Wendy Alvarez:** 330.10-2(b) Add supervisor to notification.

*Response*

This is a policy call for the LOC to determine whether it is necessary to notify one's supervisor every time proof of insurance is updated. Some individuals update this information on a monthly basis and although HRD is the entity responsible for maintaining the vehicle driver list, it may be more practical to give notice to supervisors who are responsible for directing employees to drive on Tribal business.

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<sup>1</sup> **Lisa Summers:** Distinguish between non-work related activities.

**Comment 56. Comment on applying the Law to those who don't submit mileage reimbursement.**

330.10-3(c) All provisions of this Law apply to Drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.

**Lisa Summers:** How?

*Response*

Reimbursement of vehicle mileage is a separate process from this Law and in the past some drivers were under the impression that they could drive a personal vehicle on Tribal business even if they were not on the driver list, as long as they did not collect mileage. This Law is intended to apply to all Drivers and the collection of vehicle mileage (or non-collection) is irrelevant.

**Comment 61 & 62. Comment on Fleet Management and Risk Management investigating accidents.**

330.12-4. All accidents involving Tribal vehicles shall be internally investigated by the Tribe. These investigations shall be coordinated and completed as necessary by Fleet Management and Risk Management, and other personnel as deemed appropriate by Fleet Management and Risk Management.

**Environmental, Health and Safety Division:** Are the Fleet Manager and/or Risk Management qualified to investigate a crash? Is there training or certification on those skills?

**Bob Keck:** Yes. If resources are needed, we'll go get them. The intent here is to have a process that can determine fault if it is not done so by law enforcement (i.e. – no citation issued, which happens) or anyone else. A property damage only "MVC" often doesn't result in assignment of fault (i.e. – often no law enforcement involved), so the facts of the incident need to be reviewed...by someone. Rick and I feel we can reasonably and objectively do that. Again, if review and/or investigation beyond us is warranted, we'll do that.

**Lisa Summers:** How is the staff trained to do this part?

*Response*

Risk Management has answered these questions and no changes are recommended based on these comments.

**Comment 63. Comment on applying law to individuals without supervisors.**

330.12-4(b) Investigation reports shall be provided to the Driver and the Driver's Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, with copies retained in Fleet Management and Risk Management for a minimum of three (3) years.

**Lisa Summers:** If there is no supervisor, it doesn't apply. Should it be a maximum of 3 years and need department SOPs.

*Response*

If this section does not apply, it is unclear who would keep these records. Requiring HRD to keep them in the absence of a supervisor would ensure similar records are kept by one entity and available in the future if needed. It is a policy call for the LOC as to whether there should be a maximum time limit, as opposed to the suggested minimum time limit and if the Law should state that individual departments need SOPs.

**Comment 64. Comment on suspending supervisor vehicle driver certification.**

330.12-5 reads in part: “If a Supervisor is aware of an accident and reporting requirements are not followed, the Supervisor is also subject to a vehicle driver certification suspension.”

**Wendy Alvarez:** 330.12-5 Supervisor certification suspended doesn’t make sense. I would suggest holding the supervisor accountable for not following tribal policy through the Disciplinary Process. You don’t want to stop the supervisor from doing their job if they need to drive. Then you will have two drivers unavailable. If the supervisor has multiple drivers (Shuttle) that could create a Customer Service concern.

*Response*

This is a policy call for the LOC to determine whether the consequences for inaction on a supervisor’s part should be included in the Law, or left up to the individual’s supervisor. The Law, as written, is requiring a violation of the Law result in a suspension of driving privileges.

**Comment 65. Comment on reporting to HRD in absence of a Supervisor.**

330.12-6. Drivers driving a personal vehicle while on Tribal business shall report all accidents to local law enforcement at the time of the accident, and to their Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, and Risk Management within twenty-four (24) hours after the accident or damage.

**Lisa Summers:** Why report to HRD if no Supervisor?

*Response*

HRD is responsible for maintaining the vehicle driver list and, in lieu of a supervisor, it seems that HRD would not know about actions that could potentially affect a driver’s certification status.

**Comment 66. Comment on suspending vehicle driver certification for being at fault in an accident.**

330.12-7. If, while driving a Tribal vehicle, a Driver is determined to be, or admitted to be, more than fifty percent (50%) at fault in an accident involving vehicle damage, property damage or personal injury, the Driver shall have his or her vehicle driver certification suspended.

**Lisa Summers:** Why and for how long?

*Response*

This seems to be prudent to have automatic consequences for a driver who is more than fifty percent at fault in an accident. The length of the suspension would depend on what suspension (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.) this is for that driver. The Law sets out the time lines in section 330.13.

**Comment 67. Comment on frequent insurance lapses**

330.13. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver Certification and Disciplinary Action

**Wendy Alvarez:** 330.13 There are employees who lapse for one day or more each month due to monthly renewals on their policy. Who will keep track of these suspensions? Over what amount of time does this cover – (entire employment if no break, 20 years, 10 years etc).



*Response*

The LOC may want to consider adding a provision to 330.10-2(b) that sets a minimum time frame for acceptable/unacceptable lapses in insurance. For example:

(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.

(1) A Driver shall immediately notify the Human Resources Department of any cancelation or lapse of five (5) days or more in his or her insurance coverage.

**Comment 69. Screening out ineligible drivers who apply for jobs.**

330.13-4. Drivers who incur more than three (3) vehicle driver certification suspensions under this Law shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.

**Wendy Alvarez:** 330.13 If the employee lost their eligibility to drive for 3 years, do we screen them out of the hiring process as well for any position requiring vehicle clearance for three years.

*Response*

An employee who loses their eligibility to drive for three years loses that eligibility based on multiple vehicle driver certification suspensions under the Law or a driving conviction or citation involving drugs or alcohol. If an individual leaves the Tribe for one hundred eighty or more days, it would clear their driver record. The LOC may want to clarify this section to indicate that whether the hundred eighty days begins upon the break in employment/service or upon the expiration of the suspension. This may prevent confusion in the case of an employee who leaves the Tribe in the beginning of a suspension and applies for a position with the Tribe after the one hundred eight days expires, but before the three year suspension is completed.

**Comment 70. Comment on 3 year suspension for driving citations involving drugs or alcohol.**

Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, this Law requires suspension of vehicle driver certification upon the issuance of a driving citation involving drugs or alcohol and will only allow reinstatement of vehicle driver certification upon the dismissal of the citation or upon three (3) years passing from the date of conviction.

**Lisa Summers:** Where is the 3 years coming from? It could be a year before a person is convicted.

*Response*

This time lime was incorporated based on recommendations from Risk Management.

**Comment 71. Comment on reinstating vehicle driver certification.**

330.14-2. An individual whose vehicle driver certification is suspended for thirty-one (31) days or more may have his or her vehicle driver certification reinstated after the following.

(a) The individual requests re-instatement of his or her vehicle driver certification after:

(1) A vehicle driver certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and

- (2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and
- (3) The state removes a driver license suspension; and
- (4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage; and

**Lisa Summers:** What if they don't all apply? Under (a)(2) could take years to get a conviction.

*Response*

If a section does not apply, then that section should be determined to have been met. A conviction could take years to obtain, it is a policy call for the LOC to determine whether alternate time frames should be used.

**Comment 72. Comment on rechecking driver's vehicle certification.**

**Wendy Alvarez:** Will all current driver's be rechecked? If so, within what timeframe? Gaming Personnel Services would require at least one month of the implementation of the law to re-check all Driver's in the Gaming Division.

*Response*

It does not appear that all drivers will need to be rechecked; however, it may be beneficial to state in the Law and/or adopting Resolution that these new requirements apply going forward and convictions/citations and other actions that occur before this Law goes into effect will be treated in accordance with the previous policy. In addition, the LOC may want to consider whether past violations will/will not count as a suspension under the new Law.

**Conclusion**

There were multiple comments provided on the Law, both at the public meeting and in writing which the LOC should consider and incorporate as appropriate. After the LOC reviews the comments and provides direction as to any changes necessary based on the comments, the draft and analysis should be updated and may be prepared for OBC consideration.

**Chapter 330**  
**Vehicle Driver Certification and Fleet Management**

- |  |   |
|--|---|
| 330.1. Purpose and Policy                        | 330.9. Suspension of Tribal Vehicle Driver Certification  |
| 330.2. Adoption, Amendment, Repeal               | 330.10. Drivers – Personal Vehicle Use on Tribal Business   |
| 330.3. Definitions                               | 330.11. Suspension of Personal Vehicle Driver Certification   |
| 330.4. Tribal Department Responsibilities        | 330.12. Accidents   |
| 330.5. Tribal Vehicles - Usage                   | 330.13. Vehicle Driver Certification Suspensions, Permanent Loss<br>of Vehicle Driver Certification and Disciplinary Action |
| 330.6. Rental Vehicles                           | 330.14. Reinstatement of Vehicle Driver Certification   |
| 330.7. Tribal Vehicle Driver Certification       | 330.15. Supervisor Responsibilities   |
| 330.8. Driver Responsibilities – Tribal Vehicles |   |

Analysis by the Legislative Reference Office					
Title	Vehicle Driver Certification and Fleet Management (the Law)				
Requester	Bob Keck, Risk Management	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	Submitted on June 15, 2012, this proposal would replace the current Fleet Management Policy and Vehicle Driver Certification Policy with a single law. OBC Resolution #01-14-09-G set aside Chapters 300-399 of the Code of Laws as the Employment Relations Code, with the intent that all employment-related legislation eventually be organized and re-codified there. This is one such law.				
Purpose	Governs the management of Tribally-owned vehicles, and certification for Tribal employees, volunteers and officials to drive a Tribal Vehicle, or to drive a Personal Vehicle while conducting Tribal business.				
Authorized/ Affected Entities	Fleet Management, Risk Management, HRD, Environmental Health & Safety Division, Department of Public Works, Automotive Department, Supervisors				
Due Process	None				
Related Legislation	Fleet Management Policy; Vehicle Driver Certification Policy; Travel and Expense Policy; OBC Vehicle Policy; Drug and Alcohol Free Workplace Policy				
Policy Mechanism	Driver certification				
Enforcement	Suspending certification, loss of use of Tribal Vehicles, disciplinary action				

**Overview**

This Law repeals two existing Tribal policies, but incorporates most of their provisions into one new Tribal Law that governs Tribal employees, elected and appointed officials, and volunteers in the use of Tribal Vehicles, and Personal Vehicles being used by drivers conducting Tribal business. Various changes also update and streamline the existing requirements.

For the purposes of this analysis, the term “Tribal Vehicle Certification” refers to certification to drive a Tribal Vehicle, and “Personal Vehicle Certification” refers to certification to drive a Personal Vehicle while conducting Tribal business. When the term “Personal Vehicle” is used, it refers to the use of a Personal Vehicle while conducting Tribal business.

**Proposed Amendments**

**Vehicle Driver Certification**

Currently, drivers must have Tribal Vehicle certification in order to operate a Tribal Vehicle; and Personal Vehicle certification in order to drive a Personal Vehicle on Tribal business. Both certifications require the driver to have a Wisconsin driver’s license. This Law adds that drivers must have the appropriate license within 30 days after their start date; the license must not be probationary; and an occupational license qualifies if the driver’s abstract allows the driver to operate the necessary vehicle for their job with the Tribe. [330.7-1(a) and 330.10-1(a) and the Vehicle Driver Policy, I.A.1. and I.B.1.]

The Law clarifies that Personal Vehicle Drivers are subject to this Law regardless of whether they apply for mileage reimbursement. 330.10-3 (c)

#### *Training Requirements*

The Law adds a new requirement whereby drivers must attend driver safety training every three years in order to become Tribal Vehicle certified. Drivers must complete the required training within 180 days after this Law becomes effective. [330.7-1(c)]

- Training is not required for Personal Vehicle certification or for Tribal Vehicle Drivers who are already governed by – and satisfy - other federal/state agency requirements for driver safety training.<sup>1</sup>
- Training is conducted by the Environmental Health and Safety Division (EHSD).
- Drivers will be paid their regular wage for all required training – this means employees would earn their regular pay and volunteers would not be compensated for attending the training. The Comprehensive Policy, 11-6(a) provides that officials are eligible for a \$100 stipend for each full day of being present at a training, when attendance is required by law, bylaw or resolution – and this training will most likely be seen as being required by law.
- A break in employment or service of 180 days or more requires retraining.
- The Law also adds that supervisors may refer Drivers to EHSD or another appropriate agency or training source for additional driver training. [330.15-3(a)]

#### *Driving Records*

Currently, for Tribal Vehicle Certification, a driver must not have been convicted, within the past three years, of various driving violations listed within the Vehicle Driver Certification Policy. This Law no longer lists specific driving violations – instead, for both Tribal and Personal Vehicle Certification, the driver must pass a driving record check by HRD to verify the Driver has not been cited for, or convicted of, a violation which would make the Driver ineligible under this Law.<sup>2</sup> [330.7-1(b) and 330.10-1(b)] The Law adds that:

- **Tribal Vehicle certification only** - if a driver is at least 50% at fault in an accident involving the Tribal Vehicle - and vehicle damage, property damage or personal injury, then his or her Tribal Vehicle certification must be suspended. [330.12-7]
- **Both Tribal and Personal Vehicle certification** - Any person cited for a motor vehicle operation offense involving drugs or alcohol will be ineligible to be certified for three years after the conviction date, or until the citation is dismissed. [330.13-5]

#### *Insurance Requirements*

Currently, only Tribal Vehicle drivers are required to authorize HRD to check their driving records. This Law also requires Personal Vehicle drivers to authorize checks as well, and adds that the Tribe reserves the right to check – or allow insurance carriers to check - driving records of a Driver at any time. [330.7-1(b), 330.7-3, and 330.10-1(b)]

#### *New Eligibility Reporting Requirements*

The Law changes the current requirements relating to information a driver is required to report:

	Current Policies	Proposed Law [330.8-1, 330.9-1 and 330.11-1]
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<sup>1</sup> Lisa Summers: No, says in addition to 330.7. Where is the roll-out plan?

<sup>2</sup> Lisa Summers: What is that?

<b>What to report:</b>	<b>Any convictions affecting their eligibility to be certified.<sup>3</sup></b>	<ul style="list-style-type: none"> <li>• Citations for driving infractions involving drugs or alcohol</li> <li>• Driving privileges suspended or reinstated by the state or a regulatory agency</li> </ul>
<b>When to report:</b>	Within 5 working days	Immediately
<b>Reporting to:</b>	HRD	The driver's supervisor and HRD
<b>This applies to:</b>	Tribal Vehicle Drivers	Tribal and Personal Vehicle Drivers

The Law also now requires Personal Vehicle Certified drivers to immediately notify HRD if their insurance coverage is cancelled or lapses, whereby HRD must immediately remove the driver from the list of certified drivers and notify the Driver's supervisor (if an employee or volunteer) or Tribal entity (if an official). [330.10-2 (b)(1)]

#### *Accident Reporting*

	<b>Tribal Vehicle Drivers [330.12-2]</b>	<b>Personal Vehicle Drivers [330.12-6]</b>
What must be reported to law enforcement:	Accidents or damage to <u>Tribal Vehicles</u> that resulted in: <ul style="list-style-type: none"> <li>• Death</li> <li>• injury requiring medical intervention</li> <li>• damage to property not belonging to the Driver/ Tribe</li> <li>• The Tribal Vehicle being disabled or towed.</li> </ul>	<b>All accidents<sup>4</sup></b>
What must be reported to the Tribe:	Must <u>immediately</u> report all accidents or damage involving the vehicle to his/her Supervisor, Fleet <u>and</u> Risk Management, <u>and</u> provide Fleet Management and Risk Management with a completed incident report within 24 hours	Must report all accidents to their Supervisor (or HRD if no Supervisor) and Risk Management within 24 hours

The Law also adds that:

- Both Tribal and Personal Vehicle Drivers must follow any additional accident reporting requirements for vehicles regulated by a state or federal agency. [330.12-3]
- If a Supervisor is aware of an accident and reporting requirements are not followed, the Supervisor's own certification may be suspended.[330.12-5]
- If the Tribe's Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that Policy shall apply. [330.12-1]

#### *Rental Vehicles*

New provisions are added to address rental vehicles, which are considered Tribal Vehicles for the purpose of this Law. Drivers must be Tribal Vehicle driver certified; cars must be rented in accordance with the Tribe's Travel and Expense Policy; and the maximum collision damage waiver offered by rental companies must be purchased.<sup>5</sup> [330.6]

#### *Nonbusiness miles*

Tribal Vehicles still cannot be used for personal use or non-business miles. There is no longer an exception for unexpected medical emergencies, but a new exception is added: personal/non-business use is permitted "as authorized by the Business Committee Vehicle

<sup>3</sup> **Lisa Summers:** What? How does someone know what to report?

<sup>4</sup> **Lisa Summers:** Both should require all accidents be reported to law enforcement.

<sup>5</sup> **Lisa Summers:** 8-3 and 8-10 of the Travel and Expense Policy– what if both employees.

Policy<sup>6</sup>. [330.5-4(a)] The OBC Vehicle Policy, in turn, only permits personal use in one situation - the Tribal Chair may use the Tribal Vehicle for commuting to and from Tribal headquarters. [III.E. and III.F.] This provision was added to eliminate conflict between this Law and the OBC Vehicle Policy. To create more exceptions, the OBC Vehicle Policy would have to be amended.

This Law instead only permits three categories of people to be passengers in a Tribal Vehicle:

- Employees, officials and volunteers on Tribal business.
- Individuals who receive permission, through OBC motion, to travel in a Tribal Vehicle.
- Individuals being transported as part of a Tribal program or service. [330.5-3]

#### *Drug and Alcohol Use*

Currently, the policies prohibit employees from using a Tribal Vehicle while under the influence of alcohol or drugs. The Law instead prohibits use of a Tribal Vehicle by an individual under the influence of alcohol, illegal drugs, or prescription or over the counter medicine used in an unauthorized or unlawful manner. [330.5-7(a)]

#### *Suspension of Certification*

Both types of certification can be suspended for any violation of this Law. The Law adds that regardless of whether certification is suspended, drivers who violate this Law may also be subject to further disciplinary action [330.13-7, 330.9-1 and 330.11-1]

The Law adds that certification can be suspended for knowingly driving a Tribal Vehicle without being certified – this looks like it is intended to apply to persons who already have their certification suspended, but who drive anyway. [330.9-1(f)]

<b>Length of Suspension</b> [330.13 and 330.3-1(j)]	
<i>*“Workday” is defined as “a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend.”</i>	
<b>First suspension</b>	At least 5 workdays
<b>Second suspension</b>	At least 10 workdays
<b>Third Suspension</b>	At least 15 workdays <sup>7</sup>
<b>Fourth or more</b>	3 years

The Law also adds that a break in employment/service of 180 days or more will clear the Driver’s record of any prior suspensions.<sup>8</sup> [330.13-4] This means that no matter how many prior suspensions a driver had, the next suspension would be treated as a first offense.

#### *Reinstatement of Certification*

The Law adds that when certification is suspended for 30 days or less, it is automatically reinstated when the suspension expires. Suspensions of 31 days or longer end after the suspension ends and the reason for the ineligibility expires - the individual must request reinstatement, submit written proof of insurance, and receive HRD approval in order to be reinstated. However, if it is the individual’s fourth suspension or due to a conviction of motor vehicle operation citation involving drugs or alcohol, then HRD, Fleet Management and Risk Management must give unanimous approval for reinstatement. [330.14-2]

<sup>6</sup> As approved on August 17, 1990 and amended by the OBC.

<sup>7</sup> **Lisa Summers:** Too short; 10 should be 30; 15 should be 45.

<sup>8</sup> **Lisa Summers:** No.



However, notwithstanding any regular suspension or reinstatement; HRD, Fleet Management and Risk Management can unanimously agree to suspend a driver's certification or extend a suspension based on the best interests of the Tribe. [330.13-6]

#### *Suspended Certification Affecting Job Duties*

Where an employee's certification is suspended and it affects his/her ability to perform job duties, the supervisor no longer has sole discretion on how to address the matter – instead, the employee is now responsible for requesting, in writing, that the supervisor and an HRD representative jointly determine available options - i.e. accommodation in the employee's home department, unpaid leave, termination, etc. The Law also adds that this is only an option if the employee's certification is suspended for more than five days. [330.9-2]

Currently, a supervisor may accommodate an employee by removing the driving requirement from the employee's job description. This language was specifically excluded from the new Law with the intent is that this would no longer be an option that could be exercised.<sup>9</sup>

#### *New Authorities, Responsibilities, Requirements*

The Law also adds new authorities and responsibilities for various parties:

- **Personal Vehicle drivers** must maintain and provide updated proof of insurance; and immediately notify HRD if their insurance is cancelled/lapses. [330.10-2(b)]
- **Tribal Vehicle drivers** are now responsible for:
  - Ensuring Tribal Vehicle use rules are followed when the vehicle is under his/her control, following all traffic laws, respecting property, being courteous, using good judgment, and keeping the interior of the vehicle in good/clean condition. [330.5-7 and 330.5-10]
  - Safely stopping the vehicle when using various electronic devices and reading materials, except for for authorized emergency vehicle communication and on-board computers used for navigation/communication. [330.8-2(d)]
  - Providing proof to Fleet Management of any necessary consent to use a non-permanently-assigned Tribal Vehicle.<sup>10</sup> [330.5-1(c) and (d)]
  - Complying with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol-Free Workplace Policy. [330.12-2(c)]
- **Supervisors:**
  - must ensure that drivers have the appropriate training; and that their insurance information is on file with HRD; and
  - must investigate all infractions of this Law of which they become aware; and implement disciplinary action against employees who violate this Law. [330.15-1]
  - may refer drivers to the Employee Assistance Program in accordance with "applicable" Tribal policies/procedures. [330.15-3(b).]
- **HRD:** The Law codifies duties already being performed by HRD; including:
  - performing driving record checks/reviews and approving certifications.
  - notifying supervisors or Tribal entities of the certification status of their employees and volunteers. [330.4-5]
  - The Law now also requires HRD to notify individuals during the hiring process, in writing, if they are ineligible to become vehicle driver certified. [330.10-4]

<sup>9</sup> **Lisa Summers:** HRD Supervisors may need to rework job descriptions to see who needs driving requirements. Needs to be a BFQ.

<sup>10</sup> **Lisa Summers:** How will this be done when there is no supervisor?

- Before issuing a Tribal Vehicle, **Fleet Management** must now confirm that the driver is properly certified and has consent; and must require proof that any other individuals are eligible to ride in a Tribal Vehicle. [330.5-1]
- **Risk Management** must provide insurance cards in Tribal Vehicles. [330.4-4(b)]
- **Fleet Management and Risk Management** are jointly responsible for accident investigations, determining fault in an accident if law enforcement hasn't done so; making recommendations as to when certification should be suspended; and participating in situations related to approval of driver certifications. [330.4-2, 330.4-4(e) and 330.12-4]

#### *Specific Certification/Driving/Training/Licensing Requirements*

Rules governing more specific licensing requirements were deleted, as these are addressed in other Tribal driving policies. The Law adds that Tribal Vehicle drivers are subject to all specialized requirements necessary to comply with the rules of specific departments and/or state or federal regulatory agencies. [330.5-12]

Departments are no longer required to create SOPs to minimize risk exposure, but may still require stricter driving and certification requirements. These must now be approved by both Fleet Management and HRD. [330.7-2] The Law adds that those with a Commercial Driver License may be restricted to only operating Tribal Vehicles within the state of Wisconsin. [330.7-1(a)(1)]

#### *Other Changes*

- Tribal Vehicles may be equipped with GPS systems to monitor vehicle use. Fleet Management is responsible for installation/removal. [330.4-2(e) and 330.5-11]
- Currently, all drivers and passengers in Tribal Vehicles must comply with the Wisconsin seat belt law. The Law instead requires all drivers and passengers in both Tribal and Personal Vehicles to wear seat belts at all times. [330.10-5 and 330.5-7(d)]
- One Stop, instead of DPW fuel pumps, must generally be used for Tribal Vehicles. [330.5-7(c)]
- New provisions address Personal Vehicle mileage reimbursement. [330.10-3]
- Hitchhikers are still not permitted in Tribal Vehicles, but there is no longer an emergency exception for assisting disabled motorists. The Law is still silent as to Personal Vehicles. Trailer hitches are no longer specifically prohibited on Tribal Vehicles. Tribal logos are now required to be placed on all Tribal Vehicles. Tribal entities can no longer request an exception. Personal Vehicle Drivers are prohibited from using their vehicles for personal gain of any kind, just as Tribal Vehicle Drivers are. [330.10-3(b) and 330.5-5]
- Tribal entities are no longer required to drive at least 14,000 miles/year in order to have their own designated vehicle. Instead, Fleet Management determines the minimum mileage necessary for a designated vehicle. [330.5-2]

#### **Miscellaneous**

The definition of employee is updated to reflect a standardized definition used in other recent legislation. [330.3-1(c)] Minor changes bring the Law into compliance with the Drug and Alcohol Free Workplace Policy. [330.5-8(a)] Section 330.2 was added and revised to ensure the new Law complies with the Legislative Procedures Act (LPA); and this Law can only be amended by the OBC pursuant to the LPA. [330.2-2]

A public meeting was held on April 25, 2014. The comments received during the public meeting and public comment period have been reviewed and any changes based on those comments have been incorporated into this draft.



### Considerations

- The Law does not identify whether or how any disciplinary or suspension actions could be appealed.<sup>11</sup>
- The Law is intended to apply not only to employees, but also to elected and appointed officials and volunteers, but some provisions do not consistently reflect this:
  - 330.10-4 states that “During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by [HRD]. Drivers who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility by their Supervisor and in writing by [HRD].” There is no hiring process for officials or volunteers, and they do not have supervisors.<sup>12</sup>
  - 330.9-2 sets out how an employee whose vehicle driver certification is suspended can request a meeting with HRD and their supervisor to determine what options are available to them if the suspension affects their ability to perform their duties, but there is no similar provision for officials and volunteers.<sup>13</sup>
  - 330.15-1(i) requires supervisors to implement disciplinary action against Drivers who violate this Law, in accordance with the Personnel Policies. However, those do not apply to officials or volunteers, and again, they may not have supervisors.<sup>14</sup>
  - 330.12-2(c) requires Tribal Vehicle drivers to comply with any alcohol/drug testing requirements under the Tribe’s Drug and Alcohol Free Workplace Policy (DAFWP). However, that Policy specifically only applies to employees, and not to officials, and it appears it would not apply for volunteers. Under the DAFWP [section 8-3], employees involved in a work-related accident are required to immediately undergo drug and alcohol testing and cannot refuse to submit to any post-accident testing requested by certified drug and alcohol technicians, police, or Employee Health Nursing. In short, this requirement would not extend to officials or volunteers.<sup>15</sup>
- 330.5-7(a) strictly prohibits Tribal Vehicle Drivers from being under the influence of alcohol, illegal drugs, or prescription or over-the-counter medicine used in an unauthorized or unlawful manner. 330.5-3 authorizes some persons who are not employees, officials or volunteers, to ride in Tribal Vehicles, in some situations. However, are no similar provisions governing Personal Vehicles. This is a policy call.<sup>16</sup>

<sup>11</sup> **Bob Keck:** This isn’t a disciplinary Law. If discipline stemming from the enforcement of the Law is given, it would be under a Blue Book policy. Appeals of disciplinary actions would follow Blue Book policy. Regarding appeals, this is true. In going by State rules, there aren’t appeals expected if the State revokes/suspends a license. In 330.9- of the proposed Law, it’s possible that under 330.9-1(b) and (f) could be appealed, perhaps (g). Recommendation, add to the Law that appeals can be made to the Supervisor’s Supervisor. This would mirror an existing process.

<sup>12</sup> **Bob Keck:** Recommendation – Add clause stating that HRD, the area responsible for driving record checks, also notify officials and volunteers in writing of ineligibility.

<sup>13</sup> **Bob Keck:** Correct. Recommendation – Clarify that elected officials can also meet with HRD the same as an employee can. Other officials such as those who serve on boards, and volunteers, would not have this option.

<sup>14</sup> **Bob Keck:** Correct. I don’t believe there is an answer for this consideration. In lieu of discipline, officials or volunteers may simply not be an approved/certified driver.

<sup>15</sup> **Bob Keck:** Correct. I don’t believe there is an answer for this consideration. No testing. In a situation involving an official or volunteer, and it is determined that drugs or alcohol are involved, the result in a 3-year suspension of driving certification. Generally, it is assumed that if an incident occurs, the Law requires immediate reporting. The responding police jurisdiction would (should) be the point for determining if drugs or alcohol are involved and that result would be documented. A 3-year suspension would follow.

<sup>16</sup> **Bob Keck:** Law constructed to be silent on this and the recommendation is to leave it silent.

## Chapter 330

### Vehicle Driver Certification and Fleet Management<sup>1718</sup>

#### 330.1. Purpose and Policy

330.1-1. The purposes of this Law are to:

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

330.1-2. It is the policy of the Tribe to:<sup>19</sup>

- (a) minimize the Tribe's liability when physical damage to vehicles and/or property damage occurs as a result of vehicle accidents<sup>20</sup>; and
- (b) improve the efficiency and effectiveness of the use of Tribal vehicles.

#### 330.2. Adoption, Amendment, Repeal

330.2-1. This Law was adopted by the Oneida Business Committee by Resolution<sup>2122</sup>.

<sup>17</sup> **Environmental, Health and Safety Division:** Law vs Policy. Laws are the standard rules and regulations that everyone under the jurisdiction of the government is required to follow. Laws are minimum standards that protect people, property, and the environment. Laws are enforced through governmental judicial systems. Oneida derives the authority to make laws under the status of a sovereign nation. Policies reflect the mission and objectives of an organization and are prescriptive and operational. Policies set standards above and beyond minimum standards. Policies are enforced through organizational disciplinary procedures and by-laws. Oneida sets policy and workplace rules that apply to employees under the tribe's status as an employer.

☐ Recommendation – the Vehicle Driver Certification and Fleet Management law should be a policy.

**Bob Keck:** I'm good either way on law v. policy. Looking big picture, policy might be easier to amend should the need arise in the future

<sup>18</sup> **Lisa Summers:** Is it a law (applies to all tribal members); or a policy?

<sup>19</sup> **Environmental, Health and Safety Division:** Add – the first policy statement should be about protecting Oneida employees and the community.

**Bob Keck:** Good suggestion.

<sup>20</sup> **Environmental, Health and Safety Division:** Every place it says "accident" it should say "motor vehicle crash." MVC's are rarely accidents, and can almost always be prevented. By calling them "accidents" - it implies the driver has no influence or ability to prevent the situation.

**Bob Keck:** I don't oppose using motor vehicle crash v. accident....good point made.

<sup>21</sup> **Shannon Stone:** Is there an established timeframe between the date of implementation and the date that the law will become effective?

**Tehassi Hill:** This is a question in regards to the Vehicle Driver Certification or the vehicle law amendments?

**Shannon Stone:** The Vehicle Driver Certification?

**Rae Skenandore:** Wouldn't that be in the Resolution?

**Tani Thurner:** Well there's something in there about the training requirement, it states in there when it would become effective, the law itself...

**Shannon Stone:** Well the Safe Driver Training but then we still have to train the workforce on the law, and so we need time in there to develop that. I'm from Human Resources Training Department, and we're to put together the training for the workforce. So we know that there's policy training that has to be done, and that's not addressed within anything that I read so far. Environmental Health is going to do the safety training, they have 180 days after the law comes into effect, I believe, but we need to train the employees on the policy. So we just want to make sure there's time for us to do that between the implementation and the effectiveness.

**Bob Keck:** Yeah, that period of time between passage and we have to have it in the hands of every employee that would be affected by it, is a piece that we asked our Training Department to assist with it, and so that department is where the question is coming from. It won't be able to be done overnight, and I think to facilitate this what a safe number might be... if that law was passed today, that we be allowed at least sixty and maybe 90 days to be able to accomplish this, because this affects anybody that drives a tribal vehicle, and they need to.... The process of receiving information, and verifying that they've received it, and verification of understanding, is really, really

330.2-2. This Law may be amended by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

330.2-3. 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.

330.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

(a) BC-09-09-98-A (Resolution Adopting Amended Vehicle Driver Certification Policy)

(b) BC-09-24-97-E (Resolution Adopting Vehicle Fleet Management Policy)

330.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 330.3. Definitions

330.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Business miles" means miles driven in a vehicle by an individual in order to conduct Tribal business.

(b) "Drivers" means employees, officials and volunteers who are vehicle driver certified to operate a Tribal vehicle or a personal vehicle on Tribal business.

(c) "Employee" means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe 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 and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.<sup>23</sup>

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

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

(f) "Tribal" or "Tribe" means the Oneida Tribe of Indians of Wisconsin.

(g) "Tribal entity" means a Tribal department, enterprise, program, board, committee or commission.

(h) "Tribal vehicle" means all vehicles owned or leased by the Tribe.

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important and we want to do it right, we don't want to rush it. I think I can speak for HR Training on that. So if we were to throw a number out there, 60 at minimum, and 90 preferred. I think that would be ample time, if you agree.

**Shannon Stone:** Yes. Ninety days, would be great.

<sup>22</sup> **Shannon Stone:** To begin, Training and Development would like to request that there would be a 90 day interval between the date of implementation and the effective date to allow for development of training and training of all employees on the law. During this time we will be working with the various stakeholders to determine the training needs and delivery methods. After training we will also be getting acknowledgements of receipt of training and understanding of the law from tribal employees.

<sup>23</sup> **Lisa Summers:** If it is a law, then it should apply to all.

- (i) "Volunteer" means a person who provides a service to the Tribe without receiving pay.
- (j) "Workday" means a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend.

#### 330.4. Tribal Department Responsibilities

330.4-1. *Department of Public Works.* The Department of Public Works shall maintain a Fleet Management and an Automotive Department to assist with the implementation of the provisions of this Law.

330.4-2. *Fleet Management.* Fleet Management shall:

- (a) Purchase, manage and monitor the use of Tribal vehicles including the removal of unsafe vehicles from the fleet<sup>24</sup>;
- (b) Obtain estimates of and schedule Tribal vehicle repairs when necessary;
- (c) Participate in accident investigations;
- (d) Participate in situations requiring approval of Driver certifications; and
- (e) Install or remove global positioning system monitors on Tribal vehicles.

330.4-3. *Automotive Department.* The Automotive Department shall service and maintain Tribal vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to Fleet Management.

330.4-4. *Risk Management.* Risk Management shall:

- (a) Secure and maintain insurance coverage for all Tribal vehicles;
- (b) Provide auto insurance identification cards in every Tribal vehicle;
- (c) Process all vehicle claims and information submitted to them;
- (d) Submit claims to the insurance company;
- (e) Participate in accident investigations; and
- (f) Participate in situations requiring approval of Driver certifications.

330.4-5. *Human Resources Department.* The Human Resources Department shall:<sup>25</sup>

- (a) Maintain the list of Drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;
- (b) Perform driving record checks and approve or deny vehicle driver certification based on the review of an individual's driving record;
- (c) Notify supervisors of the vehicle driver certification status of his or her employees or volunteers;
- (d) Assist supervisors with the administration of vehicle driver certification suspensions;
- (e) Request proof of insurance on personal vehicles driven on Tribal business;
- (f) Participate in accident investigations;
- (g) Approve vehicle driver certifications; and
- (h) Maintain documentation of all required driver training and regulatory compliance.

330.4-6 *Environmental Health & Safety Division.* The Environmental Health & Safety Division shall provide Driver safety training as included herein, and provide the Human Resources Department with the names of Drivers who have completed training after each training session.<sup>26,27</sup>

<sup>24</sup> **Lisa Summers:** Looks like we are displacing the manager's role a bit here.

<sup>25</sup> **Wendy Alvarez:** 330.4-5: (b) same as (g); (f) Participate in accident investigations? – why and how? They are not the experts; (g) same as (b)

<sup>26</sup> **Environmental, Health and Safety Division:** The course that EHSD uses for training should be a training module developed by a professional/public agency. The National Safety Council trains and certifies instructors and

**330.5. Tribal Vehicles - Usage**

330.5-1. Drivers that do not have access to a permanently assigned Tribal vehicle may request to use a Tribal vehicle to conduct Tribal business by submitting a request to Fleet Management.

(a) Whenever possible, requests shall be made to Fleet Management at least one (1) week in advance. Fleet Management may cancel reservations that are not fulfilled in a timely manner and may combine vehicle use for travel to the same destination.

(b) Fleet Management shall confirm a Driver is vehicle driver certified before approving the use of a Tribal vehicle.

(c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.<sup>28</sup>

(d) An employee shall provide proof to Fleet Management that he or she has the consent of his or her Supervisor before using a Tribal vehicle.

(e) Upon receiving proof that a Driver has the required consent to use a Tribal vehicle and any other individuals are eligible to travel in a Tribal vehicle, Fleet Management shall determine whether a Tribal vehicle is available.<sup>29</sup>

330.5-2. In order to have a Tribal vehicle permanently assigned to a Tribal entity, the entity shall drive a minimum number of miles annually, as determined by Fleet Management. Exceptions to the mileage criteria may be granted upon request by a Tribal entity and with written approval from Fleet Management.

330.5-3. The following individuals may travel in a Tribal vehicle:

(a) Employees, officials or volunteers who are on Tribal business.<sup>30</sup>

(b) Individuals who receive permission, through Oneida Business Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet Management before making a determination on these requests.<sup>31</sup>

(c) Individuals being transported as part of a Tribal program or service.

330.5-4. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites. Tribal vehicles shall not be used for any of the following:

(a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy, as approved on August 17, 1990 and amended by the Oneida Business Committee.<sup>32</sup>

(b) Vacation.

(c) Towing cargo for personal reasons.

(d) Hauling loads that could structurally damage the vehicle.

(e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.

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sells Defensive Driver Safety Training materials. Web link:  
<https://www.google.com/#q=driving+safety+training+for+employees>

**Bob Keck:** Looks fine

<sup>27</sup> **Environmental, Health and Safety Division:** Training options should include web base tutorials that are offered and monitored by EHSD.

**Bob Keck:** Yes, it needs a home. Maybe additional discussion between EH&S and Training/Barb needed? Your call.

<sup>28</sup> **Lisa Summers:** There is a process to be a tribal volunteer. Why don't we use it here? What constitutes consent from elected or appointed officials?

<sup>29</sup> **Wendy Alvarez:** 330.5(c), (d) and (e) request "Written" proof.

<sup>30</sup> **Lisa Summers:** But this doesn't apply to officials.

<sup>31</sup> **Lisa Summers:** BC SOP is needed here.

<sup>32</sup> **Lisa Summers:** Why isn't this being updated too?



- 404 (f) Transporting hitchhikers.  
405 (g) Jump starting vehicles, other than Tribal vehicles.  
406 330.5-5. Tribal logos shall be placed on all Tribal vehicles.  
407 330.5-6. A radar detection device shall not be installed or used in a Tribal vehicle.  
408 330.5-7. *General.* A Driver of a Tribal vehicle shall ensure the following rules regarding the use  
409 of a Tribal vehicle are followed when the Tribal vehicle is under his or her control.  
410 (a) A Driver of a Tribal vehicle shall not be under the influence of alcohol; illegal drugs;  
411 or prescription or over-the-counter medicine used in an unauthorized or unlawful  
412 manner.<sup>33</sup>  
413 (b) There is no smoking allowed in Tribal vehicles.  
414 (c) Oneida One Stops shall be used for fueling Tribal vehicles, unless the Tribal vehicle  
415 needs fuel before it can be taken to an Oneida One Stop.  
416 (d) All Drivers of and passengers in Tribal vehicles shall wear seat belts at all times.  
417 330.5-8. Modifications to Tribal vehicles for personal reasons shall not be permitted.  
418 Modifications to Tribal vehicles for operating purposes may be allowed only with the approval  
419 of Fleet Management.  
420 330.5-9. A Tribal entity shall regularly schedule service work, maintenance work and safety  
421 checks with the Automotive Department for any Tribal vehicle assigned to the entity.  
422 330.5-10. A Driver of a Tribal vehicle shall follow all traffic laws, respect property, be  
423 courteous and use good judgment. Vehicle interiors should be kept in good condition, clean and  
424 free of debris.  
425 330.5-11. The Tribe may equip Tribal vehicles with Global Positioning Systems (GPS) to  
426 monitor vehicle usage.<sup>34</sup>  
427 330.5-12. *Specialized Requirements.* Drivers of Tribal vehicles are subject to all specialized  
428 requirements necessary to comply with specific departmental rules regarding age, experience,  
429 training, licensing, additional provisions and/or specialized requirements and rules imposed by  
430 state or federal regulatory agencies.  
431  
432 **330.6. Rental Vehicles**  
433 330.6-1. Rental vehicles are considered Tribal vehicles for the purpose of this Law. All  
434 provisions of this Law apply to rental vehicle usage. Cars shall be rented in accordance with the  
435 Tribe's Travel and Expense Policy and Drivers of rental vehicles shall be vehicle driver certified  
436 according to the terms and conditions of this Law.<sup>35</sup>  
437 330.6-2. Every vehicle rental shall include the purchase of the maximum collision damage  
438 waiver offered by rental companies.<sup>36</sup>  
439  
440 **330.7. Tribal Vehicle Driver Certification**  
441 330.7-1. Drivers shall be vehicle driver certified by the Human Resources Department before  
442 operating a Tribal vehicle. In order to be vehicle driver certified to operate a Tribal vehicle,  
443 Drivers shall:

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<sup>33</sup> **Lisa Summers:** Even when lawful has side effects.

<sup>34</sup> **Environmental, Health and Safety Division:** 330.5-11 "The Tribe may equip tribal vehicles with GPS" On page 6, line 210-it says "Fleet Management is responsible for installation/removal" referring to GTP technology. The two should probably both say "Fleet Management"

**Bob Keck:** Yes, to be consistent.

<sup>35</sup> **Lisa Summers:** Double check with travel policy and what about officials?

<sup>36</sup> **Lisa Summers:** Why?

444 (a) Hold a valid, non-probationary Wisconsin driver license and provide proof of such  
445 license, including any commercial endorsement(s), to the Human Resources  
446 Department.<sup>37</sup>

447 (1) Drivers with commercial driver licenses may be restricted to only operating  
448 Tribal vehicles within the state of Wisconsin.<sup>38</sup>

449 (2) An occupational license is a valid, non-probationary driver license if the  
450 driver's abstract for the occupational license allows the Driver to operate Tribal  
451 vehicles for his or her job with the Tribe.

452 (3) Individuals with a driver license from a state other than Wisconsin shall  
453 obtain a Wisconsin driver license within thirty (30) days after their first day of  
454 actual employment or service and provide a copy to the Human Resources  
455 Department.<sup>39</sup>

456 (b) Pass a driving record check to verify the Driver has not received a citation or been  
457 convicted of a violation which would make the Driver ineligible under this Law.<sup>40</sup>

458 (1) The individual shall have his or her driving record checked by the Human  
459 Resources Department prior to his or her hire date. An individual with a driver  
460 license from a state other than Wisconsin shall have his or her driving record  
461 checked based on that state's license.

462 (2) The individual shall authorize the Human Resources Department to check his  
463 or her driving record. Any individual who refuses to allow his or her driving  
464 record to be checked shall not be vehicle driver certified to operate a Tribal  
465 vehicle.

466 (3) State Department of Motor Vehicle reports shall be used to determine  
467 whether an individual passes the driving record check.

468 (4) Tribal insurance carriers or agents may check an individual's driving record.  
469 This review shall be deemed to be a review by the Tribe.

470 (c) Complete all driver training requirements imposed by the Tribe or an individual  
471 Tribal entity or by any federal or state agency regulations.<sup>41</sup>

472 (1) Drivers of Tribal vehicles who are not governed by federal or state agency  
473 regulations for driver safety training shall complete driver safety training, as  
474 required by the Environmental Health & Safety Division, every three (3) years.

475 (A) The training program shall be administered, scheduled, rescheduled  
476 and documented by the Environmental Health & Safety Division.

477 (B) A Driver who has not completed the required training requirements  
478 within (180) days of the effective date of this Law shall be prohibited from  
479 driving a Tribal vehicle until he or she completes the required training.

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<sup>37</sup> **Shannon Stone:** The next concern was gaining an understanding of what would determine in a person's driving record that they would not be eligible or lose eligibility to maintain vehicle drive certification. Discussion with Bob Keck determined that as long as the state said the driver was eligible to drive, the driver would be able to drive for the Tribe. If the state said the driver is not eligible to drive then they would not be eligible to drive for the Tribe. This brought out the question how would a driver be impacted if they received an Occupational driver's license? Bob Keck suggested that they would have their vehicle driver certification suspended for the period identified within the law based upon whether it was the first, second, third, four or more suspensions. Then the individual could have their vehicle driver certification reinstated under the provision given within the law.

<sup>38</sup> **Lisa Summers:** Why?

<sup>39</sup> **Lisa Summers:** Should be 60 days.

<sup>40</sup> **Lisa Summers:** Cite section.

<sup>41</sup> **Lisa Summers:** Approved regs for all; Any entity under (c) is included, but under (c)(1)(A), EH&S is in charge of the Training Program.

(C) A break in employment or service of one hundred eighty (180) days or greater requires retraining. Drivers shall be paid their regular wage by their home department for all required training.<sup>42</sup>

(2) Drivers of Tribal vehicles who are governed by federal or state agency regulations or requirements shall:

(A) complete all required driver safety training according to the applicable regulations before being certified to operate a Tribal vehicle to which the regulations apply.

(B) be in compliance with all regulatory requirements pertaining to drugs and alcohol.

330.7-2. A Tribal entity may require stricter driving certification procedures that do not conflict with these standards. Such procedures shall be submitted to Fleet Management and the Human Resources Department for review and approval.

330.7-3. The Tribe reserves the right to check driving records of a Driver at any time. The Tribe also reserves the right to allow insurance carriers to check driving records at any time.

### **330.8. Driver Responsibilities – Tribal Vehicles**

330.8-1. Drivers shall notify the Human Resources Department, in writing, immediately upon:<sup>43</sup>

(a) Issuance of a driving citation involving drugs or alcohol.

(b) Any suspension of driving privileges by any State or regulatory agency.

(c) Reinstatement of driving privileges by any State or regulatory agency, if applicable.

330.8-2. When a Driver uses a Tribal vehicle, he or she shall:

(a) Complete a vehicle mileage log. Vehicle mileage logs are found in each Tribal vehicle.

(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal vehicle to complete a trip.<sup>44</sup>

(c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar expense related to vehicle use.

(d) Safely stop the vehicle when using devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios. This does not include authorized emergency vehicle communication equipment or on-board computers used for communication or navigation.<sup>45</sup>

(e) Abide by all provisions contained in this Law.

### **330.9. Suspension of Tribal Vehicle Driver Certification**

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

<sup>42</sup> **Lisa Summers:** This should be made a new section (D).

<sup>43</sup> **Lisa Summers:** What is immediately?

<sup>44</sup> **Lisa Summers:** Then what?

<sup>45</sup> **Shannon Stone:** There is a lot of new technology in new vehicles including blue tooth enabled and hands free communication equipment it sounds like as long as it is on-board equipment that it is acceptable to use. For instance, my car will automatically sync up with my cell phone to the on-board computer in the car. If the phone rings, the driver may answer the call through voice activation using the car's system. However, the phone by its design has hands free operation that is essentially identical to the capability of the vehicle. Can drivers use hands free devices while driving?



- (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.
- (b) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol.<sup>46</sup>
- (c) Failing to complete any applicable driver training requirements.
- (d) Receiving a motor vehicle operation citation for an offense involving drugs or alcohol.
- (e) Having his or her driver license suspended by the State.
- (f) Knowingly driving a Tribal vehicle without being certified under the provisions of this Law.<sup>47</sup>
- (g) Violating any other provision of this Law.<sup>4849</sup>

330.9-2. *Vehicle Driver Certification Suspensions Affecting Employment Status.* Individuals who have their vehicle driver certification suspended for more than five (5) days and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their Supervisor and a Human Resources Department representative determine what, if any, options may be available to them.<sup>50</sup> Options may include, but are not limited to: non-driving accommodation within the home department; reassignment to a position which does not require driving; a leave of absence without pay; or termination of employment.

### **330.10. Drivers – Personal Vehicle Use on Tribal Business**

330.10-1. *Certification.* Drivers of personal vehicles on Tribal business shall be vehicle driver certified by the Human Resources Department to operate a personal vehicle on Tribal business. In order to be vehicle driver certified to operate a personal vehicle on Tribal business, a Driver shall:

- (a) Hold a valid, non-probationary Wisconsin driver license within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.
  - (1) Drivers with a driver license from a state other than Wisconsin shall have their driving record checked based on that state's license.

<sup>46</sup> **Wendy Alvarez:** 330.9-1(b) within established timeframe – 5 days etc...

<sup>47</sup> **Shannon Stone:** Under suspension of Tribal vehicle driver certification, the law states that the driver may lose their Tribal vehicle driver certification for driving a Tribal vehicle without certification. This should probably say that drivers may be disciplined for driving a Tribal vehicle without certification. Additionally, the individual should lose their personal vehicle certification as well for the specified time in the law. There should also be a remark under suspension of personal vehicle driver certification that driving a Tribal vehicle without Tribal vehicle certification is prohibited.

<sup>48</sup> **Lisa Summers:** Is there a waiting period. How does one get instated?

<sup>49</sup> **Shannon Stone:** Could a person appeal the suspension of their vehicle driver certification? This was less clear. Matt Denny made one point that if the state said a person was not licensed or had their license to drive revoked there is nothing to appeal because people cannot drive for the Tribe without a valid driver's license. However, in cases where the Tribe may determine it is in the best interest of the Tribe to revoke an individual's vehicle drive certification there was less clarity but Matt suggested that it should still be unappealable. Discussion with Bob Keck revealed that he may feel that there should be consideration for an appeal process where the suspension results do not originate from the state removing driver privileges.

<sup>50</sup> **Shannon Stone:** In instances where the suspension of the vehicle driver certification impacts an individual to perform their job duties the law states that the employee may request in writing that their supervisor and HRD jointly decide the options for the employee. Matt Denny pointed out that HRD will under the law contact the supervisor to notify them that the employee's certification has been suspended and this would be a good time for the supervisor and the HRD representative to discuss the option in all cases where an employee loses their certification regardless of duration or request by the employee.

(2) An occupational license is a valid, non-probationary driver license if the driver's abstract for the occupational license allows the Driver to operate vehicles owned by the Driver for his or her job with the Tribe.

(b) Pass a driving record check by the Human Resources Department to verify the Driver has not received a citation or been convicted of a violation which would make the Driver ineligible under this Law. Any individual who refuses to allow his or her driving record to be checked shall not be vehicle driver certified to operate a personal vehicle on Tribal business.

330.10-2. *Insurance.* Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.<sup>51</sup>

(a) The minimum insurance requirements on a personal vehicle are:

(1) \$100,000 Per Person;

(2) \$300,000 Per Accident for Bodily Injury; and

(3) \$25,000 Property Damage.<sup>52</sup>

(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.<sup>53</sup>

(1) A Driver shall immediately<sup>54</sup> notify the Human Resources Department of any cancelation or lapse in his or her insurance coverage.

(2) A Driver is prohibited from driving a personal vehicle on Tribal business during the time he or she does not have the required minimum personal auto insurance coverage. The Human Resources Department shall remove the Driver from the list of certified drivers immediately upon notification by the Driver and shall notify the Driver's Supervisor or Tribal entity.

(c) The Human Resources Department shall maintain proof of insurance on personal vehicles of Drivers and may request proof of insurance from Drivers at any time.

330.10-3. *Mileage Reimbursement.*

(a) A Driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven in his or her personal vehicle if he or she:

(1) Was vehicle driver certified at the time and had proof of required insurance on file with the Human Resources Department.

(2) Had prior consent from his or her Supervisor, if an employee or volunteer.

(3) Had prior consent from the applicable board, committee or commission, if an official<sup>55</sup>.

(b) Drivers of personal vehicles while on Tribal business are prohibited from using their vehicle for personal gain of any kind.

(c) All provisions of this Law apply to Drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.<sup>56</sup>

330.10-4. During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by the Human Resources Department.<sup>57</sup> Drivers

<sup>51</sup> **Lisa Summers:** Distinguish between non-work related activities.

<sup>52</sup> **Lisa Summers:** Why?

<sup>53</sup> **Wendy Alvarez:** 330.10-2(b) Add supervisor to notification.

<sup>54</sup> **Lisa Summers:** What is immediately?

<sup>55</sup> **Lisa Summers:** How are you going to track this?

<sup>56</sup> **Lisa Summers:** How?

<sup>57</sup> **Lisa Summers:** This is why we need to have HR/supervisors go through each job description to ensure its required.

who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility by their Supervisor and in writing by the Human Resources Department.  
330.10-5. *Seat Belts.* All Drivers of and passengers in a personal vehicle on Tribal business shall wear seat belts at all times.

### **330.11. Suspension of Personal Vehicle Driver Certification**

330.11-1. A Driver shall have his or her personal vehicle driver certification suspended and shall be prohibited from driving a personal vehicle on Tribal business upon any of the following:

- (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.
- (b) Not maintaining the minimum insurance requirements on his or her personal vehicle.
- (c) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol.
- (d) Receiving a motor vehicle operation citation for an offense involving drugs or alcohol.
- (e) Having his or her driver license suspended by the State.
- (f) Violating any other provision of this Law.

### **330.12. Accidents**

330.12-1. This section shall apply in the event a Driver is involved in an accident while driving a Tribal vehicle or a personal vehicle on Tribal business, provided that if the Tribe's Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that Policy shall apply.

330.12-2. Drivers operating a Tribal vehicle shall:

- (a) report all accidents or damage involving the vehicle **immediately<sup>58</sup>** to his or her Supervisor, Fleet Management and Risk Management.
- (b) provide Fleet Management and Risk Management with a completed incident report within twenty-four (24) hours after the accident or damage occurs.
  - (1) All Tribal vehicles shall have an Auto Incident Kit which contains forms and instructions for reporting any incident.
- (c) **comply with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy.<sup>59</sup>**
- (d) **report the accident or damage to local law enforcement if the accident or damage:<sup>60</sup>**
  - (1) results in an injury to the Driver or another person and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility; or
  - (2) results in death of a person; or
  - (3) involves damage to property that does not belong to the Driver or the Tribe; or
  - (4) results in the Tribal vehicle being disabled and/or requires the Tribal vehicle to be towed.

<sup>58</sup> **Lisa Summers:** Within 24 hours.

<sup>59</sup> **Shannon Stone:** I noticed that the law requires that Tribal Vehicle Drivers are required to comply with the Tribe's DAFWP policy in the event of an accident with a tribal vehicle, but there is no requirement for Personal Vehicle Drivers or passengers to comply with the policy if they have an accident while driving on tribal business. Is there a reason for this when anyone driving for the Tribe should be held in compliance with the policy.

<sup>60</sup> **Lisa Summers:** All accidents should be reported to law enforcement.

330.12-3. Drivers shall follow any additional accident reporting requirements for vehicles regulated by a state or federal agency.

330.12-4. All accidents involving Tribal vehicles shall be internally investigated by the Tribe. These investigations shall be coordinated and completed as necessary by Fleet Management and Risk Management, and other personnel as deemed appropriate by Fleet Management and Risk Management.<sup>6162</sup> Investigations shall be completed as soon as practicable after an accident has been reported.

(a) Investigative authority includes:

(1) determination of fault if not determined by law enforcement.

(2) recommendation of whether a Driver's vehicle driver certification should be suspended.

(b) Investigation reports shall be provided to the Driver and the Driver's Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, with copies retained in Fleet Management and Risk Management for a minimum of three (3) years<sup>63</sup>.

330.12-5. Non-compliance with accident reporting requirements shall result in a vehicle driver certification suspension for the employee(s) involved who failed to comply. If a Supervisor is aware of an accident and reporting requirements are not followed, the Supervisor is also subject to a vehicle driver certification suspension.<sup>64</sup>

330.12-6. Drivers driving a personal vehicle while on Tribal business shall report all accidents to local law enforcement at the time of the accident, and to their Supervisor, or the Human Resources Department if the Driver does not have a Supervisor<sup>65</sup>, and Risk Management within twenty-four (24) hours after the accident or damage.

330.12-7. If, while driving a Tribal vehicle, a Driver is determined to be, or admitted to be, more than fifty percent (50%) at fault in an accident involving vehicle damage, property damage or personal injury, the Driver shall have his or her vehicle driver certification suspended.<sup>66</sup>

### 330.13. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver Certification and Disciplinary Action

330.13-1. The first time a Driver has his or her vehicle driver certification suspended, the suspension shall last no less than five (5) workdays.<sup>6768</sup>

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<sup>61</sup> **Environmental, Health and Safety Division:** Are the Fleet Manager and/or Risk Management qualified to investigate a crash? Is there training or certification on those skills?

**Bob Keck:** Yes. If resources are needed, we'll go get them. The intent here is to have a process that can determine fault if it is not done so by law enforcement (i.e. – no citation issued, which happens) or anyone else. A property damage only "MVC" often doesn't result in assignment of fault (i.e. – often no law enforcement involved), so the facts of the incident need to be reviewed...by someone. Rick and I feel we can reasonably and objectively do that. Again, if review and/or investigation beyond us is warranted, we'll do that.

<sup>62</sup> **Lisa Summers:** How is the staff trained to do this part?

<sup>63</sup> **Lisa Summers:** If there is no supervisor, it doesn't apply. Should it be a maximum of 3 years and need department SOPs.

<sup>64</sup> **Wendy Alvarez:** 330.12-5 Supervisor certification suspended doesn't make sense. I would suggest holding the supervisor accountable for not following tribal policy through the Disciplinary Process. You don't want to stop the supervisor from doing their job if they need to drive. Then you will have two drivers unavailable. If the supervisor has multiple drivers (Shuttle) that could create a Customer Service concern.

<sup>65</sup> **Lisa Summers:** Why?

<sup>66</sup> **Lisa Summers:** Why and for how long?

<sup>67</sup> **Wendy Alvarez:** 330.13 There are employees who lapse for one day or more each month due to monthly renewals on their policy. Who will keep track of these suspensions? Over what amount of time does this cover – (entire employment if no break, 20 years, 10 years etc).

330.13-2. The second time a Driver has his or her vehicle driver certification suspended, the suspension shall last no less than ten (10) workdays.

330.13-3. The third time a Driver has his or her vehicle driver certification suspended, the suspension shall last no less than fifteen (15) workdays.

330.13-4. Drivers who incur more than three (3) vehicle driver certification suspensions under this Law shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.<sup>69</sup> A break in employment or service of one hundred eighty (180) days or greater shall clear the Driver's record of any vehicle driver certification suspensions.

330.13-5. Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, this Law requires suspension of vehicle driver certification upon the issuance of a driving citation involving drugs or alcohol and will only allow reinstatement of vehicle driver certification upon the dismissal of the citation or upon three (3) years passing from the date of conviction.<sup>70</sup>

330.13-6. Notwithstanding sections 330.13-1 through 330.13-5, the Tribe reserves the right to suspend a vehicle driver certification or extend a vehicle driver certification suspension upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management and based on the best interests of the Tribe.

330.13-7. Drivers who violate this Law may be subject to disciplinary action, in accordance with Tribal policies and procedures, whether or not the violation results in the suspension of their vehicle driver certification.

### **330.14. Reinstatement of Vehicle Driver Certification**

330.14-1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be automatically reinstated upon expiration of the suspension. Vehicle driver certifications that are suspended for thirty-one (31) days or more shall be reinstated in accordance with 330.14-2.

330.14-2. An individual whose vehicle driver certification is suspended for thirty-one (31) days or more may have his or her vehicle driver certification reinstated after the following.<sup>71</sup>

(a) The individual requests re-instatement of his or her vehicle driver certification after:

(1) A vehicle driver certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and

(2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and

(3) The state removes a driver license suspension; and

(4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage; and

(b) Upon request from an individual to re-instate his or her vehicle driver certification, the Human Resources Department shall:

(1) check the individual's driving record to ensure the individual has no violations on his or her driving record preventing re-instatement; and

---

<sup>68</sup> **Wendy Alvarez:** What citations and/or convictions will make individuals ineligible? HRD currently has a list of violations to look for when running a Driver's Abstract.

<sup>69</sup> **Wendy Alvarez:** 330.13 If the employee lost their eligibility to drive for 3 years, do we screen them out of the hiring process as well for any position requiring vehicle clearance for three years.

<sup>70</sup> **Lisa Summers:** Where is the 3 years coming from? It could be a year before a person is convicted. Incident v. conviction.

<sup>71</sup> **Lisa Summers:** What if they don't all apply? Under (a)(2) could take years to get a conviction.



- 698 (2) approve the proof of insurance submitted by the individual, provided it meets  
699 the requirements of this Law.  
700 (c) If the individual passes the driving record check and his or her proof of insurance is  
701 approved, the individual's vehicle driver certification shall be reinstated upon:  
702 (1) unanimous approval of the Human Resources Department, Fleet Management  
703 and Risk Management, if this was the individual's fourth (4<sup>th</sup>) suspension or the  
704 suspension was due to a conviction of motor vehicle operation citation involving  
705 drugs or alcohol; or  
706 (2) approval of the Human Resources Department, in all other cases.  
707

### 708 **330.15. Supervisor Responsibilities**

709 330.15-1. Supervisors of Drivers who drive a Tribal vehicle or a personal vehicle on Tribal  
710 business shall:

- 711 (a) Ensure those Drivers who report to them are vehicle driver certified before allowing  
712 them to drive a Tribal vehicle or a personal vehicle on Tribal business.  
713 (b) Ensure Drivers have the appropriate license and training certification for driving  
714 vehicles.  
715 (c) Ensure that Drivers have the appropriate insurance information on file with the  
716 Human Resources Department.  
717 (d) Ensure all accidents and damages are reported in accordance with the provisions of  
718 this Law.  
719 (e) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management  
720 in accordance with Fleet Management's requirements. Non-compliance with turning in  
721 mileage reports shall result in revoking department vehicles.  
722 (f) Approve expense reports submitted for personal vehicle mileage reimbursement.  
723 (g) Promptly investigate all infractions of this Law which they become aware of.  
724 (h) Ensure that all direct reports abide by all provisions of this Law.  
725 (i) Implement disciplinary action against Drivers who violate this Law, in accordance  
726 with the Tribe's personnel policies and procedures.

727 330.15-2. It is the responsibility of Supervisors to uphold and enforce all provisions of this Law.  
728 Supervisors who fail to uphold this Law may face suspension of vehicle driver certification,  
729 disciplinary action and/or loss of Department vehicles.

730 330.15-3. *Referrals.* Supervisors may refer Drivers to:

- 731 (a) the Environmental Health & Safety Division or an appropriate agency or training  
732 source for additional driver training; and/or  
733 (b) the Employee Assistance Program in accordance with applicable Tribal policies and  
734 procedures.  
735  
736

**End.**<sup>72</sup>

---

<sup>72</sup> **Wendy Alvarez:** Will all current driver's be rechecked? If so, within what timeframe? Gaming Personnel Services would require at least one month of the implementation of the law to re-check all Driver's in the Gaming Division.

**Legislative Reference Office**

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4375  
(800) 236-2214

**Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember

**LEGISLATIVE OPERATING COMMITTEE**

Public Meeting on Motor Vehicle Registration and Vehicle Driver Policy  
Business Committee Conference Room-2<sup>nd</sup> Floor  
Norbert Hill Center  
February 19, 2015 12:15 p.m.

**PRESENT:** Tehassi Hill, Lynn Franzmeier, Tani Thurner, Candice Skenandore, Rae Skenandore, Bob Keck, Shannon Stone

*(Motor Vehicle Law Public Meeting portion removed)*

**Vehicle Driver Certification and Fleet Management (02:43-32:04)**

**Tehassi Hill:** The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would update and amend the current Vehicle Driver Certification requirements, including provisions regarding the granting, suspension and reinstatement of vehicle driver certification. Two: govern the use of Tribal vehicles and personal vehicles on Tribal business. Three: require most Drivers to attend training before being eligible to drive a Tribal vehicle. Four: sets out when vehicle driver certification can be suspended, including upon a motor vehicle operation citation involving drugs or alcohol. Five: clarify a Driver's responsibilities when involved in an accident. Six: prohibit individuals from traveling in Tribal vehicles unless on Tribal business, have permission through OBC motion to travel in a Tribal vehicle, or are being transported as part of a Tribal program or service.

All community members are invited to attend this meeting to learn more about this proposal and/or submit comments concerning the proposal. During the public comment period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments may be made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax. For more information about the public meeting process, or to obtain copies of the Public Meeting... contact the Legislative Reference Office, Second Floor, Norbert Hill. Is there any comment on the Vehicle Driver Certification and Fleet Management?

All I see is smiles so I guess everybody agrees with the amendments?

**Shannon Stone:** Is there an established timeframe between the date of implementation and the date that the law will become effective?

**Tehassi Hill:** This is a question in regards to the Vehicle Driver Certification or the vehicle law amendments?

**Shannon Stone:** The Vehicle Driver Certification?

Vehicle Driver Law and Motor Vehicle Registration Law Amendments Public Meeting February 19, 2015

**Rae Skenandore:** Wouldn't that be in the Resolution?

**Tani Thurner:** Well there's something in there about the training requirement, it states in there when it would become effective, the law itself...

**Shannon Stone:** Well the Safe Driver Training but then we still have to train the workforce on the law, and so we need time in there to develop that. I'm from Human Resources Training Department, and we're to put together the training for the workforce. So we know that there's policy training that has to be done, and that's not addressed within anything that I read so far. Environmental Health is going to do the safety training, they have 180 days after the law comes into effect, I believe, but we need to train the employees on the policy. So we just want to make sure there's time for us to do that between the implementation and the effectiveness.

**Bob Keck:** Yeah, that period of time between passage and we have to have it in the hands of every employee that would be affected by it, is a piece that we asked our Training Department to assist with it, and so that department is where the question is coming from. It won't be able to be done overnight, and I think to facilitate this what a safe number might be... if that law was passed today, that we be allowed at least sixty and maybe 90 days to be able to accomplish this, because this affects anybody that drives a tribal vehicle, and they need to.... The process of receiving information, and verifying that they've received it, and verification of understanding, is really, really important and we want to do it right, we don't want to rush it. I think I can speak for HR Training on that. So if we were to throw a number out there, 60 at minimum, and 90 preferred. I think that would be ample time, if you agree.

**Shannon Stone:** Yes. Ninety days, would be great.

**Tehassi Hill:** All right, thank you for your comments.

(inaudible discussion in the back of the room)

**Tehassi Hill:** Is there any more question or comments on this issue? We will close this portion of the meeting at 12:26 p.m. Thank you everybody for your participation.

**-End of meeting-**



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**Oneida Tribe of Indians of Wisconsin  
Environmental, Health & Safety Division**

Little Bear Development Office  
PO Box 365  
N7332 Water Circle Place  
Oneida, WI 54155  
Phone (920) 869-4591  
FAX (920) 869-1610



Conservation Field Office  
PO Box 365  
N8047 County Road U  
Oneida, WI 54155  
Phone (920) 869-1450  
FAX (920) 869-2743

**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Business Committee Conference Room-2nd Floor Norbert Hill Center  
January 15, 2015 9:00 a.m.

**III. Current Business**

**3. Vehicle Driver Certification and Fleet Management (07:51-31:22)**

Motion by Jennifer Webster to forward the Vehicle Driver Certification and Fleet Management to a February 19, 2015 public meeting; seconded by Tehassi Hill. Motion carried unanimously.

**Law vs Policy**

Laws are the standard rules and regulations that everyone under the jurisdiction of the government is required to follow. Laws are minimum standards that protect people, property, and the environment. Laws are enforced through governmental judicial systems. Oneida derives the authority to make laws under the status of a sovereign nation.

Policies reflect the mission and objectives of an organization and are prescriptive and operational. Policies set standards above and beyond minimum standards. Policies are enforced through organizational disciplinary procedures and by-laws. Oneida sets policy and workplace rules that apply to employees under the tribe's status as an employer

- Recommendation – the Vehicle Driver Certification and Fleet Management law should be a policy.

**330.1. Purpose and Policy**

275 330.1-1. The purposes of this Law are to:

- 276 (a) establish standards that certify employees, officials and volunteers to drive a Tribal  
277 vehicle or drive a personal vehicle on Tribal business; and  
278 (b) control the use of all Tribal vehicles.

279 330.1-2. It is the policy of the Tribe to:

- 280 (a) minimize the Tribe's liability when physical damage to vehicles and/or property  
281 damage occurs as a result of vehicle accidents; and  
282 (b) improve the efficiency and effectiveness of the use of Tribal vehicles

- Add – the first policy statement should be about protecting Oneida employees and the community.

## General

- Every place it says “accident” it should say “motor vehicle crash”. MVC’s are rarely accidents, and can almost always be prevented. By calling them “accidents”- it implies the driver has no influence or ability to prevent the situation.
- Are the Fleet Manager and/or Risk Management qualified to investigate a crash? Is there training or certification on those skills?
- 330.5-11 “The Tribe may equip tribal vehicles with GPS” On page 6, line 210- it says “Fleet Management is responsible for installation/removal” referring to GPS technology. The two should probably both say “Fleet Management”
- The course that EHSD uses for training should be a training module developed by a professional/public agency. The National Safety Council trains and certifies instructors and sells Defensive Driver Safety Training materials. Web link:  
<https://www.google.com/#q=driving+safety+training+for+employees>
- Training options should include web base tutorials that are offered and monitored by EHSD.

**From:** [Robert C. Keck](#)  
**To:** [Jeffrey M. Mears](#); [Lynn A. Franzmeier](#)  
**Cc:** [Mary A. Olson](#); [Lisa L. Hock](#); [Daniel A. King](#); [Ricky J. Fuss](#); [Jennifer A. Falck](#); [Patrick J. Pelky](#)  
**Subject:** RE: Vehicle Driver Certification and Fleet Management Law Update  
**Date:** Tuesday, February 10, 2015 10:53:39 AM  
**Attachments:** [image001.png](#)

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Astute comments Jeff, thank you. I'm good either way on law v. policy. Looking big picture, policy might be easier to amend should the need arise in the future.

Second point: Good suggestion.

Third point: I don't oppose using motor vehicle crash v. accident.....good point made.

Fourth point: Yes. If resources are needed, we'll go get them. The intent here is to have a process that can determine fault if it is not done so by law enforcement (i.e. – no citation issued, which happens) or anyone else. A property damage only "MVC" often doesn't result in assignment of fault (i.e. – often no law enforcement involved), so the facts of the incident need to be reviewed....by someone. Rick and I feel we can reasonably and objectively do that. Again, if review and/or investigation beyo0nd us is warranted, we'll do that.

Fifth point: Yes, to be consistent.

Sixth point: Looks fine.

Seventh point: Yes, it needs a home. Maybe additional discussion between EH&S and Training/Barb needed? Your call.

---

**From:** Jeffrey M. Mears  
**Sent:** Thursday, February 05, 2015 9:34 AM  
**To:** Lynn A. Franzmeier; Robert C. Keck  
**Cc:** Mary A. Olson; Lisa L. Hock; Daniel A. King; Ricky J. Fuss; Jennifer A. Falck; Patrick J. Pelky  
**Subject:** RE: Vehicle Driver Certification and Fleet Management Law Update

Good Morning,

Attached are comments from Environmental Health & Safety.

We can submit at the Public Hearing.

Please review and comment.

Yaw^ko (Thank you),

Jeffrey M. Mears, MPA  
 Environmental Area Manager  
 Oneida Tribe of Indians of Wisconsin  
 Environmental Health & Safety Division - Little Bear Development Center  
 P.O. Box 365  
 Oneida, WI 54155  
 Office 920/869-4555

Cell 920/639-7457

[jmears@oneidanation.org](mailto:jmears@oneidanation.org)

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**From:** Lynn A. Franzmeier  
**Sent:** Wednesday, January 21, 2015 11:47 AM  
**To:** Robert C. Keck  
**Cc:** Mary A. Olson; Lisa L. Hock; Jeffrey M. Mears; Daniel A. King; Ricky J. Fuss  
**Subject:** Vehicle Driver Certification and Fleet Management Law Update

Good morning Bob-

Today, the LOC forwarded the attached draft Law to a February 19, 2015 public meeting. The public meeting notice is also attached.

The LOC discussed the considerations outlined at the end of the analysis attached to the draft and requested that you provide any concerns/changes regarding these considerations. The comment period ends on February 26, 2015.

In addition, the LOC discussed whether to leave this as a Law or to make it a policy and ultimately decided to leave it as is.

Any questions, let me know.

Lynn A. Franzmeier, Staff Attorney  
Legislative Reference Office  
Oneida Tribe of Indians of Wisconsin  
(920) 869-4417

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Notice of

# Public Meeting

to be held

February 19, 2015 at 12:15 p.m.

OBC Conference Room - 2nd Floor, Norbert Hill Center



## *Topic: Vehicle Driver Certification and Fleet Management*

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ♦ Update and amend the current vehicle driver certification requirements, including provisions regarding the granting, suspension and reinstatement of vehicle driver certification.
- ♦ Govern the use of Tribal vehicles and personal vehicles on Tribal business.
- ♦ Require most Drivers to attend training before being eligible to drive a Tribal vehicle.
- ♦ Sets out when vehicle driver certification can be suspended, including upon a motor vehicle operation *citation* involving drugs or alcohol.
- ♦ Clarify a Driver's responsibilities when involved in an accident.
- ♦ Prohibit individuals from traveling in Tribal vehicles unless on Tribal business, have permission through OBC motion to travel in a Tribal vehicle, or are being transported as part of a Tribal program or service.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

### **Public Comment Period—Open until February 26, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: Legislative Reference Office  
PO Box 365  
Oneida, WI 54155

Phone: (920) 869-4376 or (800) 236-2214  
E-Mail: [LOC@oneidanation.org](mailto:LOC@oneidanation.org)  
Fax: (920) 869-4040

Public Meeting Draft  
02/19/15

## Chapter 330

### Vehicle Driver Certification and Fleet Management

4 330.1. Purpose and Policy 5 330.2. Adoption, Amendment, Repeal 6 330.3. Definitions 7 330.4. Tribal Department Responsibilities 8 330.5. Tribal Vehicles - Usage 9 330.6. Rental Vehicles 10 330.7. Tribal Vehicle Driver Certification 11 330.8. Driver Responsibilities – Tribal Vehicles	12 330.9. Suspension of Tribal Vehicle Driver Certification 13 330.10. Drivers – Personal Vehicle Use on Tribal Business 14 330.11. Suspension of Personal Vehicle Driver Certification 15 330.12. Accidents 16 330.13. Vehicle Driver Certification Suspensions, Permanent Loss 17 of Vehicle Driver Certification and Disciplinary Action 18 330.14. Reinstatement of Vehicle Driver Certification 19 330.15. Supervisor Responsibilities
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<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Vehicle Driver Certification and Fleet Management (the Law)				
<b>Requester</b>	Bob Keck, Risk Management	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	Submitted on June 15, 2012, this proposal would replace the current Fleet Management Policy and Vehicle Driver Certification Policy with a single law. OBC Resolution #01-14-09-G set aside Chapters 300-399 of the Code of Laws as the Employment Relations Code, with the intent that all employment-related legislation eventually be organized and re-codified there. This is one such law.				
<b>Purpose</b>	Governs the management of Tribally-owned vehicles, and certification for Tribal employees, volunteers and officials to drive a Tribal Vehicle, or to drive a Personal Vehicle while conducting Tribal business.				
<b>Authorized/ Affected Entities</b>	Fleet Management, Risk Management, HRD, Environmental Health & Safety Division, Department of Public Works, Automotive Department, Supervisors				
<b>Due Process</b>	None				
<b>Related Legislation</b>	Fleet Management Policy; Vehicle Driver Certification Policy; Travel and Expense Policy; OBC Vehicle Policy; Drug and Alcohol Free Workplace Policy				
<b>Policy Mechanism</b>	Driver certification				
<b>Enforcement</b>	Suspending certification, loss of use of Tribal Vehicles, disciplinary action				

### Overview

This Law repeals two existing Tribal policies, but incorporates most of their provisions into one new Tribal Law that governs Tribal employees, elected and appointed officials, and volunteers in the use of Tribal Vehicles, and Personal Vehicles being used by drivers conducting Tribal business. Various changes also update and streamline the existing requirements.

For the purposes of this analysis, the term “Tribal Vehicle Certification” refers to certification to drive a Tribal Vehicle, and “Personal Vehicle Certification” refers to certification to drive a Personal Vehicle while conducting Tribal business. When the term “Personal Vehicle” is used, it refers to the use of a Personal Vehicle while conducting Tribal business.

### Proposed Amendments

#### *Vehicle Driver Certification*

Currently, drivers must have Tribal Vehicle certification in order to operate a Tribal Vehicle; and Personal Vehicle certification in order to drive a Personal Vehicle on Tribal business. Both certifications require the driver to have a Wisconsin driver’s license. This Law adds that drivers must have the appropriate license within 30 days after their start date; the license must not be probationary; and an occupational license qualifies if the driver’s abstract allows the driver to operate the necessary vehicle for their job with the Tribe. [330.7-1(a) and 330.10-1(a) and the Vehicle Driver Policy, I.A.1. and I.B.1.]

Public Meeting Draft  
02/19/15

The Law clarifies that Personal Vehicle Drivers are subject to this Law regardless of whether they apply for mileage reimbursement. 330.10-3 (c)

*Training Requirements*

The Law adds a new requirement whereby drivers must attend driver safety training every three years in order to become Tribal Vehicle certified. Drivers must complete the required training within 180 days after this Law becomes effective. [330.7-1(c)]

- Training is not required for Personal Vehicle certification or for Tribal Vehicle Drivers who are already governed by – and satisfy – other federal/state agency requirements for driver safety training. *→ NO, says in addition to #330.7*
- Training is conducted by the Environmental Health and Safety Division (EHSD).
- Drivers will be paid their regular wage for all required training – this means employees would earn their regular pay and volunteers would not be compensated for attending the training. The Comprehensive Policy, 11-6(a) provides that officials are eligible for a \$100 stipend for each full day of being present at a training, when attendance is required by law, bylaw or resolution – and this training will most likely be seen as being required by law.
- A break in employment or service of 180 days or more requires retraining.
- The Law also adds that supervisors may refer Drivers to EHSD or another appropriate agency or training source for additional driver training. [330.15-3(a)]

*Driving Records*

Currently, for Tribal Vehicle Certification, a driver must not have been convicted, within the past three years, of various driving violations listed within the Vehicle Driver Certification Policy. This Law no longer lists specific driving violations – instead, for both Tribal and Personal Vehicle Certification, the driver must pass a driving record check by HRD to verify the Driver has not been cited for, or convicted of, a violation which would make the Driver ineligible under this Law. [330.7-1(b) and 330.10-1(b)] The Law adds that:

- **Tribal Vehicle certification only** - if a driver is at least 50% at fault in an accident involving the Tribal Vehicle - and vehicle damage, property damage or personal injury, then his or her Tribal Vehicle certification must be suspended. [330.12-7]
- **Both Tribal and Personal Vehicle certification** - Any person cited for a motor vehicle operation offense involving drugs or alcohol will be ineligible to be certified for three years after the conviction date, or until the citation is dismissed. [330.13-5]

*Insurance Requirements*

Currently, only Tribal Vehicle drivers are required to authorize HRD to check their driving records. This Law also requires Personal Vehicle drivers to authorize checks as well, and adds that the Tribe reserves the right to check – or allow insurance carriers to check - driving records of a Driver at any time. [330.7-1(b), 330.7-3, and 330.10-1(b)]

*New Eligibility Reporting Requirements*

The Law changes the current requirements relating to information a driver is required to report:

	Current Policies	Proposed Law [330.8-1, 330.9-1 and 330.11-1]

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*What? How does someone know what to report?*

<b>What to report:</b>	Any <u>convictions</u> affecting their eligibility to be certified.	<ul style="list-style-type: none"> <li>• Citations for driving infractions involving drugs or alcohol</li> <li>• Driving privileges suspended or reinstated by the state or a regulatory agency</li> </ul>
<b>When to report:</b>	Within 5 working days	Immediately
<b>Reporting to:</b>	HRD	The driver's supervisor and HRD
<b>This applies to:</b>	Tribal Vehicle Drivers	Tribal and Personal Vehicle Drivers

The Law also now requires Personal Vehicle Certified drivers to immediately notify HRD if their insurance coverage is cancelled or lapses, whereby HRD must immediately remove the driver from the list of certified drivers and notify the Driver's supervisor (if an employee or volunteer) or Tribal entity (if an official). [330.10-2 (b)(1)]

### *Accident Reporting*

	<b>Tribal Vehicle Drivers [330.12-2]</b>	<b>Personal Vehicle Drivers [330.12-6]</b>
What must be reported to law enforcement:	Accidents or damage to <u>Tribal Vehicles</u> that resulted in: <ul style="list-style-type: none"> <li>• Death</li> <li>• injury requiring medical intervention</li> <li>• damage to property not belonging to the Driver/ Tribe</li> <li>• The Tribal Vehicle being disabled or towed.</li> </ul>	All accidents
What must be reported to the Tribe:	Must <u>immediately</u> report all accidents or damage involving the vehicle to his/her Supervisor, Fleet and Risk Management, <u>and</u> provide Fleet Management and Risk Management with a completed incident report within 24 hours	Must report all accidents to their Supervisor (or HRD if no Supervisor) and Risk Management within 24 hours

*Both*

The Law also adds that:

- Both Tribal and Personal Vehicle Drivers must follow any additional accident reporting requirements for vehicles regulated by a state or federal agency. [330.12-3]
- If a Supervisor is aware of an accident and reporting requirements are not followed, the Supervisor's own certification may be suspended. [330.12-5]
- If the Tribe's Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that Policy shall apply. [330.12-1]

### *Rental Vehicles*

New provisions are added to address rental vehicles, which are considered Tribal Vehicles for the purpose of this Law. Drivers must be Tribal Vehicle driver certified; cars must be rented in accordance with the Tribe's Travel and Expense Policy; and the maximum collision damage waiver offered by rental companies must be purchased. [330.6]

### *Nonbusiness miles*

Tribal Vehicles still cannot be used for personal use or non-business miles. There is no longer an exception for unexpected medical emergencies, but a new exception is added: personal/non-business use is permitted "as authorized by the Business Committee Vehicle Policy". [330.5-4(a)] The OBC Vehicle Policy, in turn, only permits personal use in one situation

<sup>1</sup> As approved on August 17, 1990 and amended by the OBC.



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- the Tribal Chair may use the Tribal Vehicle for commuting to and from Tribal headquarters. [III.E. and III.F.] This provision was added to eliminate conflict between this Law and the OBC Vehicle Policy. To create more exceptions, the OBC Vehicle Policy would have to be amended.

This Law instead only permits three categories of people to be passengers in a Tribal Vehicle:

- Employees, officials and volunteers on Tribal business.
- Individuals who receive permission, through OBC motion, to travel in a Tribal Vehicle.
- Individuals being transported as part of a Tribal program or service. [330.5-3]

#### *Drug and Alcohol Use*

Currently, the policies prohibit employees from using a Tribal Vehicle while under the influence of alcohol or drugs. The Law instead prohibits use of a Tribal Vehicle by an individual under the influence of alcohol, illegal drugs, or prescription or over the counter medicine used in an unauthorized or unlawful manner. [330.5-7(a)]

#### *Suspension of Certification*

Both types of certification can be suspended for any violation of this Law. The Law adds that regardless of whether certification is suspended, drivers who violate this Law may also be subject to further disciplinary action [330.13-7, 330.9-1 and 330.11-1]

The Law adds that certification can be suspended for knowingly driving a Tribal Vehicle without being certified – this looks like it is intended to apply to persons who already have their certification suspended, but who drive anyway. [330.9-1(f)]

<b>Length of Suspension</b> [330.13 and 330.3-1(j)]		
*“Workday” is defined as “a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend.”		
<b>First suspension</b>		At least 5 workdays
<b>Second suspension</b>	30	At least 10 workdays
<b>Third Suspension</b>	45	At least 15 workdays
<b>Fourth or more</b>		3 years

The Law also adds that a break in employment/service of 180 days or more will clear the Driver’s record of any prior suspensions. [330.13-4] This means that no matter how many prior suspensions a driver had, the next suspension would be treated as a first offense.

#### *Reinstatement of Certification*

The Law adds that when certification is suspended for 30 days or less, it is automatically reinstated when the suspension expires. Suspensions of 31 days or longer end after the suspension ends and the reason for the ineligibility expires - the individual must request reinstatement, submit written proof of insurance, and receive HRD approval in order to be reinstated. However, if it is the individual’s fourth suspension or due to a conviction of motor vehicle operation citation involving drugs or alcohol, then HRD, Fleet Management and Risk Management must give unanimous approval for reinstatement. [330.14-2]

However, notwithstanding any regular suspension or reinstatement; HRD, Fleet Management and Risk Management can unanimously agree to suspend a driver’s certification or extend a suspension based on the best interests of the Tribe. [330.13-6]

#### *Suspended Certification Affecting Job Duties*

Where an employee’s certification is suspended and it affects his/her ability to perform job duties, the supervisor no longer has sole discretion on how to address the matter – instead,

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the employee is now responsible for requesting, in writing, that the supervisor and an HRD representative jointly determine available options - i.e. accommodation in the employee's home department, unpaid leave, termination, etc. The Law also adds that this is only an option if the employee's certification is suspended for more than five days. [330.9-2]

Currently, a supervisor may accommodate an employee by removing the driving requirement from the employee's job description. This language was specifically excluded from the new Law with the intent is that this would no longer be an option that could be exercised.

#### *New Authorities, Responsibilities, Requirements*

The Law also adds new authorities and responsibilities for various parties:

- **Personal Vehicle drivers** must maintain and provide updated proof of insurance; and immediately notify HRD if their insurance is cancelled/lapses. [330.10-2(b)]
- **Tribal Vehicle drivers** are now responsible for:
  - Ensuring Tribal Vehicle use rules are followed when the vehicle is under his/her control, following all traffic laws, respecting property, being courteous, using good judgment, and keeping the interior of the vehicle in good/clean condition. [330.5-7 and 330.5-10]
  - Safely stopping the vehicle when using various electronic devices and reading materials, except for for authorized emergency vehicle communication and on-board computers used for navigation/communication. [330.8-2(d)]
  - Providing proof to Fleet Management of any necessary consent to use a non-permanently-assigned Tribal Vehicle. [330.5-1(c) and (d)]
  - Complying with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol-Free Workplace Policy. [330.12-2(c)]
- **Supervisors:**
  - must ensure that drivers have the appropriate training; and that their insurance information is on file with HRD; and
  - must investigate all infractions of this Law of which they become aware; and implement disciplinary action against employees who violate this Law. [330.15-1]
  - may refer drivers to the Employee Assistance Program in accordance with "applicable" Tribal policies/procedures. [330.15-3(b).]
- **HRD:** The Law codifies duties already being performed by HRD; including:
  - performing driving record checks/reviews and approving certifications.
  - notifying supervisors or Tribal entities of the certification status of their employees and volunteers. [330.4-5]
  - The Law now also requires HRD to notify individuals during the hiring process, in writing, if they are ineligible to become vehicle driver certified. [330.10-4]
- Before issuing a Tribal Vehicle, **Fleet Management** must now confirm that the driver is properly certified and has consent; and must require proof that any other individuals are eligible to ride in a Tribal Vehicle. [330.5-1]
- **Risk Management** must provide insurance cards in Tribal Vehicles. [330.4-4(b)]
- **Fleet Management and Risk Management** are jointly responsible for accident investigations, determining fault in an accident if law enforcement hasn't done so; making recommendations as to when certification should be suspended; and participating in situations related to approval of driver certifications. [330.4-2, 330.4-4(e) and 330.12-4]

#### *Specific Certification/Driving/Training/Licensing Requirements*

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Rules governing more specific licensing requirements were deleted, as these are addressed in other Tribal driving policies. The Law adds that Tribal Vehicle drivers are subject to all specialized requirements necessary to comply with the rules of specific departments and/or state or federal regulatory agencies. [330.5-12]

Departments are no longer required to create SOPs to minimize risk exposure, but may still require stricter driving and certification requirements. These must now be approved by both Fleet Management and HRD. [330.7-2] The Law adds that those with a Commercial Driver License may be restricted to only operating Tribal Vehicles within the state of Wisconsin. [330.7-1(a)(1)]

*Other Changes*

- Tribal Vehicles may be equipped with GPS systems to monitor vehicle use. Fleet Management is responsible for installation/removal. [330.4-2(e) and 330.5-11]
- Currently, all drivers and passengers in Tribal Vehicles must comply with the Wisconsin seat belt law. The Law instead requires all drivers and passengers in both Tribal and Personal Vehicles to wear seat belts at all times. [330.10-5 and 330.5-7(d)]
- One Stop, instead of DPW fuel pumps, must generally be used for Tribal Vehicles. [330.5-7(c)]
- New provisions address Personal Vehicle mileage reimbursement. [330.10-3]
- Hitchhikers are still not permitted in Tribal Vehicles, but there is no longer an emergency exception for assisting disabled motorists. The Law is still silent as to Personal Vehicles. Trailer hitches are no longer specifically prohibited on Tribal Vehicles. Tribal logos are now required to be placed on all Tribal Vehicles. Tribal entities can no longer request an exception. Personal Vehicle Drivers are prohibited from using their vehicles for personal gain of any kind, just as Tribal Vehicle Drivers are. [330.10-3(b) and 330.5-5]
- Tribal entities are no longer required to drive at least 14,000 miles/year in order to have their own designated vehicle. Instead, Fleet Management determines the minimum mileage necessary for a designated vehicle. [330.5-2]

**Miscellaneous**

The definition of employee is updated to reflect a standardized definition used in other recent legislation. [330.3-1(c)] Minor changes bring the Law into compliance with the Drug and Alcohol Free Workplace Policy. [330.5-8(a)] Section 330.2 was added and revised to ensure the new Law complies with the Legislative Procedures Act (LPA); and this Law can only be amended by the OBC pursuant to the LPA. [330.2-2]

A public meeting was held on April 25, 2014. The comments received during the public meeting and public comment period have been reviewed and any changes based on those comments have been incorporated into this draft.

**Considerations**

- The Law does not identify whether or how any disciplinary or suspension actions could be appealed.
- The Law is intended to apply not only to employees, but also to elected and appointed officials and volunteers, but some provisions do not consistently reflect this:
  - 330.10-4 states that “During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by [HRD]. Drivers who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility by their Supervisor and in writing by [HRD].” There is no hiring process for officials or volunteers, and they do not have supervisors.

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- 330.9-2 sets out how an employee whose vehicle driver certification is suspended can request a meeting with HRD and their supervisor to determine what options are available to them if the suspension affects their ability to perform their duties, but there is no similar provision for officials and volunteers.
- 330.15-1(i) requires supervisors to implement disciplinary action against Drivers who violate this Law, in accordance with the Personnel Policies. However, those do not apply to officials or volunteers, and again, they may not have supervisors.
- 330.12-2(c) requires Tribal Vehicle drivers to comply with any alcohol/drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy (DAFWP). However, that Policy specifically only applies to employees, and not to officials, and it appears it would not apply for volunteers. Under the DAFWP [section 8-3], employees involved in a work-related accident are required to immediately undergo drug and alcohol testing and cannot refuse to submit to any post-accident testing requested by certified drug and alcohol technicians, police, or Employee Health Nursing. In short, this requirement would not extend to officials or volunteers.
- 330.5-7(a) strictly prohibits Tribal Vehicle Drivers from being under the influence of alcohol, illegal drugs, or prescription or over-the-counter medicine used in an unauthorized or unlawful manner. 330.5-3 authorizes some persons who are not employees, officials or volunteers, to ride in Tribal Vehicles, in some situations. However, are no similar provisions governing Personal Vehicles. This is a policy call.

## Chapter 330

### Vehicle Driver Certification and Fleet Management

#### 330.1. Purpose and Policy

330.1-1. The purposes of this Law are to:

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

330.1-2. It is the policy of the Tribe to:

- (a) minimize the Tribe's liability when physical damage to vehicles and/or property damage occurs as a result of vehicle accidents; and
- (b) improve the efficiency and effectiveness of the use of Tribal vehicles.

#### 330.2. Adoption, Amendment, Repeal

330.2-1. This Law was adopted by the Oneida Business Committee by Resolution \_\_\_\_\_.

330.2-2. This Law may be amended by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

330.2-3. 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.

330.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

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

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330.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 330.3. Definitions

330.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Business miles" means miles driven in a vehicle by an individual in order to conduct Tribal business.

(b) "Drivers" means employees, officials and volunteers who are vehicle driver certified to operate a Tribal vehicle or a personal vehicle on Tribal business.

(c) "Employee" means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe 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 and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

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

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

(f) "Tribal" or "Tribe" means the Oneida Tribe of Indians of Wisconsin.

(g) "Tribal entity" means a Tribal department, enterprise, program, board, committee or commission.

(h) "Tribal vehicle" means all vehicles owned or leased by the Tribe.

(i) "Volunteer" means a person who provides a service to the Tribe without receiving pay.

(j) "Workday" means a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend.

### 330.4. Tribal Department Responsibilities

330.4-1. *Department of Public Works.* The Department of Public Works shall maintain a Fleet Management and an Automotive Department to assist with the implementation of the provisions of this Law.

330.4-2. *Fleet Management.* Fleet Management shall:

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

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

(c) Participate in accident investigations;

(d) Participate in situations requiring approval of Driver certifications; and

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

330.4-3. *Automotive Department.* The Automotive Department shall service and maintain Tribal vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to Fleet Management.

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330.4-4. *Risk Management*. Risk Management shall:

- (a) Secure and maintain insurance coverage for all Tribal vehicles;
- (b) Provide auto insurance identification cards in every Tribal vehicle;
- (c) Process all vehicle claims and information submitted to them;
- (d) Submit claims to the insurance company;
- (e) Participate in accident investigations; and
- (f) Participate in situations requiring approval of Driver certifications.

330.4-5. *Human Resources Department*. The Human Resources Department shall:

- (a) Maintain the list of Drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;
- (b) Perform driving record checks and approve or deny vehicle driver certification based on the review of an individual's driving record;
- (c) Notify supervisors of the vehicle driver certification status of his or her employees or volunteers;
- (d) Assist supervisors with the administration of vehicle driver certification suspensions;
- (e) Request proof of insurance on personal vehicles driven on Tribal business;
- (f) Participate in accident investigations;
- (g) Approve vehicle driver certifications; and
- (h) Maintain documentation of all required driver training and regulatory compliance.

330.4-6 *Environmental Health & Safety Division*. The Environmental Health & Safety Division shall provide Driver safety training as included herein, and provide the Human Resources Department with the names of Drivers who have completed training after each training session.

**330.5. Tribal Vehicles - Usage**

330.5-1. Drivers that do not have access to a permanently assigned Tribal vehicle may request to use a Tribal vehicle to conduct Tribal business by submitting a request to Fleet Management.

- (a) Whenever possible, requests shall be made to Fleet Management at least one (1) week in advance. Fleet Management may cancel reservations that are not fulfilled in a timely manner and may combine vehicle use for travel to the same destination.
- (b) Fleet Management shall confirm a Driver is vehicle driver certified before approving the use of a Tribal vehicle.
- (c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle. — *what constitutes consent from elected or Appt. officials?*
- (d) An employee shall provide proof to Fleet Management that he or she has the consent of his or her Supervisor before using a Tribal vehicle.
- (e) Upon receiving proof that a Driver has the required consent to use a Tribal vehicle and any other individuals are eligible to travel in a Tribal vehicle, Fleet Management shall determine whether a Tribal vehicle is available.

330.5-2. In order to have a Tribal vehicle permanently assigned to a Tribal entity, the entity shall drive a minimum number of miles annually, as determined by Fleet Management. Exceptions to the mileage criteria may be granted upon request by a Tribal entity and with written approval from Fleet Management.

330.5-3. The following individuals may travel in a Tribal vehicle:

- (a) Employees, officials or volunteers who are on Tribal business.
- (b) Individuals who receive permission, through Oneida Business Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet Management before making a determination on these requests.
- (c) Individuals being transported as part of a Tribal program or service.

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330.5-4. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites. Tribal vehicles shall not be used for any of the following:

- (a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy, as approved on August 17, 1990 and amended by the Oneida Business Committee. *→ why isn't this being updated too?*
- (b) Vacation.
- (c) Towing cargo for personal reasons.
- (d) Hauling loads that could structurally damage the vehicle.
- (e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.
- (f) Transporting hitchhikers.
- (g) Jump starting vehicles, other than Tribal vehicles.

330.5-5. Tribal logos shall be placed on all Tribal vehicles.

330.5-6. A radar detection device shall not be installed or used in a Tribal vehicle.

330.5-7. *General.* A Driver of a Tribal vehicle shall ensure the following rules regarding the use of a Tribal vehicle are followed when the Tribal vehicle is under his or her control.

- (a) A Driver of a Tribal vehicle shall not be under the influence of alcohol; illegal drugs; or prescription or over-the-counter medicine used in an unauthorized or unlawful manner.
- (b) There is no smoking allowed in Tribal vehicles.
- (c) Oneida One Stops shall be used for fueling Tribal vehicles, unless the Tribal vehicle needs fuel before it can be taken to an Oneida One Stop.
- (d) All Drivers of and passengers in Tribal vehicles shall wear seat belts at all times.

330.5-8. Modifications to Tribal vehicles for personal reasons shall not be permitted. Modifications to Tribal vehicles for operating purposes may be allowed only with the approval of Fleet Management.

330.5-9. A Tribal entity shall regularly schedule service work, maintenance work and safety checks with the Automotive Department for any Tribal vehicle assigned to the entity.

330.5-10. A Driver of a Tribal vehicle shall follow all traffic laws, respect property, be courteous and use good judgment. Vehicle interiors should be kept in good condition, clean and free of debris.

330.5-11. The Tribe may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.

330.5-12. *Specialized Requirements.* Drivers of Tribal vehicles are subject to all specialized requirements necessary to comply with specific departmental rules regarding age, experience, training, licensing, additional provisions and/or specialized requirements and rules imposed by state or federal regulatory agencies.

### 330.6. Rental Vehicles

330.6-1. Rental vehicles are considered Tribal vehicles for the purpose of this Law. All provisions of this Law apply to rental vehicle usage. Cars shall be rented in accordance with the Tribe's Travel and Expense Policy and Drivers of rental vehicles shall be vehicle driver certified according to the terms and conditions of this Law.

330.6-2. Every vehicle rental shall include the purchase of the maximum collision damage waiver offered by rental companies.

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**330.7. Tribal Vehicle Driver Certification**

330.7-1. Drivers shall be vehicle driver certified by the Human Resources Department before operating a Tribal vehicle. In order to be vehicle driver certified to operate a Tribal vehicle, Drivers shall:

(a) Hold a valid, non-probationary Wisconsin driver license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department.

*why?* (1) Drivers with commercial driver licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.

(2) An occupational license is a valid, non-probationary driver license if the driver's abstract for the occupational license allows the Driver to operate Tribal vehicles for his or her job with the Tribe.

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

(b) Pass a driving record check to verify the Driver has not received a citation or been convicted of a violation which would make the Driver ineligible under this Law.

(1) The individual shall have his or her driving record checked by the Human Resources Department prior to his or her hire date. An individual with a driver license from a state other than Wisconsin shall have his or her driving record checked based on that state's license.

(2) The individual shall authorize the Human Resources Department to check his or her driving record. Any individual who refuses to allow his or her driving record to be checked shall not be vehicle driver certified to operate a Tribal vehicle.

(3) State Department of Motor Vehicle reports shall be used to determine whether an individual passes the driving record check.

(4) Tribal insurance carriers or agents may check an individual's driving record. This review shall be deemed to be a review by the Tribe.

(c) Complete all driver training requirements imposed by the Tribe or an individual Tribal entity or by any federal or state agency regulations. *approved reqs 4 all*

*Any but here is EHS* (1) Drivers of Tribal vehicles who are not governed by federal or state agency regulations for driver safety training shall complete driver safety training, as required by the Environmental Health & Safety Division, every three (3) years.

(A) The training program shall be administered, scheduled, rescheduled and documented by the Environmental Health & Safety Division.

(B) A Driver who has not completed the required training requirements within (180) days of the effective date of this Law shall be prohibited from driving a Tribal vehicle until he or she completes the required training.

(C) A break in employment or service of one hundred eighty (180) days or greater requires retraining. (D) Drivers shall be paid their regular wage by their home department for all required training.

(2) Drivers of Tribal vehicles who are governed by federal or state agency regulations or requirements shall:

(A) complete all required driver safety training according to the applicable regulations before being certified to operate a Tribal vehicle to which the regulations apply.

(B) be in compliance with all regulatory requirements pertaining to drugs and alcohol.



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330.7-2. A Tribal entity may require stricter driving certification procedures that do not conflict with these standards. Such procedures shall be submitted to Fleet Management and the Human Resources Department for review and approval.

330.7-3. The Tribe reserves the right to check driving records of a Driver at any time. The Tribe also reserves the right to allow insurance carriers to check driving records at any time.

### 330.8. Driver Responsibilities – Tribal Vehicles

330.8-1. Drivers shall notify the Human Resources Department, in writing, immediately upon:

- (a) Issuance of a driving citation involving drugs or alcohol. *what is immediately*
- (b) Any suspension of driving privileges by any State or regulatory agency.
- (c) Reinstatement of driving privileges by any State or regulatory agency, if applicable.

330.8-2. When a Driver uses a Tribal vehicle, he or she shall:

- (a) Complete a vehicle mileage log. Vehicle mileage logs are found in each Tribal vehicle.
- (b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal vehicle to complete a trip. *what?*
- (c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar expense related to vehicle use.
- (d) Safely stop the vehicle when using devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios. This does not include authorized emergency vehicle communication equipment or on-board computers used for communication or navigation.
- (e) Abide by all provisions contained in this Law.

### 330.9. Suspension of Tribal Vehicle Driver Certification

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

- (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.
- (b) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol. *more a waiting how*
- (c) Failing to complete any applicable driver training requirements.
- (d) Receiving a motor vehicle operation citation for an offense involving drugs or alcohol.
- (e) Having his or her driver license suspended by the State.
- (f) Knowingly driving a Tribal vehicle without being certified under the provisions of this Law.
- (g) Violating any other provision of this Law.

330.9-2. *Vehicle Driver Certification Suspensions Affecting Employment Status.* Individuals who have their vehicle driver certification suspended for more than five (5) days and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their Supervisor and a Human Resources Department representative determine what, if any, options may be available to them. Options may include, but are not limited to: non-driving accommodation within the home department; reassignment to a position which does not require driving; a leave of absence without pay; or termination of employment.

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### 330.10. Drivers – Personal Vehicle Use on Tribal Business

330.10-1. *Certification.* Drivers of personal vehicles on Tribal business shall be vehicle driver certified by the Human Resources Department to operate a personal vehicle on Tribal business. In order to be vehicle driver certified to operate a personal vehicle on Tribal business, a Driver shall:

(a) Hold a valid, non-probationary Wisconsin driver license within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.

(1) Drivers with a driver license from a state other than Wisconsin shall have their driving record checked based on that state's license.

(2) An occupational license is a valid, non-probationary driver license if the driver's abstract for the occupational license allows the Driver to operate vehicles owned by the Driver for his or her job with the Tribe.

(b) Pass a driving record check by the Human Resources Department to verify the Driver has not received a citation or been convicted of a violation which would make the Driver ineligible under this Law. Any individual who refuses to allow his or her driving record to be checked shall not be vehicle driver certified to operate a personal vehicle on Tribal business.

330.10-2. *Insurance.* Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.

(a) The minimum insurance requirements on a personal vehicle are:

(1) \$100,000 Per Person;

(2) \$300,000 Per Accident for Bodily Injury; and

(3) \$25,000 Property Damage.

(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.

(1) A Driver shall immediately notify the Human Resources Department of any cancelation or lapse in his or her insurance coverage.

(2) A Driver is prohibited from driving a personal vehicle on Tribal business during the time he or she does not have the required minimum personal auto insurance coverage. The Human Resources Department shall remove the Driver from the list of certified drivers immediately upon notification by the Driver and shall notify the Driver's Supervisor or Tribal entity.

(c) The Human Resources Department shall maintain proof of insurance on personal vehicles of Drivers and may request proof of insurance from Drivers at any time.

### 330.10-3. *Mileage Reimbursement.*

(a) A Driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven in his or her personal vehicle if he or she:

(1) Was vehicle driver certified at the time and had proof of required insurance on file with the Human Resources Department.

(2) Had prior consent from his or her Supervisor, if an employee or volunteer.

(3) Had prior consent from the applicable board, committee or commission, if an official.

(b) Drivers of personal vehicles while on Tribal business are prohibited from using their vehicle for personal gain of any kind.

(c) All provisions of this Law apply to Drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.

330.10-4. During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by the Human Resources Department. Drivers

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who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility by their Supervisor and in writing by the Human Resources Department.

330.10-5. *Seat Belts*. All Drivers of and passengers in a personal vehicle on Tribal business shall wear seat belts at all times.

### 330.11. Suspension of Personal Vehicle Driver Certification

330.11-1. A Driver shall have his or her personal vehicle driver certification suspended and shall be prohibited from driving a personal vehicle on Tribal business upon any of the following:

- (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.
- (b) Not maintaining the minimum insurance requirements on his or her personal vehicle.
- (c) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol.
- (d) Receiving a motor vehicle operation citation for an offense involving drugs or alcohol.
- (e) Having his or her driver license suspended by the State.
- (f) Violating any other provision of this Law.

### 330.12. Accidents

330.12-1. This section shall apply in the event a Driver is involved in an accident while driving a Tribal vehicle or a personal vehicle on Tribal business, provided that if the Tribe's Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that Policy shall apply.

330.12-2. Drivers operating a Tribal vehicle shall:

- (a) report all accidents or damage involving the vehicle <sup>(immediately)</sup> to his or her Supervisor, Fleet Management and Risk Management. *(within 24 hrs)*
- (b) provide Fleet Management and Risk Management with a completed incident report within twenty-four (24) hours after the accident or damage occurs.
- (1) All Tribal vehicles shall have an Auto Incident Kit which contains forms and instructions for reporting any incident.
- (c) comply with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy.
- (d) report the accident or damage to local law enforcement if the accident or damage:
  - (1) results in an injury to the Driver or another person and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility; or
  - (2) results in death of a person; or
  - (3) involves damage to property that does not belong to the Driver or the Tribe; or
  - (4) results in the Tribal vehicle being disabled and/or requires the Tribal vehicle to be towed.

330.12-3. Drivers shall follow any additional accident reporting requirements for vehicles regulated by a state or federal agency.

330.12-4. All accidents involving Tribal vehicles shall be internally investigated by the Tribe. These investigations shall be coordinated and completed as necessary by Fleet Management and Risk Management, and other personnel as deemed appropriate by Fleet Management and Risk Management. Investigations shall be completed as soon as practicable after an accident has been reported.

- (a) Investigative authority includes:

330-14

*training to  
decide who's  
permitted.*

*How is the staff  
trained to do  
this part?*

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631 *if there is no supervisor, it doesn't apply.*  
632 (1) determination of fault if not determined by law enforcement.  
633 (2) recommendation of whether a Driver's vehicle driver certification should be  
634 suspended.

635 *A* (b) Investigation reports shall be provided to the Driver and the Driver's Supervisor, or  
636 the Human Resources Department if the Driver does not have a Supervisor, with copies  
637 retained in Fleet Management and Risk Management for a minimum of three (3) years. *-may? it need dept SOPs.*

638 330.12-5. Non-compliance with accident reporting requirements shall result in a vehicle driver  
639 certification suspension for the employee(s) involved who failed to comply. If a Supervisor is  
640 aware of an accident and reporting requirements are not followed, the Supervisor is also subject  
641 to a vehicle driver certification suspension.

642 330.12-6. Drivers driving a personal vehicle while on Tribal business shall report all accidents  
643 to local law enforcement at the time of the accident, and to their Supervisor, or the Human  
644 Resources Department if the Driver does not have a Supervisor, and Risk Management within  
645 twenty-four (24) hours after the accident or damage. *→ why?*

646 330.12-7. If, while driving a Tribal vehicle, a Driver is determined to be, or admitted to be, more  
647 than fifty percent (50%) at fault in an accident involving vehicle damage, property damage or  
648 personal injury, the Driver shall have his or her vehicle driver certification suspended. *why? & for how long*

### 649 330.13. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver 650 Certification and Disciplinary Action

651 330.13-1. The first time a Driver has his or her vehicle driver certification suspended, the  
652 suspension shall last no less than five (5) workdays.

653 330.13-2. The second time a Driver has his or her vehicle driver certification suspended, the  
654 suspension shall last no less than ten (10) workdays.

655 330.13-3. The third time a Driver has his or her vehicle driver certification suspended, the  
656 suspension shall last no less than fifteen (15) workdays.

657 330.13-4. Drivers who incur more than three (3) vehicle driver certification suspensions under  
658 this Law shall lose their vehicle driver certification for three (3) years, beginning with the date of  
659 the incident that resulted in the most recent suspension. A break in employment or service of  
660 one hundred eighty (180) days or greater shall clear the Driver's record of any vehicle driver  
661 certification suspensions.

662 330.13-5. Due to the seriousness of a citation for the operation of motor vehicles involving  
663 drugs or alcohol, this Law requires suspension of vehicle driver certification upon the issuance of  
664 a driving citation involving drugs or alcohol and will only allow reinstatement of vehicle driver  
665 certification upon the dismissal of the citation or upon three (3) years passing from the date of  
666 conviction. *→ where is this coming from? ans: it would be a year or by conviction*

667 330.13-6. Notwithstanding sections 330.13-1 through 330.13-5, the Tribe reserves the right to  
668 suspend a vehicle driver certification or extend a vehicle driver certification suspension upon  
669 unanimous agreement between the Human Resources Department, Fleet Management and Risk  
670 Management and based on the best interests of the Tribe. *incident vs violation*

671 330.13-7. Drivers who violate this Law may be subject to disciplinary action, in accordance with  
672 Tribal policies and procedures, whether or not the violation results in the suspension of their  
673 vehicle driver certification.

### 675 330.14. Reinstatement of Vehicle Driver Certification

676 330.14-1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be  
677 automatically reinstated upon expiration of the suspension. Vehicle driver certifications that are  
678 suspended for thirty-one (31) days or more shall be reinstated in accordance with 330.14-2.

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330.14-2. An individual whose vehicle driver certification is suspended for thirty-one (31) days or more may have his or her vehicle driver certification reinstated after the following.

(a) The individual requests re-instatement of his or her vehicle driver certification after:

- (1) A vehicle driver certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and
- (2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and
- (3) The state removes a driver license suspension; and
- (4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage; and

(b) Upon request from an individual to re-instate his or her vehicle driver certification, the Human Resources Department shall:

- (1) check the individual's driving record to ensure the individual has no violations on his or her driving record preventing re-instatement; and
- (2) approve the proof of insurance submitted by the individual, provided it meets the requirements of this Law.

(c) If the individual passes the driving record check and his or her proof of insurance is approved, the individual's vehicle driver certification shall be reinstated upon:

- (1) unanimous approval of the Human Resources Department, Fleet Management and Risk Management, if this was the individual's fourth (4<sup>th</sup>) suspension or the suspension was due to a conviction of motor vehicle operation citation involving drugs or alcohol; or
- (2) approval of the Human Resources Department, in all other cases.

### 330.15. Supervisor Responsibilities

330.15-1. Supervisors of Drivers who drive a Tribal vehicle or a personal vehicle on Tribal business shall:

- (a) Ensure those Drivers who report to them are vehicle driver certified before allowing them to drive a Tribal vehicle or a personal vehicle on Tribal business.
- (b) Ensure Drivers have the appropriate license and training certification for driving vehicles.
- (c) Ensure that Drivers have the appropriate insurance information on file with the Human Resources Department.
- (d) Ensure all accidents and damages are reported in accordance with the provisions of this Law.
- (e) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management in accordance with Fleet Management's requirements. Non-compliance with turning in mileage reports shall result in revoking department vehicles.
- (f) Approve expense reports submitted for personal vehicle mileage reimbursement.
- (g) Promptly investigate all infractions of this Law which they become aware of.
- (h) Ensure that all direct reports abide by all provisions of this Law.
- (i) Implement disciplinary action against Drivers who violate this Law, in accordance with the Tribe's personnel policies and procedures.

330.15-2. It is the responsibility of Supervisors to uphold and enforce all provisions of this Law. Supervisors who fail to uphold this Law may face suspension of vehicle driver certification, disciplinary action and/or loss of Department vehicles.

330.15-3. *Referrals.* Supervisors may refer Drivers to:

*what if they don't all apply?*  
→ could take yrs to get acc'd.

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- 727 (a) the Environmental Health & Safety Division or an appropriate agency or training  
728 source for additional driver training; and/or  
729 (b) the Employee Assistance Program in accordance with applicable Tribal policies and  
730 procedures.

731

732 *End.*

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733

From: [Robert C. Keck](#)  
 To: [Lynn A. Franzmeier](#)  
 Subject: Driver Cert Policy Comments  
 Date: Friday, February 20, 2015 11:07:03 AM

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Lynn: As we discussed yesterday, additional comments...particularly regarding Tani's considerations. Please confirm that you received as below in yellow highlight. Thanks!

### Considerations

239 The Law does not identify whether or how any disciplinary or suspension actions could be  
 240 appealed.

**This isn't a disciplinary Law. If discipline stemming from the enforcement of the Law is given, it would be under a Blue Book policy. Appeals of disciplinary actions would follow Blue Book policy.**

**Regarding appeals, this is true. In going by State rules, there aren't appeals expected if the State revokes/suspends a license. In 330.9 of the proposed Law, it's possible that under 330.9-1 (b) and (f) could be appealed, perhaps (g). Recommendation, add to the Law that appeals can be made to the Supervisor's Supervisor. This would mirror an existing process.**

241 The Law is intended to apply not only to employees, but also to elected and appointed

242 officials and volunteers, but some provisions do not consistently reflect this:

243 ○ 330.10-4 states that "During the hiring process, individuals who are ineligible to be

244 vehicle driver certified shall be notified of their ineligibility in writing by [HRD].

245 Drivers who become ineligible to be vehicle driver certified after being hired shall be

246 notified of their ineligibility by their Supervisor and in writing by [HRD]." There is

247 no hiring process for officials or volunteers, and they do not have supervisors.

**Recommendation – Add clause stating that HRD, the area responsible for driving record checks, also notify officials and volunteers in writing of ineligibility.**

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330-7

248 ○ 330.9-2 sets out how an employee whose vehicle driver certification is suspended can

249 request a meeting with HRD and their supervisor to determine what options are

250 available to them if the suspension affects their ability to perform their duties, but

251 there is no similar provision for officials and volunteers.

**Correct. Recommendation – Clarify that elected officials can also meet with HRD the same as an employee can. Other officials such as those who serve on boards, and volunteers, would not have this option.**

252 ○ 330.15-1(i) requires supervisors to implement disciplinary action against Drivers who

253 violate this Law, in accordance with the Personnel Policies. However, those do not

254 apply to officials or volunteers, and again, they may not have supervisors.

**Correct. I don't believe there is an answer for this consideration. In lieu of discipline, officials or volunteers may simply not be an approved/certified driver.**

255 ○ 330.12-2(c) requires Tribal Vehicle drivers to comply with any alcohol/drug testing

256 requirements under the Tribe's Drug and Alcohol Free Workplace Policy (DAFWP).

257 However, that Policy specifically only applies to employees, and not to officials, and  
 258 it appears it would not apply for volunteers. Under the DAFWP [section 8-3],  
 259 employees involved in a work-related accident are required to immediately undergo  
 260 drug and alcohol testing and cannot refuse to submit to any post-accident testing  
 261 requested by certified drug and alcohol technicians, police, or Employee Health  
 262 Nursing. In short, this requirement would not extend to officials or volunteers.

**Correct. I don't believe there is an answer for this consideration. No testing. In a situation involving an official or volunteer, and it is determined that drugs or alcohol are involved, the result in a 3-year suspension of driving certification. Generally, it is assumed that if an incident occurs, the Law requires immediate reporting. The responding police jurisdiction would (should) be the point for determining if drugs or alcohol are involved and that result would be documented. A 3-year suspension would follow.**

263 330.5-7(a) strictly prohibits Tribal Vehicle Drivers from being under the influence of alcohol,

264 illegal drugs, or prescription or over-the-counter medicine used in an unauthorized or

265 unlawful manner. 330.5-3 authorizes some persons who are not employees, officials or

266 volunteers, to ride in Tribal Vehicles, in some situations. However, are no similar provisions

267 governing Personal Vehicles. This is a policy call.

**Law constructed to be silent on this and the recommendation is to leave it silent.**



**From:** [Shannon J. Stone](#)  
**To:** [LOC](#)  
**Subject:** Driver Vehicle Certification Law  
**Date:** Tuesday, February 24, 2015 9:06:29 AM

---

I noticed that the law requires that Tribal Vehicle Drivers are required to comply with the Tribe's DAFWP policy in the event of an accident with a tribal vehicle, but there is no requirement for Personal Vehicle Drivers or passengers to comply with the policy if they have an accident while driving on tribal business. Is there a reason for this when anyone driving for the Tribe should be held in compliance with the policy?

*Shannon Stone*

Senior Training &  
Development Specialist

**Oneida Human Resources**

sstone@oneidanation.org

Office: (920)-490-3653

Cell: (920) 548-4240

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**From:** [Shannon J. Stone](#)  
**To:** [LOC](#)  
**Subject:** Public Comment on Vehicle Driver Certification and Fleet Management  
**Date:** Friday, February 20, 2015 4:47:54 PM

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Dear Legislative Reference Office:

I have reviewed the draft for the Vehicle Driver Certification and have spoken with Bob Keck, Matt Denny and others for clarification on issues within the law. As such I have been asked to share my questions and what I have learned.

1. To begin, Training and Development would like to request that there would be a 90 day interval between the date of implementation and the effective date to allow for development of training and training of all employees on the law. During this time we will be working with the various stakeholders to determine the training needs and delivery methods. After training we will also be getting acknowledgements of receipt of training and understanding of the law from tribal employees.
2. The next concern was gaining an understanding of what would determine in a person's driving record that they would not be eligible or lose eligibility to maintain vehicle drive certification. Discussion with Bob Keck determined that as long as the state said the driver was eligible to drive, the driver would be able to drive for the Tribe. If the state said the driver is not eligible to drive then they would not be eligible to drive for the Tribe.
3. This brought out the question how would a driver be impacted if they received an Occupational driver's license? Bob Keck suggested that they would have their vehicle driver certification suspended for the period identified within the law based upon whether it was the first, second, third, four or more suspensions. Then the individual could have their vehicle driver certification reinstated under the provision given within the law.
4. Could a person appeal the suspension of their vehicle driver certification? This was less clear. Matt Denny made one point that if the state said a person was not licensed or had their license to drive revoked there is nothing to appeal because people cannot drive for the Tribe without a valid driver's license. However, in cases where the Tribe may determine it is in the best interest of the Tribe to revoke an individual's vehicle drive certification there was less clarity but Matt suggested that it should still be unappealable. Discussion with Bob Keck revealed that he may feel that there should be consideration for an appeal process where the suspension results do

not originate from the state removing driver privileges.

5. In instances where the suspension of the vehicle driver certification impacts an individual to perform their job duties the law states that the employee may request in writing that their supervisor and HRD jointly decide the options for the employee. Matt Denny pointed out that HRD will under the law contact the supervisor to notify them that the employee's certification has been suspended and this would be a good time for the supervisor and the HRD representative to discuss the option in all cases where an employee loses their certification regardless of duration or request by the employee.
6. Under suspension of Tribal vehicle driver certification, the law states that the driver may lose their Tribal vehicle driver certification for driving a Tribal vehicle without certification. This should probably say that drivers may be disciplined for driving a Tribal vehicle without certification. Additionally, the individual should lose their personal vehicle certification as well for the specified time in the law. There should also be a remark under suspension of personal vehicle driver certification that driving a Tribal vehicle without Tribal vehicle certification is prohibited.
7. There is a lot of new technology in new vehicles including blue tooth enabled and hands free communication equipment it sounds like as long as it is on-board equipment that it is acceptable to use. For instance, my car will automatically sync up with my cell phone to the on-board computer in the car. If the phone rings, the driver may answer the call through voice activation using the car's system. However, the phone by its design has hands free operation that is essentially identical to the capability of the vehicle. Can drivers use hands free devices while driving?

Thank you for your consideration,

Sincerely,

*Shannon Stone*

Senior Training &  
Development Specialist

**Oneida Human Resources**

sstone@oneidanation.org

Office: (920)-490-3653

Cell: (920) 548-4240

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**From:** [Wendy M. Alvarez](#)  
**To:** [LOC](#)  
**Cc:** [Larae A. Gower](#); [Geraldine R. Danforth](#); [Amanda J. Lathrop](#); [Tonya Boucher](#); [Dana M. Thyssen](#)  
**Subject:** Vehicle Driver Certification and Fleet Management Public Comments  
**Date:** Thursday, February 26, 2015 10:59:42 AM  
**Attachments:** [image001.png](#)  
[20150226110041862.pdf](#)

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Good morning,

Please accept these comments to the Vehicle Driver Certification and Fleet Management proposed policy

330.10-2 (b) Add supervisor to notification

330.12-5 Supervisor certification suspended doesn't make sense. I would suggest holding the supervisor accountable for not following tribal policy through the Disciplinary Process. You don't want to stop the supervisor from doing their job if they need to drive. Then you will have two drivers unavailable. If the supervisor has multiple drivers (Shuttle) that could create a Customer Service concern.

330.13 There are employees who lapse for one day or more each month due to monthly renewals on their policy.

Who will keep track of these suspensions? Over what amount of time does this cover – (entire employment if no break, 20 years, 10 years etc).

Reinstatement of Certification: How can the suspension be for more than 31 days unless it is a fourth suspension? G

330.4-5 (b) same as (g)

(f) Participate in accident investigations? - why and how? They are not the experts.

(g) same as (b)

330.5 (c) (d) and (e) request "Written" proof

330.9-1(b) within established timeframe – 5 days etc...

330.13 If the employee lost their eligibility to drive for 3 years, do we screen them out of the hiring process as well for any position requiring vehicle clearance for three years?

What citations and/or convictions will make individuals ineligible? HRD currently has a list of violations to look for when running a Driver's Abstract.

Will all current driver's be rechecked? If so, within what timeframe? Gaming Personnel Services would require at least one month of the implementation of the law to re-check all Driver's in the Gaming Division.

Respectfully,

*Wendy M Alvarez*

*Manager*

*Personnel Services Department*

*Oneida Casino*

Office 920-429-3063

Fax 920-405-1986

Cell 920-609-1303



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# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: March 3, 2015
- 2) Contact Person(s): Racquel Hill - Vice Chairperson Dept: Oneida Election Board  
Phone Number: 869.4388 Email: rhill2@oneidanation.org
- 3) Agenda Title: Amended Bylaws
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Bylaws of Oneida Election Board needed to be amended per the current Election Law and  
previous action of GTC.

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

- 1) Bylaws
- 2) Notes of amendments made
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
\_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
\_\_\_\_\_
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
If yes, please indicate why: Bylaws control the internal affairs of the Election Board

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

Signature of Requester: Racquel L Hill 3-3-15

*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

## ONEIDA ELECTION BOARD BY-LAWS

### Article I. Authority

**1-1. Name.** The name of this entity will be the Oneida Election Board and may be referred to as the Board.

**1-2. Authority.** This entity is re-recognized by the Oneida Business Committee by adoption of these by-laws on December 30, 1998 and amended on May 21, 2003, February 25, 2009 and March 15, 2011.

**1-3. Office.** The official mailing address of this entity shall be:

Oneida Election Board  
P.O. Box 365  
Oneida, Wisconsin 54155

The physical meeting place shall be determined at the first meeting of this entity and may change from time to time as determined by the entity, but shall be within the reservation boundaries unless noticed to the membership prior to designating the meeting location.

**1-4. Membership.** The Board will:

- a. Consist of nine (9) voting members.
- b. Be selected in accordance with the Election Law.
  - i. Qualifications of Election Board members shall be as follows:
    - (i) Be enrolled Oneida Tribal member
    - (ii) Be of voting age
    - (iii) Reside within a 50 mile radius of Oneida reservation boundaries
- c. Fill vacancies in accordance with the Election Law.
- d. Remove members in accordance with the Removal Law.
- e. Accept resignations when submitted in writing and presented to the Board in accordance with the Election Law
- f. Has the authority to utilize alternates for elections and General Tribal Council meetings.

**1-5. Elections.** The Board is responsible for holding elections of the Oneida Tribe

**1-6. General Tribal Council (GTC) Meetings.** The Board is responsible for conducting ballot voting and hand voting as requested.

### Article II. Officers

**2-1. Officers.** This entity shall have three officers -- Chairperson, Vice Chairperson, and Secretary.

**2-2. Chair duties.** Responsible for calling meetings and notifying members with the assistance of the Vice Chair or Secretary. The Chairperson shall preside over all regular and special meetings, shall oversee the conduct of the election, and shall post the results of all elections.

**2-3. Vice Chair duties.** The Vice Chairperson shall preside at all meetings in the absence of the Chairperson.

**2-4. Secretary duties.** The Secretary shall keep accurate minutes of all meetings, both regular and special meetings, and assure that minutes are reported in the proper format.

**2-5. How chosen and length of term.** The officers shall serve terms of one (1) year and shall be elected by a majority vote at the first meeting of the Board following elections. In the event of a vacancy, the successor shall be voted in by the voting members for the duration of the unexpired term.

**2-6. *Members.*** Members shall serve a term of three (3) years and shall be elected by the membership. Members of the Board shall have voting powers. No Member shall serve for more than two (2) consecutive terms. In the event of a vacancy of a Member, a request shall be submitted to the Oneida Business Committee requesting the vacancy be posted.

**2-7. *Standing and Special Committees.*** Standing and special committees shall be created when necessary.

**2-8. *Compensation.*** The Board shall be compensated as defined by the Comprehensive Policy Governing Boards, Committees, and Commissions for all meetings, including General Tribal Council meetings, at the rate of \$100.00<sup>1</sup> per meeting and paid at an hourly rate of \$10.00 per hour for all Elections.

**2-9. *Conflict of Interest.*** Any board member who possesses a conflict of interest or may be related to<sup>2</sup> a potential candidate on the ballot for the current election or is vying for candidacy shall recuse themselves from the entire election process once they are aware of the conflict of interest.

**2-10. *Recusals.*** Notification of recusals must be provided in writing to Board.

### **Article III. Meetings**

**3-1. *Regular meetings.*** The regular meeting of the Board shall be held as called for by the Chairperson.

**3-2. *Emergency meetings.*** Emergency or special meetings may be called by the Chairperson with at least one hour notice.

**3-3. *Quorum.*** A quorum shall consist of a majority of Board members and shall include the Chairperson or Vice Chairperson.

**3-4. *Order of Business.*** The regular meetings of the Board shall follow the order of business as set out herein:

- a. Call to order
- b. Approve/Amend Agenda
- c. Approve/Amend Minutes
- d. Tabled Business
- e. Old Business
- f. New Business
- g. Other Concerns/Announcements
- h. Next Meeting & Adjournment

**3-5. *Voting.*** Voting shall be in accordance with Robert's Rules of Order or by a majority vote of the voting members.

### **Article IV. Reporting**

**4-1. *Format.*** Agenda items shall be in an identified format.

**4-2. *Minutes.*** Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity.

**4-4. *Reporting.*** The Chairperson or designee will report to the Business Committee per the Comprehensive Policy Governing Boards, Committees, and Commissions.



## **Article V. Amendments**

**5-1. Amendments to By-Laws.** Amendments shall be made to these by-laws at a regular meeting of the Board provided that written notice of proposed amendments was made at a prior regular meeting. Amendments are effective upon adoption by the Board and approved by the Oneida Business Committee.

These by-laws, as amended and revised, are hereby attested to as adopted by the Board at a duly called meeting by the Chairperson=s signature on \_\_\_\_\_, 20\_\_\_\_ and approved by the Oneida Business Committee at a duly called meeting held on \_\_\_\_\_, 20\_\_\_\_ signed by the Tribal Secretary of the Oneida Business Committee.

\_\_\_\_\_  
Oneida Election Board Chairperson

\_\_\_\_\_  
Oneida Tribal Secretary  
Oneida Tribe of Indians of Wisconsin

<sup>1</sup> Approval of \$100 stipend for Election Board came by way of motion and is located in the Fiscal Year 2004 Budget/Fiscal Year 2003 Education Budget Modification General Tribal Council Meeting Minutes of September 13, 2003

<sup>2</sup> Related to defined as: Father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, sister, wife, husband, grandparent, grandchild.

## NOTES FOR BYLAW AMENDMENTS:

Chair According to the compensation plan presented by Falmouth, yes the Appeals Commission, Gaming Commission will get 20%, according to the amendment the Business Committee will get 10% and the Election Board will get a stipend increase. Cathy Metoxen So, there's still a 100% raise out their for somebody, Chair I'm going to recognize the call for the question.

MOTION BY RICHARD MOSS TO ADOPT THE FYO4 BUDGET IN THE AMOUNT OF \$344,386,922, SECONDED BY KATE STEVENS. MOTION CARRIED.

Excerpt from: General Tribal Council Meeting - Fiscal Year 2004 Budget - Fiscal Year 2003  
Education Budget Modification – September 13, 2003

### Amendments:

1. Add superscript #1 to stipend amount with endnote to explain how the amount was approved at the GTC Budget meeting of September 3, 2003.
2. Changed address to PO Box 365 from PO Box 413
3. Membership a. From 12 to 9
4. Revised 1.4 b. (ii) Be at least 21 years of age to Be of voting age
4. Took out the specific areas of the Election Law
5. Took out a lot of what are processes and is in the SOPs
6. Changed 1.5 ***Elections***. The Board is responsible for holding elections of the Oneida Tribe and conducting secret ballots of General Tribal Council Meetings to ***Elections***. The Board is responsible for holding elections of the Oneida Tribe
7. Added 1.6 ***General Tribal Council (GTC) Meetings***. The Board is responsible for conducting ballot voting and hand voting as requested.
8. Added Vice Chair to 2-2: Responsible for calling meetings and notifying members with the assistance of the **Vice Chair** or Secretary.
9. Removed 2nd sentence of Vice Chair duties: The Vice Chairperson shall work with the Chairperson in all matters that concern the Board.
10. Reformatted 2-4 from ***Secretary duties***. The Secretary shall keep accurate minutes of all meetings, both regular and special meetings. Assure that minutes are reported in the proper format. Read and answer all mail abiding by/to the decisions of the Board to ***Secretary duties***. The Secretary shall keep accurate minutes of all meetings, both regular and special meetings, and assure that minutes are reported in the proper format.
11. 2-5 changed length of term of officers from three (3) years to one (1) year
12. 2-6 changed that members are now elected. Previously were selected by GTC.
13. 2-8 changed compensation to \$100 and added explanation in an endnote
14. Removed 4-3: ***Attachments***. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.
15. Changed 4-4 to ***Reporting***. The Chairperson or designee will report to the Business Committee per the Comprehensive Policy Governing Boards, Committees, and Commissions.

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 03/18/2015
- 2) Contact Person(s): Brandon Stevens Dept: OBC  
 Phone Number: 869-4378 Email: bstevens@oneidanation.org
- 3) Agenda Title: VAWA
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

- 1) Email attachment 3) \_\_\_\_\_
- 2) Tulalip DV Code 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
 \_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
 \_\_\_\_\_
- 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: Brandon Stevens

*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

**Rhiannon R. Metoxen**

---

**From:** Chris Cornelius <chriscornelius1@gmail.com>  
**Sent:** Monday, September 16, 2013 12:12 PM  
**To:** Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen  
**Subject:** Fwd: Tulalip Tribes adopt DV Code  
**Attachments:** DV Code\_Tulalip Tribes.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Brandon,

Attached is the latest e-mail from the VAWA ITWG; I have not participated in any events or meetings because I was not given the authority or support from the OBC; however I did have support from the Oneida Judicial System. Initially I did send VAWA ITWG an e-mail regarding my interest; however, in my e-mail I stated that I was waiting for the approval from the Oneida BC.

Below is the information on the Native Owned Consulting Business (**Owl Nest Consulting (ONC)**) they can come in and review all our laws and provide recommendations in order to implement VAWA or other laws to which will improve our Sovereignty and Legal System. (information provided per our discussion).

**Here is who they are:** The "ONC is an Indian owned consulting firm owned and operated by Mato Standing High, Esq. and Matt Rappold, Esq. Both Mato and Matt are licensed South Dakota Attorneys and Mato is also licensed in Colorado.

*ONC is backed by over 18 years of legal practice experience including 12 years of experience working directly for Tribal government in Indian Country and brings an unparalleled level of experience, professionalism, knowledge and perspective to consult on all matters related to Tribal government. We bridge historical gaps while using cutting edge ideas to give our clients a service they can be proud to have and one which will demand repeat business."* (They are currently working with the DOJ and BIA training tribes and tribal court personnel throughout Indian country). I meet Matt and Mato along with the BAI and DOJ at the VAWA training in ND a few months ago.

**Here is their website and what they do:** <http://www.oncllc.com/services.html> ; the BIA or DOJ may have money to help pay for these services or they said they would be willing to sit down and work something out that can be affordable to the Tribe.

They have offered to help out our National American Indian Veterans Organization for free.

Please keep me posted on any VAWA meetings or updates.

Thank you for your time.

Chris J. Cornelius

----- Forwarded message -----

From: **Natasha Anderson** <[nanderson@ncai.org](mailto:nanderson@ncai.org)>  
Date: Mon, Sep 16, 2013 at 10:54 AM  
Subject: Tulalip Tribes adopt DV Code  
To: "Natasha Anderson (NCAI)" <[nanderson@ncai.org](mailto:nanderson@ncai.org)>  
Cc: [mdemmert@tulaliptribes-nsn.gov](mailto:mdemmert@tulaliptribes-nsn.gov)

Please see attached. It will also be saved on VAWA ITWG Shared Dropbox folder under Tribal Codes & Procedures\Tulalip Tribes.

-----Original Message-----

From: Michelle Demmert [<mailto:mdemmert@tulaliptribes-nsn.gov>]  
Sent: Monday, September 16, 2013 11:20 AM  
To: Natasha Anderson  
Subject: Adopted DV Code



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Puget Sound Agency  
2707 Colby Ave. - Suite 1101  
Everett, Washington 98201-3665  
(425) 258-2651



September 9, 2013

Honorable Melvin Sheldon  
Chairman  
Tulalip Tribes  
6406 Marine Drive  
Tulalip, WA 98271

Dear Chairman Sheldon:

We are in receipt of Tulalip Tribes Resolution No. 2013-379, a resolution amending Tulalip Tribal Code Title 4.25 - Domestic Violence - in its entirety. This resolution was adopted by the Board of Directors of the Tulalip Tribes of Washington on August 28, 2013, and received by us on September 4, 2013. It was reviewed and approved by the Superintendent on September 9, 2013. Resolution No. 2013-379 is in accordance with Article VI, Section 1 and Section 2, of the Tulalip Constitution.

It will be forwarded for Secretarial review pursuant to your Constitution.

If you have any questions, please call Connie Johnston at (425) 258-2651. Thank you.

Sincerely,

Judith R. Joseph  
Superintendent

Enclosure

The Tulalip Tribes  
Resolution No. 2013 - 379

BRANCH OF TRIBAL OPERATIONS  
PUGET SOUND AGENCY

SEP 04 2013

OFFICIAL TRIBAL ACTION

**Amending Tulalip Tribal Domestic Violence Code Title 4.25, in its Entirety**

WHEREAS the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribe approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. §476); and

WHEREAS, the Board of Directors is empowered by Article VI, Sec. L to safeguard and promote the peace, safety, morals, and general welfare of the Tulalip Reservation by regulation the conduct of trade and the use and disposition of property upon the Reservation; and

WHEREAS, pursuant to its authority to adopt Ordinances under the Tulalip Tribes Constitution Article VI, Section 1 (K) and (O), the Board adopted Tulalip Tribal Ordinance 117, and codified under the Tulalip Tribal Code under Title 4.25, Domestic Violence; and

WHEREAS, Domestic violence and family violence is not cultural and is contrary to traditional Tulalip tribal values of honoring the family, and is contrary to the interest of our community and sense of well-being and growth; and

WHEREAS, A community response to domestic and family violence is necessary because domestic and family violence crimes and incidents impact the community as a whole as these crimes redirect tribal resources--whether personnel, financial, public safety or other resources-- elsewhere and requires an immediate response. As a result of this impact on tribal resources, the Tribes deems it necessary to address domestic and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future.

WHEREAS, the Indian Civil Rights Act of 1968 25 USC §1301 as Amended by the Violence Against Women Reauthorization Act of 2013, makes several amendments to the Indian Civil Rights Act authorizing tribes to exercise special domestic violence criminal jurisdiction, which the Tulalip Tribes intends to fully exercise and has incorporated these provisions into the attached Tulalip Tribal Code section 4.25 *et. seq.*;

WHEREAS, once this title takes effect on the date approved by the Tulalip Board of Directors, it does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this title and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty there from, forfeiture or liability, and;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Tulalip Tribes that the attached code 4.25, hereby replaces Tulalip Tribal Ordinance 117, as codified as 4.25 in its entirety.

NOW THEREFORE BE IT FURTHER RESOLVED by the Board of Directors that the substantive criminal code provisions in effect prior to the date, the new superseding domestic violence code provisions go into effect, including all provisions related to elements of an offense and penalties, shall remain applicable to all criminal violations prior to the date the new criminal domestic violence code revisions go into effect.

ADOPTED by the Board of Directors of the Tulalip Tribes of Washington at a Special meeting assembled on the 28 of August, 2013, with a quorum present, by a vote of 0 for and 0 against.

THE TULALIP TRIBES OF WASHINGTON

Melvin R. Sheldon Jr.  
Melvin R. Sheldon Jr., Chairman

ATTEST:

Marie Zackuse  
Marie Zackuse, Secretary

Approved pursuant to 209 DM 8,  
230 DM 1, 3 IAM 4, 4A

Judith K. Joseph 9/9/13  
Superintendent Date

2 of 2  
Amending Tulalip Tribal Domestic Violence  
Code Title 4.25



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## Article I General Provisions

### 4.25.010 Purpose

The Purpose of this Chapter is to recognize domestic violence and family violence as serious crimes against society, the Tribes, and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this Chapter is to recognize that the strength of the Tribes is founded on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

It is the intent of the Tulalip Tribes that the official response of domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote healing of families and the tribes where possible, and promote cultural teachings and traditional tribal values so as to nurture non-violence and respect within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

### 4.25.020 Legislative Findings

It is the intent of the Tulalip Board of Directors and the tribal community that the official response to domestic violence and family violence shall be that the Tribes will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Tribes, or of the entire community residing on the Tulalip Reservation, are to be cherished and treated with respect.

Domestic violence and family violence are not acceptable and are contrary to traditional Tulalip tribal culture and values of honoring the family, and are contrary to the interest of our community and sense of well-being and growth. Domestic violence and family violence will not be tolerated.

The Tribes finds that domestic violence and family violence imperils the very subsistence of the tribal community and the residents of the reservation. The Tribes recognizes the Department of Justice findings that one in three Native women is sexually assaulted in her lifetime and that 70% of *reported* assaults are committed by non-Native men against Native women. A community response to domestic and family violence is necessary because domestic and family violence crimes and incidents impact the community as a whole. These crimes redirect

tribal resources--whether personnel, financial, public safety or other resources--elsewhere and require an immediate response. As a result of this impact on tribal resources, the Tribes deems it necessary to address domestic violence and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future.

The Tribes further recognizes that there is a distinction between intimate partner domestic violence and family member violence. Domestic violence involves an intimate partner relationship and dynamics of power and control are overwhelmingly present in the action. Family violence is committed against all other family or household members. Both are reprehensible actions that require specialized recognition and enhanced provisions than what might be otherwise available to victims of crimes, or remedies available in civil actions.

#### 4.25.030 General Jurisdiction

Jurisdiction over domestic and family violence matters shall be in accordance with Chapter 2. In addition, the Tulalip Tribal Court shall retain jurisdiction over members of federally-recognized Indian tribes and any violations of Orders of Protection entered pursuant to this Chapter which are alleged to have occurred outside of the boundaries of the Tulalip Indian Reservation where such orders are entitled to recognition outside reservation boundaries as a matter of full faith and credit.

#### 4.25.040 Special Domestic Violence Criminal Jurisdiction

- (1) The Tulalip Tribes hereby exercises "Special Domestic Violence Criminal Jurisdiction" as a "participating tribe," as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.
- (2) In all proceedings in which the tribal court is exercising Special Domestic Violence Criminal Jurisdiction as a participating tribe, all rights afforded by TTC 2.25 shall apply and those enumerated in the Indian Civil Rights Act, 25 United States Code §1302 to all defendants. Should there be any inconsistency between TTC 2.25 and 25 United States Code § 1302, those of 25 United States Code § 1302 shall apply.
- (3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the court to stay further detention pending the habeas proceeding.
  - (a) A court shall grant a stay if the court—
    - (i) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its Special Domestic Violence Criminal Jurisdiction over any person only if he or she:

- (a) Resides within the jurisdiction of the Tulalip Tribes; or
- (b) Is employed within the jurisdiction area of the Tulalip Tribes, or;
- (c) Is a spouse, intimate partner, or dating partner of :
  - (i) A member of the Tulalip Tribes; or,
  - (ii) A member of another Indian Tribe who resides within the jurisdiction of the Tulalip Tribes;

#### 4.25.050 Special Jurisdiction; Criminal Conduct Applicable

The Tulalip Tribes exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

- (1) Domestic Violence and Dating Violence: An act of domestic violence or dating violence that occurs within the jurisdiction of the Tulalip Tribes.
- (2) Violations of Protection Orders: An act that occurs within the jurisdiction of the Tulalip Tribes, and:
  - (a) Violates the portion of a protection order that
    - (i) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to, the person protected by the order.
    - (ii) Was issued against the defendant
    - (iii) Is enforceable by the Tulalip Tribes, and
    - (iv) Is consistent with 18 United States Code § 2265 (b).

#### 4.25.060 Statute of Limitations

For purposes of this chapter, the statute of limitations shall be consistent and follow Tulalip Tribal Code 3.05.080 or any successor code.

#### 4.25.070 Non-waiver of Sovereign Immunity.

Nothing in this Chapter shall be deemed to constitute a waiver by the Tulalip Tribes of its sovereign immunity for any reason whatsoever.

#### 4.25.080 Severability.

If any part or parts, or the application of any part of this Chapter is held invalid, such holding shall not affect the validity of the remaining parts of this Chapter. The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this Chapter even if it had known that such part or parts of application of any part thereof would be declared invalid.

#### 4.25.090 Savings

This Chapter takes effect on the date approved by the Tulalip Board of Directors and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Chapter and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty there from, forfeiture or liability.

#### 4.25.100 Definitions.

As used in this Chapter the following terms shall have the meaning given below:

- (1) "Abuse" means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to assault and battery as defined in the Tulalip Tribal code.
- (2) "Advocate" means a person who is employed to provide services to victims of domestic violence and/or sexual assault or who volunteers to do so after receiving training in the area, and is bound by confidentiality policies.
- (3) "Anger Management" means a program based on psychological therapeutic techniques and exercises by which someone with excessive or uncontrollable anger can control or reduce the triggers, degrees, and effects of an angered emotional state. Anger management is not appropriate or approved for domestic violence perpetrators. Anger management may, however, be utilized for family violence perpetrators, provided they receive an intake evaluation assessment from a qualified tribal or state certified domestic violence professional.
- (4) "Alarm" means to cause apprehension or fear resulting from the reasonable perception of danger.
- (5) "Coercion" means to restrain, compel or dominate by force or threat.
- (6) "Contact" includes but is not limited to:
  - (a) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
  - (b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person.

(d) Sending or making written communications in any form, including text messaging, IM, and social media, to the other person;

(e) Speaking with the other person by any means, including leaving a voicemail message;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of impacting the third person's relationship with that other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school; or

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person.

(7) "Court" means the Tulalip Tribal Court.

(8) "Course of Conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(9) "Dating Relationship" means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the trier of fact shall consider:

(a) The length of time the relationship has existed;

(b) The nature of the relationship, and;

(c) The frequency of the interaction between the parties.

(10) "Dating Violence" means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(11) "Domestic Violence" means a crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with



the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic violence laws of the Tulalip Tribes.

Domestic violence can take many forms such as but not limited to use of intimidation, contact as defined within this chapter; manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense. The following are examples of what form the domestic violence action may take, but is not an exhaustive list, merely illustrative:

- (a) Attempting to commit or committing any criminal offense as defined by Chapter 3 against an intimate partner;
- (b) Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to him or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
- (c) Emotional or mental abuse of the intimate partner including, physical or mental intimidation, controlling activities, or using demeaning language;
- (d) Economic abuse of an intimate partner;
- (e) Causing an intimate partner to engage involuntarily in sexual activity ;  
or
- (f) Preventing the victim from accessing services.

(12) "Electronic Communications" means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.

(13) "Electronic Surveillance" means monitoring the behavior, activities, or whereabouts by electronic means.

(14) "Emotional Distress": For the purpose of this chapter, "emotional distress" means a reaction such as anguish, grief, fright, humiliation, or fury.

(15) "Elder" means a person 62 or more years old.

(16) "Essential Personal Effects" means those items necessary for a person's health, welfare and livelihood, including but not limited to clothing, cribs, bedding, family heirlooms, medications, money, personal documents, personal hygiene, items, tools of the trade, vehicles, jewelry, regalia or any cultural or ceremonial items, and pets.

(17) "Ex Parte" in this Chapter means that only the requesting party is heard by the court, and that notice and an opportunity to contest the facts are not available to the party adversely affected by the court's action.

(18) "Family or Household Member" means:

- (a) Persons who are related by blood, marriage, or adoption
- (b) Minor children, by blood, marriage, or adoption
- (c) Minor children who are part of the household
- (d) Persons who reside or have resided together in the past who are not or have not been intimate partners.

(19) "Family Violence" means the same or similar acts committed in Domestic Violence, but directed towards a Family or Household member instead of an intimate partner. The dynamics of power and control may not be present.

(20) "Foreign Protection Order" means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a Tribal Court, in a civil or criminal action.

(21) "Indian Country" means the definition given in 18 United States Code § 1151.

(22) "Immediate Family" means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.

(23) "Intimate Partner" means

- (a) spouses,
- (b) former spouses,
- (c) persons who are, or have been in a marital-like relationship, including same sex relationships,
- (d) persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship, or;
- (e) Persons who are dating or have dated in the past.

(24) "Legacy of Healing" means the tribal program primarily responsible for assisting victims of domestic, dating violence, and sexual assault and stalking.

(25) "Mandatory Arrest" means that a police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined

by this chapter even though the arrest may be against the expressed wishes of the victim.

(26) "Minor" or "Juvenile" means any person under the age of eighteen years of age.

(27) "No Contact Order" means a court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.

(28) "Protection Order" means a temporary or permanent court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and

Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by, or on behalf of a person, seeking protection.

(29) "Perpetrator" means the person who has committed an act of domestic violence or family violence. The perpetrator may also be referred to as a "defendant" in a criminal case or "respondent" in a civil case.

(30) "Police Officer" means any person employed or commissioned as a police or law enforcement officer by the Tulalip Tribes, Snohomish County, other State of Washington or any agency of the federal government or any law enforcement agency having jurisdiction within the Tulalip Indian Reservation, including non-tribally deputized officers who may make arrests on the reservation.

(31) "Probable Cause" for arrest means that the police officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this Chapter, based on all the facts known to the officer, including the officer's personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable information.

(32) "Repeated" means two or more times.

(33) "Safe House" means a safe home/safe house that provides temporary refuge and other services on a twenty-four (24) hour, seven (7) days per week basis, to victims of domestic violence and their children.

(34) "School" means a public or private institution of learning or a child care facility.

(35) Tribal or State Certified Domestic Violence Perpetrator Treatment Program" means a state or tribally certified program for abusers in which they are held accountable for their abusive actions and/or controlling behavior and in which their belief systems are sought to be changed that adopts at a minimum the state standards of Chapter 388-60 of the Washington Administrative Codes (WAC) or any successor code.

#### 4.25.110 Reporting Domestic and Family Violence

The following persons are obligated to report suspected domestic violence or family violence if they believe it is occurring, or is about to occur and they believe the victim is in imminent risk of harm: any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; peace officer or other law enforcement official; judge, attorney if not prevented by the attorney client privilege, probation staff, clerk of the Court, or other judicial system official. The suspected domestic violence or family violence shall be reported immediately by telephone or otherwise to the Tulalip Police Department. The reporter may initially be logged in as anonymous.

Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence known to him/her may, after notice and hearing, will be assessed a civil penalty in an amount not to exceed \$500.00. [Ord. 117 § 1.19, 11-5-2001 (Res. 2001-365)].

#### 4.25.120 Immunity from Liability

The following persons have immunity from liability in a civil action brought by a party for any action or omission in good faith under this Chapter arising from alleged domestic violence or family violence or a crime involving domestic violence or family violence:

- (1) Law enforcement officers;
- (2) Victim advocates;
- (3) Bedahel, Legacy of Healing, Tulalip Child Support or Behavioral Health staff;
- (4) Mandatory reporters, or;
- (5) Members who are part of a team established by the Legacy of Healing Program with the Board of Directors consent, for the purpose of protecting persons from domestic violence or family violence.

## Article II Power and Duties of Law Enforcement

### 4.25.130 Law Enforcement Duties to Victims

A law enforcement officer who responds to an allegation of domestic violence or family violence shall use all reasonable means to protect the victim and any family or household member, and prevent further violence, including, but not limited to:

- (1) Taking necessary actions to provide for the safety of the victim and any family or household members or witnesses, including arresting the alleged perpetrator or dominant aggressor;
- (2) Transporting or obtaining transportation for the victim and any child (ren) to a domestic violence Safe House or other place of safety at the victim's request;
- (3) Assisting the victim in removing essential personal effects, at the victim's request;
- (4) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
- e) Calling the Legacy of Healing contact number so that an advocate can provide immediate support to the victim;
- (5) Giving the victim immediate and adequate written notice of the rights of victims and of the remedies available as well as the name, address, and telephone number of local services available to victims, family or household members or witnesses of domestic violence or family violence;
- (6) Providing the victim with any other notice as required by the Tulalip Tribal Police Protocol Manual for Domestic Violence as adopted and amended;
- (7) Confiscating any weapon as provided within this chapter; and/ or
- (8) Providing assistance in obtaining a Temporary Protection Order or Emergency No Contact Order.

### 4.25.140 Duty to Preserve Evidence

(1) The purpose of this section is to assist in the prosecution of perpetrators of crimes involving domestic violence and family violence and to recognize that victims of crimes involving domestic violence or family violence are often reluctant to cooperate or testify at subsequent hearings for many reasons, including but not limited to economic, emotional and psychological factors.

(2) All law enforcement officers who respond to an allegation of a crime involving domestic violence or family violence shall take reasonable steps to collect sufficient evidence to enable the prosecutor to secure a conviction of the perpetrator without the testimony of any victim. Reasonable steps include:

- (a) Photographing injuries to any victim, any damage to property and the location and surroundings of the alleged incident.
- (b) Describing both the physical and emotional condition of the victim in detail;
- (c) Noting the identity of any witnesses to the incident and determining what they observed;

- (d) Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident,
- (e) Recording any oral comments;
- (f) Gathering a history of the relationship and its duration;
- (g) Describing the scene of the alleged crime on first contact and other physical evidence, and;
- (h) Gathering statements and interviewing responding medical personnel or following up with medical personal if the victim is transported to a facility for medical treatment.

(3) A law enforcement officer who responds to an allegation of domestic violence or family violence shall encourage any victim to make an oral and written statement concerning the incident and shall take one from any perpetrator, if possible.

(4) A law enforcement officer who responds to an allegation of a crime involving domestic violence or family violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident. In addition, the law enforcement officer shall preserve a chronology of events in written form.

(5) If a child is present in the household the officer shall note their presence. In order to preserve evidence and not taint testimony or induce additional trauma, an interview of a child shall be conducted by someone trained and qualified to interview children. However, if the child makes spontaneous statements, the officer shall note these within his or her report. If a child is present in the household, the officer shall make any reports, as required by Chapter 4.05, to beda?chelh or another appropriate Tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

#### 4.25.150 Mandatory Arrest

(1) The purpose of mandating arrest of perpetrators is to provide victims with immediate protection from the current violence, to afford them an opportunity to consider legal options, to provide victims with time to safely relocate or obtain a Protection Order, and to ensure an adequate and prompt law enforcement response to domestic violence or family violence. The person shall be held in custody on maximum bail allowed pending further action by the Court.

(2) A law enforcement officer shall, without a warrant, arrest a person and charge him or her for the appropriate crime if the officer has probable cause to believe that the person has committed a crime of domestic violence or family violence within four (4) hours of the time when the victim first has the ability to report the incident. The officer must make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report.

Nothing in this subsection prohibits an officer from arresting and booking a person upon probable cause to believe that a person has committed a

crime involving domestic violence or family violence when more than four hours has passed.

(3) If a law enforcement officer receives a complaint alleging a crime involving domestic violence or family violence from two or more persons, the officer shall evaluate each person's account separately to determine who was more likely to have been the predominate physical aggressor. In determining whether a person was the predominate physical aggressor, the officer must consider the following as well as any other relevant factors:

- (a) Prior complaints of domestic violence or family violence;
- (b) The relative severity of the injuries inflicted on each person;
- (c) The likelihood of future injury to each person; and
- (d) Whether one of the persons acted in self-defense.

(4) If a law enforcement officer determines that one person was the predominate physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has committed a crime involving domestic violence or family violence against the predominate physical aggressor.

(5) A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving domestic violence or family violence, must include in the police report a detailed explanation why the officer did not make an arrest or arrested two or more parties.

(6) Persons arrested shall be held pending first appearance on the maximum bail allowable.

(7) Whenever a Police Officer investigates an allegation of domestic violence or family violence, whether or not an arrest is made, the officer shall make a detailed written report of the alleged abuse and submit that report to the Tulalip Tribes Prosecutor's office within 48 hours.

(8) A police officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests of intervention by law enforcement by any party.

#### 4.25.160 Emergency Criminal No Contact Order:

A police officer shall have the authority to request from the on-call judicial officer, an Emergency Criminal No Contact Order prohibiting contact with the victim, including third party contact, on a form approved by the court, if the officer has probable cause to believe that a crime involving domestic violence or family violence has occurred. One of the following methods shall be used:

- (1) The Officer shall call the on-call judicial officer from jail at time of booking and provide the judicial officer with enough information for a

finding of probable cause. The officer shall then sign the order on the judge's behalf and serve it on the defendant.

(2) The Officer shall call the judicial officer from the scene once arrest has been made and follow the same procedure as above, providing the victim with copy of the order at the scene if possible.

(3) The order shall be effective until the first court appearance or as vacated or amended by court order.

(4) Upon issuance of such an order, the officer shall serve a copy on the perpetrator and file the order with the court by noon on the next judicial day. The officer shall provide a copy of the order to the victim and assist the victim in securing any essential personal effects.

#### 4.25.170 Violations of Conditions of Release

If a police officer has probable cause to believe that a person has violated a condition of release from arrest or judgment in a domestic violence or family violence case the officer shall, without a warrant, arrest the alleged violator.

#### 4.25.180 Duty to Expedite Service of Protection Orders

The Tulalip Tribal Police shall serve Orders of Protection on an expedited basis and shall attempt to complete service within 48 hours and provide a Declaration of Service to the Court by the next judicial day.

#### 4.25.190 Authority to Seize and Hold Weapons

(1) Incident to arrest for a crime involving domestic violence or family violence, Tulalip Tribal Police shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime.

(2) The Tulalip Tribal Police may also seize weapons that are in plain view of the officer or that are discovered pursuant to a consensual search, an officer safety pat-down or a search incident to arrest as necessary for the protection of the officer or other persons.

(3) Tulalip Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them.

#### 4.25.200 Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders

When a law enforcement officer has probable cause to believe that a person has violated one of the following court orders, the officer shall, without a warrant, arrest the alleged violator. This section applies to all violations of any Protection Order or No Contact Order whether civil or criminal. Arrest shall be mandatory where the violation is of one of the following, regardless of whether the issuing authority is the Tulalip Tribal Court or another court:



- (1) A criminal no-contact order.
- (2) A civil domestic violence protection order.
- (3) A sexual assault protection order.
- (4) A civil Protection Order issued in the context of a family law action.
- (5) A vulnerable adult protection order.
- (6) A youth in need of care protection order, or
- (7) A foreign Protection Order.

The defendant shall be held without bail pending the first hearing at which time bail and conditions of release shall be established.

#### **4.25.210 Law Enforcement Records on Domestic Violence or Family Violence to be Identifiable**

The Tulalip Tribal Police Department shall maintain written records of arrests, incident reports, and initial contacts in such a manner as to allow tracking and identification of them as related to domestic violence or family violence.

The Tulalip Police Department is not required to provide records of police contacts alleging incidents of domestic violence, family violence, or stalking to the alleged perpetrator. Records may be obtained by Court order after notice to the prosecutor and a hearing. In ordering disclosure, the Court may order that the victim identification and location be redacted, and may make other orders as necessary to protect the confidentiality of victim and/or witness information.

#### **4.25.220 Liability of Law Enforcement Officers**

A law enforcement officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any court order, or any other action or omission made in good faith under this Chapter arising from an incident of alleged domestic violence or family violence or violations of one of the named criminal or civil protection orders identified within this chapter.

#### **4.25.230 Officials who Batter**

No special treatment by policy makers or law enforcement officials shall be given to any person because of their official capacity as a law enforcement officer, public official, or because of their connections to or influence over policy makers, public officials, law enforcement officers or the community. All procedures and

duties set out in this Chapter and internal policy Chapter 24 of the Tulalip Tribal Police Department in its current form or as subsequently modified, shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and/or sanctions.

### Article III Court Requirements

#### 4.25.240 Confidentiality

- (1) The Court shall establish a method for identifying civil and criminal cases that arise from an allegation of domestic violence or family violence or a crime of domestic violence or family violence. These files shall be treated as other confidential files subject to limited release.
- (2) Civil court proceedings arising from a petition for a domestic violence or family violence order are closed to the general public. The Court may designate appropriate persons who may attend the proceeding.
- (3) Court records arising from a civil petition for a domestic violence or family violence order are confidential. Documents and other information contained in the file may be released to the Petitioner, law enforcement officers, judicial officers, tribal prosecutor or reservation attorney, victim advocates, child protection workers, and elder protection workers. The records may be released, except for the address and location of the protected person, to the Respondent. The records may also be released to other persons upon order of the Court for good cause shown.
- (4) At all stages of a criminal proceeding under this Chapter, the Court shall take steps necessary to ensure that a victim's address or location is kept confidential from members of the public, except that the address or location may be revealed with the victim's consent, to the attorneys for the parties to the case. Defense counsel may not reveal to his or her client the address or location of the victim without authorization of the Court. The Court may order release of the information to other persons upon good cause shown.
- (5) Upon Court approval, a petitioner in a civil matter or a victim of domestic violence in a criminal matter may use the Legacy of Healing Program address as his or her address for service of process and other purposes.

#### 4.25.250 Pre-trial and Release Conditions

(1) Any person arrested for a crime involving Domestic Violence, Family Violence, or Violation of a Protection Order or No Contact Order shall be held in custody without bail pending the person's first appearance before the Court, at which time bail and conditions of release shall be established.

Thereafter the court shall consider the following factors when setting bail:

- (a) The person has been charged with a crime of violence and 1) the person has been recently convicted of another crime of violence, or 2) the person has committed this offense while on probation, or other release for another crime of violence;
- (b) The person has been charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury or intimidation;
- (c) There is strong likelihood of flight to escape trial. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is potential; or
- (d) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and no conditions for release are available which would reasonably assure the safety of the community.

## (2) No Contact Order

Because of the likelihood of repeated violence directed at those who have been victims of domestic violence or family violence, when any person is arrested for or charged with a crime of domestic violence or family violence, the court may issue a No Contact Order prohibiting the defendant from having any contact with the victim. Such an order shall be entered at the first opportunity with no additional hearing required.

(a) The protected party in a No Contact Order shall be provided with a certified copy of the Order.

(b) In issuing a No Contact Order, the Court shall consider whether the firearms prohibition provisions of this chapter apply.

(c) A No contact order shall not be vacated without notice to the prosecutor and a hearing.

## (3) Other Considerations

(a) No Ex Parte Bench Warrant Quash

A warrant issued in a domestic violence or family violence crime cannot be quashed without notice to the prosecutor and a hearing.

- (b) Bail. Bail set in a domestic violence or family violence case requires cash only. A bond is not available unless approved by the court and after input from the prosecutor.
- (c) The use of GPS monitoring may be required pre or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant's expense.
- (d) Other Conditions. The court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the Tulalip Police Department

#### 4.25.260 Special court rules for domestic violence or family violence crimes.

In addition to the rules of court generally applicable to criminal proceedings, the court is authorized to take the following actions in proceedings of alleged domestic violence or family violence.

- (1) If the alleged perpetrator pleads or is found guilty, the court in its discretion, may order the Tulalip Probation Department to prepare a pre-sentence report prior to sentencing.
- (2) If it appears to the court that alcohol or drugs played a part in the crime, a chemical dependency evaluation with a treatment plan may be ordered prior to sentencing at the discretion of the court.
- (3) Upon a guilty plea, conviction, other disposition, the court may issue a No Contact Order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.
- (4) Upon a guilty plea, conviction, or other disposition, the perpetrator shall be ordered to participate in the Tulalip Tribes Behavioral Health certified Domestic Violence Perpetrator Treatment Program. If the Tulalip Tribes Behavioral Health program is unavailable at the time of sentencing, the Court may approve a certified Domestic Violence Perpetrator Treatment Program that the Court finds consists of at least the following:
  - (a) The perpetrator shall attend and cooperate in an intake session for a Domestic Violence Perpetuator's Treatment program.
  - (b) The intake shall be completed by the Perpetrator Treatment Program not later than 10 calendar days after entry of the order requiring treatment, unless the court extends that time period for good cause shown.
  - (c) A copy of the recommended treatment plan shall be provided to the court
  - (d) In the discretion of the court, the perpetrator's participation in treatment sessions based on the domestic violence program's

treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the court. However, once this service is ordered it must be completed prior to dismissal unless probation is revoked.

(d) The domestic violence program or other services provider shall submit written progress reports to the court at least every six calendar weeks.

#### 4.25.270 Judgments and Convictions

When entering a judgment upon conviction for a crime involving domestic violence, family violence, or stalking, the Court shall:

- (1) Consider the entry of orders for the protection of the victim, including those set out within this chapter
- (2) Order restitution as warranted; and
- (3) Order appropriate domestic violence perpetrator's treatment

(a) For the purposes of this section, a Domestic Violence Perpetrators' Treatment intake assessment should include the following considerations: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant's self-report and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

(b) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her behavior. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the prosecutor or probation office in order to monitor compliance with the Court order.

In the Court's discretion, order any other lawful relief as it deems necessary for the protection of any claimed, alleged or potential victim of domestic violence or family violence, including orders or directives to the Tulalip Police Department

#### 4.25.280 Additional Conditions for Crimes Involving Domestic Violence or Family Violence

- (1) Upon conviction of a crime of domestic violence, the perpetrator shall be required to complete the Tulalip Tribes' Domestic Violence Perpetrator's Treatment or one approved by the court.
- (2) Upon conviction of a crime involving family violence, the perpetrator shall be required to complete a Tulalip Tribes perpetrator's intake assessment to determine whether treatment is appropriate and follow all recommendations.
- (3) Within the court's discretion the defendant may be excluded from the Tulalip Indian Reservation consistent with TTC 2.40.
- (4) Within the court's discretion, the court may order publication of the perpetrator's name and photograph in the Tulalip Tribes See-Yaht-Sub newspaper described as a domestic violence or family violence perpetrator.
- (5) Within the court's discretion it may order any combination of such confinement, exclusion, publication, and fine.
- (6) The Tulalip Tribes per capita payment of any person convicted under this chapter shall be withheld by the Tulalip Tribes and applied to the following until the costs and/or restitution are paid in full to be satisfied in the following order:
  - (a) any restitution ordered by the Court for victim and/or victim's property;
  - (b) costs incurred by the Tulalip Tribes for imprisonment , or;
  - (c) costs incurred by the Tulalip Tribes for exclusion of the convicted person.
- (7) If the defendant is not a tribal member, the court shall reduce the restitution and costs to a judgment and shall send to collections. Attorney fees and costs of collections shall be added on to the judgment.

#### 4.25.290 Factors to consider in Sentencing:

- (1) In sentencing for a crime of domestic violence, family violence, or stalking as defined in this chapter, the court shall consider, among other factors, whether:
  - (a) the firearms prohibition provisions of this chapter apply
  - (b) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
  - (c) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and whether
  - (d) The offense occurred within sight or sound of the victim's or the

offender's minor children.

(2) In sentencing for the crime of domestic violence or family violence as defined in this chapter, the prosecutor shall provide for the court's review:

(a) The defendant's criminal history, if any, that occurred under the law of the Tulalip Tribes, any state, federal, territory, possession, tribe or United States military tribunal.

(b) For the purposes of (a) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution and Stipulated Orders of Continuance (SOC), as otherwise available to the court or prosecutor, before the date of sentencing.

#### 4.25.300 Witness Testimony

(1) Upon the request of a prosecutor or the defense, the Court may issue a material witness warrant compelling a witness to appear before the Court. In making the request, the party must certify that:

- (a) The witness is material to the party's case;
  - (b) The witness has failed or refused to appear before the Court; and
  - (c) Other means of securing the witness' presence at trial have proved futile.
- (2) The Tulalip Tribes declares that protection of domestic violence and family violence victim-witnesses is a substantial and compelling interest of the Tulalip Tribes. When abuse is prosecuted, a domestic violence or a family violence victim-witness may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open Court. The creation of procedural devices designed to enhance the truth-seeking process and to shield domestic violence or family violence victim-witnesses from the trauma of exposure to the abuser and the Courtroom is a compelling tribal interest.

#### (3) Prior Statement

A prior statement is admissible as substantive evidence at trial if the victim appears and testifies inconsistently with the statement. In determining the admissibility of the statement, the court shall consider whether the statement was made subject to the following provisions:

- (a) The witness voluntarily made the statement;
- (b) When the statement was made, there were minimal guaranties of truthfulness, such as a sworn declaration, certified statement, or affidavit signed before a notary. The Statement should include the following: "I have read the attached statement or it has been read to me and I know the contents of the statement. I understand that my written statement is made

under penalty of perjury by signing below," Which should be followed by a signature and date;

(c) The statement was taken pursuant to standard procedure and;

(d) The witness whose statement is being offered is subject to cross-examination when giving the subsequent statement.

#### Article IV Criminal Actions and Remedies

##### 4.25.310 Domestic Violence or Family Violence Sentencing Designation

This section provides for the designation of a crime as domestic violence (DV) or family violence (FV) which gives notice that the Tribes may seek additional conditions at sentencing. Any crime as defined by Tulalip Tribal Code Chapter 3 or within this chapter is considered domestic violence if committed against a current or former intimate partner, or family violence if against a family or household member and is subject to the provisions of this chapter.

The designation of Domestic Violence or Family Violence should not be removed as part of a plea bargain.

##### 4.25.320 Interfering with the reporting of Domestic Violence or Family Violence

Any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911 or the Tulalip Tribal Police or other law enforcement agency, or from obtaining medical assistance or making a report to any tribal, state or federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence or family violence.

Interfering with the reporting of domestic violence or family violence is a Class E offense.

##### 4.25.330 Interfering with the Prosecution of Domestic Violence or Family Violence

Any person who prevents or attempts to prevent a witness from testifying in a court proceeding or otherwise impedes the prosecution of a case involving domestic violence or family violence, has committed the crime of Interfering with the Prosecution of domestic violence or family violence.

Interfering with the prosecution of domestic violence or family violence is a Class E offense.

##### 4.25.340 Powers and Duties of Prosecutor

The Prosecutor shall indicate in the charging document that the defendant is being accused of a crime of domestic violence or family violence.



#### 4.25.350 Communication with Victim

In every case in which a person is arrested for or charged with a crime under this Chapter, the Prosecutor shall endeavor to maintain contact with the victim throughout the criminal proceedings, with particular attention to the following:

(1) Hearing Dates, Continuances, Sentencing. The Prosecutor shall assure that the victim is informed of all hearing dates and continuances and of the right to address the Court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to insure the safety of the victim and the victim's family and household members.

(2) Prosecutorial Decisions: The Prosecutor shall inform the victim of every major prosecutorial decision, including a decision to decline prosecution of the crime, to dismiss the charges, or to enter into a plea agreement within five court days of the decision and should include available resources for the victim.

(3) Restitution: The Prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of domestic violence or family violence and shall seek restitution for the victim.

#### 4.25.360 Dismissals Disfavored

The Tulalip Tribes does not favor dismissal of domestic violence or family violence charges, thus when the prosecutor moves to dismiss a domestic violence or family violence charge against a defendant, the prosecutor shall provide specific reasons for the dismissal to the court. If the dismissal is based on the unavailability of the alleged victim or any witness, the prosecutor shall indicate why such person(s) are unavailable and why the case cannot be prosecuted without the individuals.

#### 4.25.370 Violation of No Contact Order – Penalties

- (1) A police officer shall arrest without a warrant and take into custody any person who the police officer has probable cause to believe has willfully violated a No Contact Order issued under TTC 4.25.250(1)
- (2) All provisions of an order issued under TTC 4.25.250(1) shall remain in full force and effect until the order terminates or is modified by the court.
- (3) Willful Violation of a No Contact Order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a No Contact Order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions as it deems appropriate.

(a) Violation of a No Contact Order is a Class E offense.

(b) A third or subsequent violation of a No Contact Order is a Class F offense.

(c) Consent is not a defense to a violation of a Domestic Violence No Contact Order.

#### 4.25.380 Violation of Domestic Violence Protection Order - Penalties

(1) A police officer shall arrest without a warrant and take into custody any person who the police officer has probable cause to believe has willfully violated an order issued under TTC 4.25.470.

(2) All provisions of an order issued under TTC 4.25.470 shall remain in full force and effect until the order terminates or is modified by the court.

(3) Willful violation of any domestic violence protection order subjects the respondent to criminal penalties under this chapter. Any respondent who is found guilty of violating the terms of a domestic violence protection order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions as it deems appropriate.

(a) Violation of a domestic violence protection order is a Class E offense.

(b) A third or subsequent violation of a domestic violence protection order is a Class F offense.

(c) Consent is not a defense to a charge of violation of a Domestic Violence Protection Order.

#### 4.25.390 Crime of Stalking

(1) A person commits the crime of stalking if, without lawful authority:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The fear must be one that a reasonable person would experience under the same circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2) It is not a defense to the crime of stalking:

(a) Under Subsection (1) (c) (i) of this Section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or

(b) Under Subsection (1) (c) (ii) of this Section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(4) A person who stalks another person is guilty of a Class E offense except that the person is guilty of a Class F offense if any of the following applies:

- (a) the stalker has previously been convicted in the Tribal Court, in Washington State or any other state of any crime of harassment, as defined in TTC Section 3.15.160 or RCW 9A.46.060 or similar statute of another jurisdiction,
  - (b) the stalking violates any protective order protecting the person being stalked;
  - (c) the stalker has previously been convicted of an offense under this Section or of a gross misdemeanor or felony stalking offense under Federal or Washington State law;
  - (d) the stalker was armed with a dangerous weapon while stalking the person;
  - (e) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, legislator, or community corrections officer, probation officer or staff and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or
  - (f) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.
- (5) As used in the Section:
- (a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
  - (b) "Harasses" for the purpose of this section means engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the victim, or, when the course of conduct is contact by a person over age eighteen (18) of a minor child that would cause a reasonable parent to fear for the well-being of that child.
  - (c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including, but not limited to a Domestic Violence Protection Order issued pursuant to TTC 4.25.480, No Contact Order issued pursuant to TTC 4.25.280(1), Sexual Assault Protection Order pursuant to TTC 4.25.850 or any successor codes to these sections.
  - (d) "Repeatedly" means two (2) or more times

#### 4.25.400 Advocates –Present during Prosecution or Defense Interviews

If requested by the victim, and if the presence of the advocate does not cause any unnecessary delay in the investigation or prosecution of the case, an advocate of the victim's choosing shall be present at any interview with the victim

and at any judicial proceeding related to criminal acts committed against the victim.

#### 4.25.410 Victim Rights

Notwithstanding other provisions of the Tulalip Tribal Code, a victim of a crime under this chapter shall have the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the prosecutor in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The Victim has the right to provide a Victim Impact Statement

A victim impact statement is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, how the crime affected the victim psychologically, financially, and physically. The prosecutor shall assist the victim to provide this statement. The court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in court.

#### 4.25.420 Habitual Domestic Violence or Family Violence Offender

Any person with two or more convictions for crimes of domestic violence or family violence shall be deemed an habitual domestic violence or family violence offender and any subsequent violation shall be a class "F" offense, except where inconsistent with federal laws.

#### 4.25.430 Assaulting Legacy of Healing Staff

Any written or verbal threat or any assault upon a person acting in an official or professional capacity in the protection of victims of domestic violence or family

violence, sexual assault, stalking or dating violence shall be considered to be an assault of the most serious nature and a Class E offense.

#### 4.25.440 Probation: Modifications of Conditions.

Upon violation of a judgment and sentencing order, the court may modify, reduce, or enlarge the conditions of probation at any time prior to the expiration or termination of the term of probation and the provisions applicable to the initial setting of the conditions of probation. However, the court may not set aside or modify the requirement to complete Domestic Violence Perpetrator's Treatment without notice to the Prosecutor and a hearing.

4.25.450 Written Statement of Conditions. The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required. This statement shall be signed and dated by defendant when received.

#### 4.25.460 Violations by juveniles – Mandatory arrest.

(1) Whenever a Police Officer has grounds under TTC 4.25.160 or 4.25.210 to arrest a person who is a juvenile, the officer shall arrest the juvenile as provided in this chapter, and the provisions of this chapter shall govern the arrest and all subsequent proceedings.

(2) A juvenile held in custody under this chapter shall be held in any of the following places:

(a) Juvenile detention facility.

(b) Juvenile halfway home.

(c) Any other suitable place approved by the Court and/or beda?chelh.

(3) All civil and criminal proceedings against a juvenile under this chapter shall be within the jurisdiction of the Tribal Court rather than the Juvenile Court.

(4) The arrest and prosecution of a juvenile under this chapter does not bar proceedings in an appropriate Juvenile Court.

(5) A petition for a Protection Order under TTC 4.25.450 may be filed against a juvenile who is alleged to have committed an act of domestic violence, and the provisions of this chapter shall govern all subsequent proceedings in the action. [Ord. 117 § 1.9, 11-5-2001 (Res. 2001-365)].

## Article V Civil Remedies and Actions

### 4.25.470 Civil Protection Order

**Purpose:** A person may seek a Protection Order whether or not the person has contacted law enforcement officers to report a crime, but such persons should be referred to law enforcement officers in the event that crime has been committed. It is the policy of the Tribes that temporary protection orders may be issued without prior notice to the Respondent to ensure the immediate protection of the victim and any family or household member, and to prevent further violence. Orders may be modified or extended, with or without prior notice to the Respondent or a hearing, consistent with this purpose. Relief under this Chapter may not be denied or delayed on the grounds that the relief is available in another action.

### 4.25.480 Persons Authorized to File

- (1) A petition to obtain a Protection Order under this Section may be filed by:
  - (a) Any person claiming to be the victim of domestic violence, family violence, dating violence or stalking, or
  - (b) Any family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence or stalking on behalf of the minor or vulnerable adult, or
  - (c) The Tribal Prosecutor, or
  - (d) Any person acting in an official capacity in the protection of domestic violence, family violence, dating violence or stalking survivors including but not limited to Legacy of Healing staff, elder abuse case managers or advocates, Child Advocacy Center, therapists, beda?chelh case managers on behalf a child, or other advocate acting in a professional capacity.

### 4.25.490 Petition for Protection Order or Modification

- (1) A petition shall allege the existence of domestic violence, family violence, dating violence, or stalking, and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.

- (2) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
- (3) No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence, family violence, dating violence or stalking, the Court or the arresting police officer shall advise the alleged victim of the right to file a petition under this section without cost.
- (4) The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining a Protection Order. However, the petition shall state whether any other action is pending between the petitioner or victim, and the respondent.
- (4) The court shall make available standard, simplified petition forms and instructional brochures with instructions for completion. The Tulalip Police Department and the Tribal Court shall make such forms available upon request to victims of domestic violence, family violence, dating violence, or stalking.
- (5) Once a petition has been filed, the Court Clerk shall conduct a criminal background check according to court policy and attach the report(s) to the petition.

#### 4.25.500 Procedure for Issuance of a Protection Order

Upon the filing of a petition for a Protection Order, the Court shall evaluate the petition for protection and error on protecting the petitioner and any other family members during this initial process, and:

- (1) Immediately grant an Ex Parte Protection Order without bond if, based on the specific facts stated in the affidavit, the Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of domestic violence, family violence, dating violence, or stalking committed by the respondent, and issuance of the ex-parte order is necessary to protect the victim from further abuse.
- (2) Cause an Ex Parte Protection Order, together with notice of hearing, to be made immediately available to the petitioner for service by a police officer, court officer, or other authorized person.

- (3) The court may hold the record open and request additional information if the submitted information is insufficient at the time of filing. The record must be completed within 72 hours and at that time the order granted or denied.
- (4) Hold a hearing within fifteen (14) days after the granting of the Ex Parte Protection Order to determine whether the order should be vacated, extended, or modified in any respect.
- (5) Once granted, the order may not be dismissed without a court hearing.
- (6) If an ex-parte order is not granted, serve notice upon both parties to appear in Tribal Court and hold a hearing on the petition for protection order within seventy-two (72) hours after the filing of the petition; if notice of hearing cannot be personally served, notice shall be provided consistent with Chapter 2.

#### 4.25.510 Contents of a Protection Order

An ex-parte protection order or a protection order entered after notice and hearing may, when deemed appropriate by the Court, include provisions:

- (1) Restraining the respondent from committing acts of domestic violence, family violence, dating violence, or stalking.
- (2) Excluding the respondent from the residence, workplace, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence.
- (3) Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.
- (4) Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis that gives primary consideration to the safety of the claimed victim of domestic violence and the minor children.
  - (a) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole



custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence or family violence

- (b) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence, family violence, sexual assault, or stalking has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, family violence, sexual assault, or stalking in the location of that parent's choice.
- (c) In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic violence, family violence, sexual assault, or stalking has occurred since the last custody determination constitutes a finding of a change in circumstances.
- (d) If the Court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children.
- (e) In determining custody and/or visitation, the Court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.
- (f) If a parent is absent or relocated because of an act of domestic violence or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.
- (g) Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court.
- (h) In a visitation order, the Court may:
  - (i) Order an exchange of a minor child to occur in a protected setting;

- (ii) Order that visitation be supervised by another person or agency at the perpetrator of domestic violence or family violence's expense;
  - (iii) Order the perpetrator of domestic violence or family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (iv) Order the perpetrator of domestic violence or family violence to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for 24 hours preceding the visitation and may order submission of a UA prior to the visit
  - (v) Prohibit overnight visitation;
  - (vi) Require a court-approved bond from the perpetrator of domestic violence or family violence for the return and safety of the minor child; and
  - (vii) Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence or family violence, or other family or household member.
- 
- (i) Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.
  - (j) The Court may refer but may not order an adult who is a victim of domestic violence or family violence to attend counseling relating to the victim's status or behavior as a victim, as a condition of receiving custody of a minor child or as a condition of visitation.
  - (k) If the Court allows a family or household member to supervise visitation, the Court must establish, in writing, conditions to be followed during visitation.

- (l) The Court shall notify the restrained party that the willful violation of any provision of the Protection Order is a criminal offense and punishable by imprisonment and/or a fine.
- (5) Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence, family violence, sexual assault, or stalking if necessary for the safety of the elderly or vulnerable adult until the matter can be addressed through an action pursuant to TTC 4.30.
- (6) Awarding temporary use and possession of property of the respondent.
- (7) Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures.
- (8) Ordering the respondent to timely pay any existing debts of the petitioner, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.
- (9) Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.
- (10) Notifying the parties that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this Code for which civil penalties may be assessed.
- (11) If the victim or alleged victim is awarded temporary use of the house and is listed on the rental agreement, the landlord, including tribal housing shall, at the request of the petitioner change the locks within 24 business hours of issuance of the order.
- (12) Ordering Law Enforcement to assist the victim in removing Essential Personal Effects from a shared home.
- (13) Order that the respondent may not come within 500 feet of the Legacy of Healing building or safe house, regardless of whether the victim is there.
- (14) Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the Tulalip Police Department.

#### 4.25.520 Duration of Permanent Protection Order and Modification

- (1) The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the Court at the request of any party or at the request of the Legacy of Healing Program.
- (2) The Court in its discretion may upon request of either party or the Legacy of Healing Program modify a protection order.
- (3) By the petitioner: Before the court may modify or reconsider a protection order at the request of the petitioner if children live in the home, the Court may require petitioner to attend a Domestic Violence Support group, with a session focused on the effects of domestic violence on children.
- (4) By the respondent: Before the court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the court with all pertinent documents, affidavits, compliance forms or any other information required by the court for either reconsideration or modification of protection orders.

#### 4.25.530 Service Of Temporary Protection Order.

Temporary Protection Orders are to be served personally upon the respondent by a police officer, officer of the court, or other authorized person within 48 hours if possible. If the respondent cannot be located, the order shall be mailed by certified mail with return receipt requested and regular mail to the respondent's last known address. If by the first court hearing, service is not achieved, then notice shall be issued by publication in accordance with TTC 2.10. If respondent has been served with notice of the hearing and fails to appear, the petitioner has no further requirement to serve the respondent with the final order entered by the Court at the hearing.

#### 4.25.540 Copy to the Police Department and other Jurisdictions

Each Protection Order granted pursuant to TTC 4.25.470 and each order issued under TTC 4.25. 530 shall be forwarded by fax or email, by the Clerk of Courts within 24 hours to the Tulalip Tribes Police Department and Snohomish County Superior Court, or any other necessary jurisdiction for entry into the state-wide data system. The Police Department shall make available to each officer information as to the existence and status of each such order. [Ord. 117 § 1.17, 11-5-2001 (Res. 2001-365)].

#### 4.25.550 Penalties for Violation of a Protection Order.

Violation of a protection order is a crime.

- (1) Violation of a protection order is a Class E offense.

(2) The third or subsequent violation of a protection order is a Class F offense.

(3) Consent is not a defense to a charge of Violation of a Protection Order.

#### 4.25.560 Firearms Disqualification

**Purpose:** It shall be the purpose of this Section to prohibit any person from possessing a firearm who has been convicted of a felony or misdemeanor crime of domestic violence, family violence, sexual assault, stalking, or dating violence, as defined under the laws of the Tulalip Tribes who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; any person who is found mentally incompetent to stand trial; or any person committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense from possessing a firearm.

(1) It shall be unlawful for any person to possess a firearm who:

(a) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, except that this subsection shall apply only to those orders that:

(i) were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present;

(ii) include a finding that such person represents a credible threat to the physical safety of such household or family member; and

(iii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

(b) Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the Tulalip Tribes, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined by this chapter.

(2) Violation of this section is a class E offense and may result in exclusion from the Tulalip Indian Reservation as defined within TTC 2.40. Any violations of related domestic violence or family violence sentences in this section or any violations of other sections of this chapter shall be served consecutively.

#### Article VI Special Rules of Court and Other Issues

##### 4.25.570 Secure Waiting Area

Whenever practical, the Court shall provide a secure waiting area or bailiff supervision, prior to and during court proceedings for a victim and his or her family, of domestic violence, family violence, sexual assault, dating violence, or stalking, which will not require them to be in close proximity to the defendant or their families or friends.

##### 4.25.580 Fees not Permitted

A public agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

##### 4.25.590 Child Custody Disputes

(1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with TTC 4.20 or its successor, the Uniform Child-Custody Jurisdiction and Enforcement Act, and be in accordance with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.

(2) A police officer shall not remove a child from his or her current placement unless:

- (a) A writ of habeas corpus to produce the child has been issued by the Tulalip Tribal Court, a superior court of this state, or another tribal court ; or
- (b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to TTC 4.05.

#### 4.25.600 Mediation not allowed

Mediation is not allowed if a Protection Order is in effect unless mediation is requested by the victim of the alleged domestic violence after consultation with counsel or an advocate, and is provided by a certified mediator who is trained in domestic violence in a specialized manner intended to protect the safety of victims. The victim is permitted to have a support person of his or her choice, including but not limited to a Legacy of Healing advocate or other person, in attendance at the mediation.

#### 4.25.610 Domestic Violence Leave Act

**Purpose:** Victims of domestic violence are often forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing victims who are employed frequently miss days of employment and employers sometimes respond by terminating or disciplining such employees. It is the purpose of this chapter to preclude all reservation employers from terminating any employee who can document within 14 days an instance of domestic abuse which contributed to his/her absence from employment. Employers have the option of granting such employees leave with or without pay because of domestic violence related absences. Absences are not to exceed twelve (12) weeks.

An employee may take reasonable leave from work, intermittent leave, or leave on a reduced work schedule, with or without pay to:

- (1) Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence or family violence, sexual assault, stalking or dating violence;
- (2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence or family violence, sexual assault, stalking, or dating violence, or to attend to health care treatment for a victim who is the employee's family member;
- (3) Obtain or assist a family member in obtaining services from a domestic violence safe house, rape crisis center, or other social services program for relief from domestic violence, family violence, sexual assault, stalking, or dating violence;
- (4) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, family violence, sexual assault, stalking or dating violence, in which the employee or the employee's family member was a victim of domestic violence or family violence, sexual assault, stalking or dating violence; or

(5) Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence or family violence, sexual assault, stalking, or dating violence.

#### 4.25.620 Discharges for Absence of Employment Due to Domestic Violence Prohibited.

It shall be a violation of this chapter for any employer located within the exterior boundaries of the Tulalip reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that he/she has been the victim of domestic violence, family violence, sexual assault, stalking or dating violence, and that such violence contributed to his/her absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.

#### 4.25.630 Penalty for Violation.

Any employer who willfully violates this section shall be subject to a maximum civil penalty of up to \$1000.00 payable to the Tribes in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section. Any funds collected for a violation of this section shall be used for the Legacy of Healing Safe House

### Article VII Legacy of Healing Safe House

#### 4.25.640 Purpose

Safe Houses for victims of domestic violence, family violence, sexual assault, stalking, or dating violence are essential to provide protection to victims from further abuse and physical harm, as well as to help victims find long-range alternative living situations if requested. Safe Houses provide safety, refuge, advocacy, and helping resources to victims and his or her children, who may not have access to such resources if they remain in abusive situations.

#### 4.25.650 Duties and Responsibilities of Legacy of Healing Safe House:

The Legacy of Healing Safe House should attempt to provide the following services subject to available resources:



(1) Make available Safe House services to any person who is a victim of domestic violence, family violence, sexual assault, stalking, or dating violence and to that person's children;

(2) Provide prevention and treatment programs to victims of domestic violence, family violence, sexual assault, stalking, or dating violence and their children .

(3) Provide a day program or drop-in center to assist victims of domestic violence, family violence, sexual assault, stalking, or dating violence who have found other safe housing but who need support services.

#### 4.25.660 After Hours Contact

The Legacy of Healing shall provide Tulalip Tribal Police with an after-hours contact number and/or person.

#### 4.25.670 Client Records

(1) Client records maintained by Legacy of Healing are confidential and shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to the court stating that discovery is requested of the client's domestic violence, family violence, sexual assault, stalking, or dating violence records, with notice to the agency and notice to the victim(s) affected by the disclosure of information;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence, family violence, sexual assault, stalking, or dating violence program's records;

(c) The court reviews the domestic violence, family violence, sexual assault, stalking, or dating violence program's records *in camera* to determine whether the domestic violence, family violence, sexual assault, stalking, or dating violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings, provided that such a release does not violate the Violence Against Women Act codified at 18 U.S.C. 2265 and any subsequent act or amendment .

(2) For purposes of this section "domestic violence program" means the Legacy of Healing Program, or a program that provides a Safe House, advocacy, or

counseling services for victims of domestic violence or family violence, stalking or dating violence.

(3) For purposes of this section "sexual assault program" means the Legacy of Healing Program, or a program that provides Safe House, advocacy, or counseling services for victims of sexual assault.

(4) Client records subject to Health Insurance Portability and Accountability Act are excluded from this section.

#### 4.25.680 Legacy of Healing Safe House: Safe Zone

Findings: To protect the health and safety of children, parents, and families receiving services from the Legacy of Healing Program, it is the policy of the Tribes to provide a "Safe Zone" which is identified as the premises of the Legacy Healing and Legacy of Healing Safe House and may deny entrance to individuals in the following categories.

- (1) Persons convicted of a domestic violence or family violence charge;
- (2) Persons subject to an on-going investigation of domestic violence or family violence or a pending criminal matter that involves a charge of domestic violence or family violence;
- (3) Persons convicted of a sex offense no matter how the offense is styled or how long ago the event occurred;
- (4) Persons who are registered sex offenders or who would be required to register under Tribal, Federal, or State law;
- (5) Persons deemed not competent to stand trial for a sex offense criminal charge or domestic violence or family violence criminal charge but whom the court deems a threat to children or other persons, or;
- (6) Persons who are subject to a protection order whether civil or criminal as a respondent or defendant.

### Article VIII Other Orders

#### 4.25.690 Full Faith and Credit Clause.

Purpose: The purpose of this section is to ensure compliance with the full faith and credit provision of the Violence Against Women Act of 1994 (VAWA) as set forth in Chapter 18 of the United States Code, Section 2265 (18 U.S.C. 2265), as it may be amended from time to time, and to ensure that victims of domestic violence are able to move across State and Tribal boundaries without losing the

ability to enforce protection orders they have previously obtained to increase their safety.

A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, Indian tribe, or United States military tribunal.

A person under restraint must be given reasonable notice and the opportunity to be heard before the protection order of the foreign state, territory, possession, Indian tribe or United States military tribunal was issued. In the case of an ex parte order, notice and opportunity to be heard must have been provided within a reasonable time after the order was issued, consistent with due process. [Ord. 117 § 1.21, 11-5-2001 (Res. 2001-365)].

#### 4.25.700 Filing a foreign protection order.

(1) A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a Clerk of the Tulalip Tribal Court. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the Clerk of the Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

(2) There shall be a presumption in favor of validity where a protection order appears authentic on its face.

(3) Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this State used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.

(4) The Court shall accept the filing of a foreign protection order without a fee or cost.

(5) The Clerk of the Court shall provide information to a person entitled to protection of the availability of domestic violence, family violence sexual abuse, stalking and dating violence of other services to victims in the community.

(6) The Clerk of the Court shall assist the person entitled to protection in completing an information form that must include, but need not be limited to, the following:

- (a) The name of the person entitled to protection and any other protected parties;
- (b) The name and address of the person who is subject to the restraint provisions of the foreign protection order;
- (c) The date the foreign protection order was entered;
- (d) The date the foreign protection order expires;
- (e) The relief granted under \_\_\_\_\_ (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);
- (f) The judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
- (g) The Social Security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
- (h) Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
- (i) Whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order;
- (j) The type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection;
- (k) An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.

(7) The Clerk of the Court shall provide the person entitled to protection with a copy bearing proof of filing with the Court.

(8) Any assistance provided by the Clerk under this section does not constitute the practice of law. The Clerk is not liable for any incomplete or incorrect information that he or she is provided. [Ord. 117 § 1.22, 11-5-2001 (Res. 2001-365)].

#### 4.25.710 Transmittal of filed foreign protection orders to law enforcement agency.

(1) The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the Tulalip Tribes

Police Department and County Sheriff along with the completed information form. The Clerk may forward the foreign protection order to the County Sheriff by facsimile or electronic transmission. Upon receipt of the filed foreign protection order, the Tulalip Police Department shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available, listing outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The Tulalip Police Department shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the computer-based intelligence information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the State.

(2) The information entered into other computer-based criminal intelligence information systems must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service. [Ord. 117 § 1.23, 11-5-2001 (Res. 2001-365)].

#### 4.25.720 Violation of Foreign Orders

- (1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person from a residence, workplace, school, or daycare, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which a foreign protection order specifically indicates that a violation will be a crime, is punishable on the same schedule as if the order were issued by the Tulalip Tribal Court in section 4.25.470
- (2) Upon conviction, and in addition to any other penalties provided by law, the Court may require the person under restraint to submit to electronic monitoring (Global Positioning System (GPS) or similar). The court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.
- (3) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order for which the foreign protection order specifically

indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

#### 4.25.730 Police/peace Officer Immunity

No police officer, peace officer, or officer's legal advisor shall be held criminally or civilly liable for making an arrest under this chapter if the Police Officer, peace officer, or the officer's legal advisor acted in good faith and without malice. [Ord. 117 § 1.25, 11-5-2001 (Res. 2001-365)].

#### 4.25.740 Harassment

Purpose: The Tulalip Tribes finds that the prevention of harassment is important to the health, safety and general welfare of the tribal community. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil Harassment Protection Orders preventing all further unwanted contact between the victim and the perpetrator.

#### 4.25.750 Harassment Protection Order

For the purpose of this section, "Harassment Protection Order" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.

#### 4.25.760 Temporary Harassment Protection Order

For the purpose of this section, "Temporary Harassment Protection Order" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than fourteen (14) days.

#### 4.25.770 Petition for an Harassment Protection Order

There shall exist an action known as petition for Harassment Protection Order for cases of harassment. The requirements for obtaining such an order are as follows:

(1) A petition to obtain an Harassment Protection Order under this section may be filed by any person claiming to be the victim of harassment or made by a parent, guardian, or bedah?chel if the child is a ward of the court, on behalf of the child.

(a) A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties, except that a parent may not petition for an Harassment Protection Order on behalf of his or her child against the child's other parent. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

#### 4.25.780 Contents of a Petition for Harassment Protection Order

- (1) A petition for relief shall allege the existence of harassment and shall be accompanied by a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.
- (2) The court shall make simplified petition forms and instructional brochures available. Any information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.
- (3) Civil filing fees shall apply for filing of a petition under this section, unless the court makes a finding upon due inquiry that the petitioner lacks the financial resources to pay filing fees.
- (4) No bond is required to obtain relief in any proceeding under this section.
- (5) The parent, guardian of a child under age eighteen, or bedahel if the child is a ward of the court, may petition for an Harassment Protection Order to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be restrained is detrimental to the welfare of the child.

#### 4.25.790 Harassment Protection Order Ex Parte

- (1) Upon filing a petition for an Harassment Protection Order under this section, the petitioner may obtain an Ex Parte Temporary Harassment Protection Order with or without serving notice upon the respondent by filing a statement made under penalty of perjury which, to the satisfaction of the court, shows evidence of harassment of the petitioner by the respondent, and that continued harassment may result if the temporary Harassment Protection Order is not granted.
- (2) An Ex Parte Temporary Sexual Assault Protection Order shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the Ex Parte Temporary Sexual Assault Protection Order along with a copy of the petition and notice of the date set for the hearing. If service is not possible, the court may authorize service according to TTC 2.10 or its successor code.

#### 4.25.800 Permanent Harassment Protection Order

- (1) At the hearing within fourteen (14) calendar days after the granting of the Ex Parte Harassment Protection Order, a permanent order shall be issued prohibiting such harassment if the court finds by a preponderance of the evidence that harassment exists or has occurred. Otherwise, the temporary

Harassment Protection Order shall expire on its own terms. If the respondent does not appear, the petitioner must demonstrate that he or she effected proper service; and a default judgment will be entered.

(2) An order issued under this section shall be effective for not more than one year unless the court finds that any future contact with petitioner would result in the harm from which the petitioner originally sought protection. If the court so finds, the court may enter an order to a fixed time exceeding one year or may enter a permanent Harassment Protection Order.

(3) In the event that a respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him or her, the court may grant a second Ex Parte Temporary Harassment Protection Order to the same petitioner enjoining the same respondent and order alternate service according to TTC 2.10 or its successor code. If an officer investigates an alleged violation of an order issued pursuant to this chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the court.

(4) At any time within three months prior to the expiration of the order, the petitioner may apply for a renewal of the order by filing a motion for renewal with the court. The motion for renewal shall state the reasons why he or she seeks to renew the order. Upon receipt of the motion for renewal, the court shall order a hearing which shall be held within fourteen (14) days from the date of motion. The court shall grant the motion for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when the order expires. The court may renew the Harassment Protection Order for another fixed period or may enter a permanent order.

(5) The court, in granting an Harassment Protection Order, shall have broad discretion to grant such relief as the court deems proper including but not limited to:

- (a) Restraining the respondent from making attempts to contact the petitioner and all persons listed in the petition.
- (b) Restraining the respondent from making any attempts to monitor the petitioner by actual or electronic surveillance.
- (c) Requiring the respondent to stay a specified minimum distance from the petitioner's residence, workplace, and /or school.

#### 4.25.810 Notice to Local Law Enforcement Agencies – Enforceability.

(1) A copy of an Harassment Protection Order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the Tulalip Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into the computer-based criminal intelligence information system currently in use by the Department to list



outstanding warrants. The Police Department shall expunge expired orders from the computer system. Entry into the information system constitutes notice to the Police Department of the existence of the order.

(2) If an officer investigates an alleged violation of an order issued pursuant to this chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the court. Law enforcement shall update the criminal information system to reflect that service has been effected.

#### 4.25.820 Contempt and Violation of Harassment Protection Order-Penalties.

(1) Knowing violation of any Harassment Protection Order subjects the respondent to criminal penalties under this chapter.

(2) Any respondent who is found guilty of violating the terms of the Harassment Protection Order may also, subject to the court's discretion, be held in civil contempt of court, and the court may impose such sanctions as it deems appropriate.

(3) Violation of a Harassment Protection Order is a Class D offense.

(4) Third or subsequent violation of an Harassment Protection Order is a Class E offense.

#### 4.25.830 Full Faith and Credit.

(1) Harassment Protection Orders issued by the Tulalip Tribal Court will be enforceable throughout the state of Washington pursuant to RCW 13.34.240, if pertaining to a child under 18, or Washington Civil Rule 82.5 (c), provided it does not violate policy.

(2) To ensure that Harassment Protection Orders issued by the Tulalip Tribal Court are enforced outside of the boundaries of the reservation, Harassment Protection Orders issued in the courts of the State of Washington will be enforced within the boundaries of the Tulalip Reservation.

(3) Notice of reciprocal enforcement pursuant to this section shall be printed on all Harassment Protection Orders issued by the court.

#### 4.25.840 Sexual Assault Protection Order

Purpose: The Tulalip Tribes finds that there are times when a victim of a sexual assault or unwanted sexual contact is neither an intimate partner nor family member, thus does not qualify for the protections from these types of orders. Nevertheless, the victim deserves all the protections afforded within this chapter

because the alleged sexual assault or unwanted sexual contact is such a heinous incident that goes to the heart of the health, safety and general welfare of the Tulalip Tribal Community; therefore a protection order provided under this chapter is to protect those that have been sexually assaulted

#### 4.25.850 Persons Authorized To File

A petition for a sexual assault protection order may be filed by a person:

(1) Who does not qualify for a domestic violence or family violence protection order and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(2) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a domestic violence or family violence protection order:

(a) A minor child; or

(b) A vulnerable adult as defined in by TTC 4.30 or

(c) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

#### 4.25.860 Petition for Sexual Assault Protection Order

There shall exist an action known as a petition for a sexual assault protection order.

(1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter which give rise to a reasonable fear of future dangerous acts for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties.

(3) Forms and instructional brochures and the necessary number of certified copies shall be provided to the petitioner free of charge.

(4) A person is not required to post a bond to obtain relief in any proceeding under this section.

(5) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address, such as the Legacy of Healing office, at which the respondent may serve notice of any motions.

#### 4.25.870 Emergency Sexual Assault Protection Order Ex Parte

(1) An Ex Parte Temporary Sexual Assault Protection Order shall issue if the petitioner to the satisfaction of the court, shows evidence of:

(a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and

(b) There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(2) If the court declines to issue an Ex Parte Temporary Sexual Assault Protection Order, the court shall state the particular reasons for the court's denial and set a hearing on the petition. The court's denial of a motion for an Ex Parte Temporary Protection Order shall be filed with the court.

(3) A willful violation of a court order issued under this section is punishable under the laws for the Tulalip Tribes and will subject the perpetrator to arrest.

(4) An Ex Parte Temporary Sexual Assault Protection Order shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the Ex Parte Temporary Sexual Assault Protection Order along with a copy of the petition and notice of the date set for the hearing. If service is not possible, the court may authorize service according to TTC 2.10 or its successor code.

(a) Any Ex Parte Temporary Sexual Assault Protection Order issued under this section shall contain the date and time of issuance and the expiration date and shall be transmitted to the clerk of the court of the county in which the petitioner resides and to the Tulalip Police Department within one judicial day after issuance.

(5) Any Ex Parte Temporary or Final Sexual Assault Protection Order may be renewed one or more times, as necessary for victim safety. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. Renewals may be granted only in open court.

#### 4.25.880 Appointment of Counsel

The court may appoint counsel to represent the petitioner.

#### 4.25.890 Permanent Sexual Assault Protection Order

(1) Except as otherwise provided in this section, a final sexual assault protection order shall be effective for a fixed period of time, not to exceed two years. However, the order may be renewed prior to its expiration.

(2) Any sexual assault protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

#### 4.25.900 Request for Reconsideration or Modification

Upon motion with notice to all parties and after a hearing, the court may modify the terms of an existing Sexual Assault Protection Order. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall, on or before the next judicial day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or terminated order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

#### 4.25.910 Sexual Assault Protection Orders — Personal Jurisdiction — Nonresident Individuals.

(1) In a proceeding in which a Sexual Assault Protection Order is sought under this chapter, the Tulalip Tribal Court may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition; or

(b) The individual submits to the jurisdiction of this Tribe by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred within this Tribes' jurisdiction as defined by Chapter 2 or within this chapter; or

(d) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred outside this tribe but are part of an ongoing pattern of sexual assaults or stalking that has an adverse effect on the petitioner, a member of the petitioner's family or household and the petitioner resides within the exterior boundaries of the Tulalip Reservation; or

(e) There is any other basis consistent with laws of the Tulalip Tribes and/or the laws of the United States.

(2) For jurisdiction to be exercised under subsection (1) (a-e) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides within the exterior boundaries of this tribe. For the purposes of subsection (1)(a-e) of this section, "communicated or made known" includes, but is not limited to, regular or electronic mail, telephonic, or a posting on an electronic communication site, medium or social website. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) of this section if directed at a resident of the Tulalip Reservation.

#### 4.25.920 Penalties for Violation of a Sexual Assault Protection Order.

Violation of a sexual assault protection order is a crime.

(1) Violation of a sexual assault protection order is a Class E offense.

(2) A third or subsequent violation of a sexual assault protection order is a Class F offense,

(3) Consent is not a defense to a charge of Violation of a Sexual Assault Protection Order.

#### 4.25.930 Full Faith and Credit.

(1) A Sexual Assault Protection Order issued by the Tulalip Tribal Court will be enforceable throughout the state of Washington pursuant to RCW 13.34.240, if pertaining to a child under 18, or Washington Civil Rule 82.5 ( c ).

(2) To ensure that Sexual Assault Protection Orders issued by the Tulalip Tribal Court are enforced outside of the boundaries of the reservation, Sexual Assault Protection Orders issued in the courts of the State of Washington, or a Tribal Court within the State of Washington, will be enforced within the boundaries of the Reservation.

(3) Notice of reciprocal enforcement pursuant to this section shall be printed on all Sexual Assault Protection Orders issued by the court.

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 3-9-15
- 2) Contact Person(s): Tehassi Hill Dept: LOC  
Phone Number: x 4420 Email: rhill7@oneidanation.org
- 3) Agenda Title: \_\_\_\_\_
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
The 2013 Farm Bill authorizes institutions of higher education or State departments of agriculture in states where hemp is legal to grow hemp for research or agriculture pilot programs. Because that State of Wisconsin does not have hemp legislation, this Law will govern how industrial hemp will be grown on the Reservations, pending the appropriate federal permits are obtained.

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

- |          |          |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:  
\_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
Environmental Health and Safety, Integrated Food Systems, Internal Services, Land Management, Law Office
- 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: Tehassi Hill

*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

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: March 12, 2015
- 2) Contact Person(s): Susan G. Daniels or Gina Buenrostro Dept: Oneida Personnel Commission  
Phone Number: 869-4437 Email: \_\_\_\_\_
- 3) Agenda Title: Oneida Personnel Commission By-laws Revision
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
The Oneida Personnel Commission has identified the need to revise its by-laws in order to outline more specifically qualifications for appointed commissioners.  
The type of work done by OPC is more detailed and advanced than it was when first created.  
As a result, appointed commissioners need a higher degree of qualifications than originally identified.

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

- 1) OPC Minutes of December 9, 2014
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
\_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
\_\_\_\_\_
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
If yes, please indicate why: New appointments are due soon. It was the goal of OPC to have these ready for any new commissioner being assigned to OPC

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

Signature of Requester: Susan G. Daniels

Digitally signed by Susan G. Daniels  
DN: cn=Susan G. Daniels, o=Oneida Personnel Commission, ou=Oneida Personnel Commission, email=sdaniels1@tds.net, c=US  
Date: 2015.03.12 09:05:45 -0500

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

**LOC@oneidation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



## Oneida Personnel Commission Bylaws

### Article I. Authority

- 1-1 *Name.* The name of this entity shall be the Oneida Personnel Commission and may be referred to as the OPC for the purpose of these bylaws.
- 1-2 *Authority.* The OPC was created by the General Tribal Council as the Personnel Selection Committee and renamed the Personnel Commission by the Personnel Commission and the Oneida Business Committee Resolution (#4-13-90A). The original bylaws were amended by approval of the Oneida Business Committee on April 29, 1998 and April 28, 2010.
- 1-3 *Office.* The official mailing address of the OPC shall be:

Oneida Personnel Commission  
P.O. Box 365  
Oneida, WI 54155

The physical meeting place shall be determined at the first meeting of the OPC and may change from time to time as determined by the OPC and approved by the OBC but shall be within the boundaries of the Oneida Reservation unless noticed to the membership prior to designating the meeting location.

1-4 *Commission Membership.*

- a. *Number of Commissioners.* The OPC shall be made up of no less than twelve (12) members and no more than fifteen (15) members serving five (5) year terms.
- b. *Qualifications.* Commissioners shall be appointed by the Oneida Business Committee and shall meet the following qualifications:
  1. An enrolled member of the Oneida Tribe of Indians of Wisconsin.
  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 Ethics Code, the Judicial Code and the Oneida Rules of Civil Procedure.
  4. A member may not be an 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, training, interviews, pre-screening, 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, as indicated in 1-4.f. below.
  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 may be 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.
  7. The ability to research and apply laws and processes including tribal and relative Federal laws. (Approved by OPC at a duly held meeting on December 9, 2014).

8. The ability to conduct job interviews to hire best matched applicant. (Approved by OPC at a duly held meeting on December 9, 2014).
  9. The ability to use judicious good sense. (Approved by OPC at a duly held meeting on December 9, 2014).
  10. The ability to proofread documents for proper grammar, spelling, punctuation, clarity of meaning and sufficient content. (Approved by OPC at a duly held meeting on December 9, 2014).
- c. *How Vacancies are Filled.* Vacancies shall be filled in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions and the person filling the vacancy shall serve a full term. When a vacancy occurs or is anticipated, the OPC shall direct the OPC Chair to give formal written notice of such vacancy to the Tribal Chairperson and Tribal Secretary requesting that the OBC take appropriate action to fill the vacancy. The OPC Chair shall also provide the Tribal Chairperson a copy of qualifications for Commissioners, as set forth in these bylaws, to refer to in their consideration in selection and screening of appointments.
  - d. *Resignation.* Resignation shall be submitted, in writing within five (5) working days of initial verbalization of intent to resign to an officer of the OPC. The resignation shall be acted on by the OPC at the next duly called meeting and accepted upon succession of pending OPC assignments to other Commissioners. Upon acceptance of the resignation, the OPC shall commence the process set forth above in 1-4.c.
  - e. *Complaints Against Commissioners.* Complaints against a Commissioner shall be processed by the OPC in accordance with the Process for Complaints Regarding Commissioners SOP, originally approved by the OPC on January 27, 2003 and amended by the OPC on January 12, 2010.
  - f. *Termination of Appointment.* When a Commissioner has been found to have acted in violation of his or her responsibilities as a Commissioner for the OPC, the OPC may recommend to the OBC to terminate the Commissioner's appointment and request that the vacancy be timely filled as set forth in 1-4.c. above.

## Article II. Officers

- 2-1 *Officers.* The OPC shall have four officers - Chairperson, Vice-Chairperson, Secretary and Treasurer.
  - a. The officers shall serve terms of two (2) years and shall be elected by a majority vote at the bi-annual meeting in October. Terms of office start the first of November. In the event of a vacancy, the successor shall be appointed by the OPC for the duration of the unexpired term at the next regular meeting.
  - b. Formal communications with the attorney to the OPC shall be directed by the Officers, or as required by the circumstances.
  - c. In addition to the officer responsibilities found in these bylaws, specific internal administrative responsibilities of officers shall be indicated in the OPC SOP file. The OPC Manual shall also contain a section relating to responsibilities for OPC officers.
- 2-2 *Chair Duties.* The Chairperson shall call meetings and notify members with the assistance of the Administrator. When present, the Chairperson shall preside over all regular and

- special meetings.
- 2-3 *Vice-Chair Duties.* The Vice-Chairperson shall preside at all meetings in the absence of the Chairperson and appoint a Vice-Chairperson *Pro Tem* for that meeting. The Vice-Chairperson shall work with the Chairperson in all matters that concern the OPC.
  - 2-4 *Secretary Duties.* The Secretary shall keep accurate minutes of all meetings, both regular and special, assuring that minutes are reported in the proper format and presented for review and approval to the OPC at the next regular scheduled meeting. It is the responsibility of the Secretary to forward all approved minutes to the OBC.
  - 2-5 *Treasurer Duties.* The Treasurer shall report at each regular scheduled monthly meeting on the financial status of the OPC budget.
  - 2-6 *Standing and Special Committees.* Standing and special committees shall be created when deemed necessary by the OPC.
  - 2-7 *Employees of the Commission.* The Administrator of the OPC shall be supervised by the Chairperson of the OPC.

### **Article III. Meetings**

- 3-1 *Regular Meetings.* The OPC officers shall establish a schedule of regular meetings for the upcoming year beginning in November. Notice of meeting location, agenda and materials shall be forwarded by the Chairperson with the assistance of the Administrator. Robert's Rules of Order shall be used as a guideline for conducting meetings.
- 3-2 *Special Meetings.* Special meetings shall be called not less than three (3) days prior to the date of a special meeting.
- 3-3 *Emergency meetings.* Emergency meetings shall be scheduled as needed and provide details of the *emergency*.
- 3-4 *Legislative Sessions.* When considering revisions or suggestions to the OPC regarding the labor laws of the Tribe, a Legislative Session may be scheduled to devote a focused exclusive convened working meeting of the OPC to specifically address amendment or revision of existing or proposed labor laws of the Tribe. An internal OPC SOP may be drafted governing the procedures to be followed in implementing such Legislative Session.
- 3-5 *Quorum.* A quorum shall consist of a majority of the OPC members. In the absence of the Chairperson and the Vice-Chairperson, the members present at the meeting shall elect a Chairperson *Pro Tem* to preside over the meeting.
- 3-6 *Order of Business.* The meetings of the OPC shall follow the order of business as set out herein:
  - a. Call to order
  - b. Approval of agenda
  - c. Review/Approval of Minutes
  - d. Old Business
  - e. New Business
  - f. Correspondence
  - g. Standing or Special Committee Reports
  - h. Other
  - i. Adjourn
- 3-7 *Voting.* Voting shall be in accordance with Robert's Rules of Order.
- 3-8 *Open Meetings.* All meetings of the OPC shall be open except when it is determined that a

closed meeting is appropriate and permissible under Tribal law. A confidential record shall be maintained when the OPC has determined that a meeting be closed and shall be available only upon specific directive of the OPC and upon good cause shown.

- 3-9 *Standard Operating Procedures (SOPs)*. The OPC may adopt SOPs that facilitate their various *internal* responsibilities, such as administrative processes, uniform procedural guides, such as Initial Review and Employee Protection petitions, and addressing special circumstances such as Complaints against Commissioners.
- a. Each Commissioner is mandated the responsibility to be trained on each SOP at least once each year as directed and scheduled by the OPC.
  - b. The OPC Manual, which includes the Training Plan, shall list all SOPs to fulfill the mandatory requirement.

#### **Article IV. Reporting**

- 4-1 *Format*. Agenda items shall be in an identified format by the OPC or OBC.
- 4-2 *Minutes*. Minutes shall be typed and in a consistent format designed to record the topics, discussions and actions taken as well as a record of adoption.
- 4-3 *Attachments*. Any documentation relating to the agenda may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented and discussed.
- 4-4 *Reporting*. The Chairperson shall report to the OBC and/or OGTC subsequent to action of the OPC and consistent with the Comprehensive Policy Governing Boards, Committees and Commissions.

#### **Article V. Amendments**

- 5-1 *Amendments to Bylaws*. Amendments shall be made to these bylaws at a regular or special meeting of the OPC provided that written notice of the proposed amendments was made at a prior regular meeting. Amendments are effective upon adoption and approval of the OPC, Legislative Operating Committee and Oneida Business Committee.

#### **Article VI. Educational Requirements**

- 6-1 *Training*. All training shall be **mandatory**. Exceptions may be made for good cause shown regarding specific training events, however, alternative training shall be provided that insures that all commissioners are equally knowledgeable of their duties and responsibilities. Such alternative training shall occur within the time frames specified in the OPC Training Plan. Failure to attend without formal exception for good cause may result in suspension of all further assignments and may be reported to the OBC if so determined and deemed appropriate by the OPC.

#### **References**

**Oneida Constitution**

**Oneida Administrative Procedures Act**

**Comprehensive Policy Governing Boards, Committees and Commissions**

**Robert's Rules of Order (Parliamentary Procedure)**

## CERTIFICATION

These bylaws as amended and revised are hereby attested to as adopted by the Oneida Personnel Commission at a duly called meeting by the Chairperson's signature on the 23rd day of February, 2010.

Signed: \_\_\_\_\_  
Susan G. Daniels, Personnel Commission Chairperson

And approved by the Oneida Business Committee at a duly called meeting held on the 28th \_\_\_\_\_ day of April, 2010 by the Secretary of the Oneida Business Committee's signature.

\_\_\_\_\_  
Patricia Hoeft, Tribal Secretary

PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

A. Call to Order: Attendance (12:00p.m.) Gate Keeper assigned: Kevin Shilka

ATTENDANCE

Sue Daniels	Chairwoman
Yvonne Jourdan	Vice Chairwoman
Kevin Shilka	Treasurer
Rochelle A. Powless	Secretary
Julie Clark	Member
Pearl Webster	Member
Carol Smith	Member
Clifford Danforth	Member
Arlene Danforth	Member
Gary Smith	Member

EXCUSED

Dorothy A. Skenandore	Member
Eric Krawczyk	Member
Sandy Dennett	Member

AGENDA

B. Approval of Agenda (5 minutes)

ADD ONS: Under B. New Business, 1. d. Medical Leave, e. Notice of Appeal, and 2. Oneida Judiciary Rules of Civil Procedures (10 minutes)

**MOTION:** Rochelle A. Powless motioned to approve the agenda with additions: ADD ONS:  
Under B. New Business, 1. d. Medical Leave, e. Notice of Appeal, and  
2. Oneida Judiciary Rules of Civil Procedures (10 minutes).

**SECOND:** Gary Smith seconded the motion.

**MOTION CARRIED**

C. Review\Approval Minutes – November 14, 2014 OPC Regular Meeting Minutes  
by Rochelle A. Powless, Secretary, (10 minutes)

**MOTION:** Carol Smith motioned to approve the November 14, 2014 OPC Regular Meeting Minutes by Rochelle A. Powless; Secretary.

**SECOND:** Gary Smith seconded the motion.

**ABSTENTION:** Arlene Danforth abstains because she was absent this meeting.

**MOTION CARRIED**

PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

D. Tabled Business (2)

1. Proposed Amendments to the OPC Bylaws and Qualifications for Oneida Personnel Commissioners (Oneida Personnel Commission and Susan Daniels - 20 minutes)

**MOTION:** Julie Clark motioned to remove Proposed Amendments to the OPC Bylaws and Qualifications for Oneida Personnel Commissioners\Page 12 of this agenda (Oneida Personnel Commission and Susan Daniels - 20 minutes)

**SECOND:** Rochelle A. Powless seconded the motion.

**MOTION CARRIED**

DISCUSSION:

- Go forward with next steps for Qualifications of Commissioners
- Proposed to building up OPC Commissioner Criteria for applicants
- Research Probationary item
- Lack of Training Budget for Commissioners
- Amend Bylaws to reflect these criteria updates for Commissioners

**MOTION:** Julie Clark motioned to add seven (7) more minutes to the agenda for discussion.

**SECOND:** Gary Smith seconded the motion.

**MOTION CARRIED**

**MOTION:** Julie Clark motioned to approve the Proposed Amendments to the OPC Bylaws and Qualifications for Oneida Personnel Commissioners (Oneida Personnel Commission and Susan Daniels) and go forward with OPC Qualifications.

**SECOND:** Kevin Shilka seconded the motion.

**MOTION CARRIED**

**MOTION:** Julie Clark motioned to move the Proposed Amendments to the OPC Bylaws and Qualifications for Oneida Personnel Commissioners (Oneida Personnel Commission and Susan Daniels) to E. Old Business.

**SECOND:** Rochelle A. Powless seconded the motion.

**MOTION CARRIED**

1. Advocacy Issue-(Susan Daniels, Gina Buenrostro, and Bridget Cornelius – 10 minutes).  
11/14/14 Minutes: Motion by Sandy Dennett to have Sue Daniels work with Gina Buenrostro and Bridget Cornelius to determine number of supervisors not represented by advocate, and include numbers who have to be presented at the December meeting.  
(NO ACTION TAKEN)

PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

E. Old Business (4)

1. Annual Report-Retroactive Approval\Page 22 of December Agenda (Yvonne Jourdan – 10 minutes).

**MOTION:** Rochelle A. Powless motioned to retroactively approve the OPC Annual Report.

**SECOND:** Gary Smith seconded the motion.

**MOTION CARRIED**

2. Oneida Judiciary Rules of Civil Procedures – Training 12\8\14 Update (Entire Commission – 5 minutes) UPDATED DISCUSSION - OPC MEMBERS

**MOTION:** Carol Smith motioned to delete the Oneida Judiciary Rules of Civil Procedures from the OPC Regular Meeting Agenda 12\09\14.

**SECOND:** Julie Clark seconded the motion.

**MOTION CARRIED**

3. Financial Report – September, 2014\Page 19 & 20 (Gina Buenrostro – 5 minutes)

**MOTION:** Gary Smith motioned to approve the Financial Report of September, 2014.

**SECOND:** Carol Smith seconded the motion.

**MOTION CARRIED**

4. Activity Report and Training Log – October, 2014 (Gina Buenrostro and Bridget Cornelius – 10 minutes)

**MOTION:** Yvonne Jourdan motioned to approve the Activity Report and Training Log of October, 2014.

**SECOND:** Rochelle A. Powless seconded the motion.

**MOTION CARRIED**

F. New Business (4)

1. Scheduling Initial Reviews, Grievances, Reassignments, and Housekeeping – (Gina Buenrostro – 45 minutes)

**MOTION:** Julie Clark motioned to go into Executive Session at 1:00p.m.

**SECOND:** Gary Smith seconded the motion.

**MOTION CARRIED**

**MOTION:** Rochelle A. Powless motioned to come out of Executive Session at 1:05p.m.

**SECOND:** Gary Smith seconded the motion.

**MOTION CARRIED**



PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

- f. Update on Declaratory Ruling – Discussion  
Declaratory Hearing will be forwarded to the Judiciary January, 2015. The OPC will expect to hear a response in February, 2015.  
Gina Buenrostro will send PDF to OPC Commissioners:
- 1) Sue Daniels
  - 2) Pearl Webster
  - 3) Kevin Shilka
  - 4) Gary Smith
  - 5) Rochelle A. Powless
- g. Post Vacancy  
Sue Daniels has accepted the OPC Chairwoman's position until her term ends in April 1, 2015 upon which time it will be necessary for her to reapply as an OPC Commissioner to continue her term as Chairwoman. The request to repost this position is to decrease the down time of not having a Commissioner in that position.  
**MOTION:** Julie Clark motioned to request the OBC to repost Sue Daniels position.  
**SECOND:** Carol Smith seconded the motion.  
**MOTION CARRIED**
- h. Training Updates  
Sue Daniels and Julie Clark will facilitate working on the Training Matrix.  
**MOTION:** Clifford Danforth motioned to approve the Training Matrix for 12/16/14.  
**SECOND:** Gary Smith seconded the motion.  
**MOTION CARRIED**
- i. Medical Leave  
Sandy Dennett is requesting a Medical Leave for 8 weeks starting December 1, 2014.  
**MOTION:** Arlene Smith motioned to approve Sandy Dennett's Medical Leave for 8 weeks starting December 1, 2014.  
**SECOND:** Gary Smith seconded the motion.  
**MOTION CARRIED**
- j. Notice of Appeal  
Re: Gary Thompson vs Rose Melchert OPC Decision. The decision was to overturn his termination without Back Pay. There is a January 5<sup>th</sup> Deadline – (Sandy Dennett is out on Medical Leave). The OPC will meet before training to approve the final brief on December 16, 2014, 11:00a.m.-1:00p.m. Sue Daniels and Julie Clark are Facilitators for Team Building Training.

PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

2. Oneida Judiciary Rules of Civil Procedures, Yvonne Jourdan  
Yvonne Jourdan quoted this excerpt from the Oneida Judiciary Rules of Civil Procedures “153.4-6. *Application of this Law*. This Law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. This Law shall apply to proceedings conducted by the Tribe’s Personnel Commission, except where the Tribe’s personnel policies and procedures are more specific, then those shall supersede. This Law shall not apply the Mediation or Peacekeeping divisions of the Trial Court. (*emphasis added*)”

Set Up AD HOC COMMITTEE. Educate the Employee Base by notifying the Kaliwisaks of changes that the OPC is proposing to the Blue Book. The OPC proposes to keep the system more Employee User Friendly.

The Oneida Judiciary Rules of Civil Procedures is too stringent and not user friendly for employees. It creates greater obstacles and additional paper work for Petitioner’s to make an Appeal. Using the amendments to the Blue Book would benefit advocates. Advocates have 15 years of experience and knowledge of the Blue Book. The OPC can opt out of the Oneida Judiciary Rules of Civil Procedures because the Blue Book is more specific to employees and supervisors.

The Administrative Procedures Act is more specific than the Blue Book. (APA)  
The majority of commissioners agree to opt out of the Oneida Judiciary Rules of Civil Procedures. This commission is more sensitive to employee issues and need to align ourselves in a unique format.

There is 3 weeks before the Oneida Judiciary Rules of Civil Procedures goes into effect. There is an agreement to stay the status quo and amend the Blue Book. Ad Hoc Committee: Arlene Danforth, Gary Smith, Pearl Webster, Clifford Danforth, Rochelle A. Powless. Update by December 16, 2014.

3. Financial Report and Training Log, November, 2014 (Gina Buenrostro and Bridget Cornelius – 10 minutes)

**MOTION:** Gary Smith motioned to approve the November, 2014 Financial Report.

**SECOND:** Carol Smith seconded the motion.

**MOTION CARRIED**

**MOTION:** Arlene Danforth motioned to approve the November Activity Report.

**SECOND:** Julie Clark seconded the motion.

**MOTION CARRIED**

G. Correspondence: Primarily distributed into PC Members mailboxes.

PERSONNEL COMMISSION REGULAR MEETING  
DECEMBER 9, 2014 – Noon  
East Wing Conference Room

H. Standing and Special Committee Reports:

1. FY Budget Planning – Chairperson, Treasurer, Administrator
2. Quarterly Reports due to the OBC – Due 2<sup>nd</sup> Wednesday of the Month in January, April, July, and October.
3. Semi-Annual and Annual Reports due to G.T.C. – Due October and April.

I. Other:

1. Next OPC REGULAR MEETING – JANUARY 13, 2014
2. POT LUCK – PERSON IN CHARGE: JULIE CLARK


Adjourn Time: 2:40p.m.

**MOTION:** Carol Smith motioned to adjourn at 2:40p.m.

**SECOND:** Kevin Shilka seconded the motion.

**MOTION CARRIED**

Respectfully Submitted by:



Rochelle A. Powless, OPC Secretary

Approved/Revised: JANUARY 13, 2015 OPC REGULAR MEETING

Submitted by: Sue Daniels, OPC Chairwoman

Rpowless\OPC Minutes\120914 Regular OPC Meeting Minutes  
OPC:rap



# LOC UPDATE

## Legislative Items the LOC is Currently Processing

This information is being provided as part of the Legislative Operating Committee's commitment to share as much information as possible with the Oneida Tribal membership about proposals that are being processed that could create or change Tribal laws and policies.

For this issue, the LOC is providing a list of

the legislative items that each LOC member is currently sponsoring.

These items are being processed for consideration by the OBC; but these are only legislative *proposals*—meaning these proposals are subject to change, depending on the public comments submitted by the membership and the

policy directions chosen by the LOC, Oneida Business Committee and/or General Tribal Council.

The membership is encouraged to contact any member of the LOC with any questions or to discuss any of the items that LOC member is currently sponsoring.

### Items Sponsored by Brandon Stevens, LOC Chair

**Budget Management and Control Law.** This is a GTC directive to develop a law to provide a consistent manner to govern the Tribal budget process, establish a procedural framework, and oversee Tribal expenditures.

**Employment Law.** This is a request to develop an employment law to replace the current Personnel Policies and Procedures.

**Sanctions and Penalties Law.** This is a proposal for a consistent process

that would provide for OBC members and other elected and appointed officials to face varying sanctions for misconduct. Currently, the only penalty that officials are subject to for misconduct is termination of appointment (appointed officials) or removal from office (elected officials).

**Family Court Amendments: Bench Warrants.** Amendments to the are being sought that would expressly grant the Family Court the authority to issue bench warrants.

**Membership Ordinance.** Amendments have been requested to the Membership Ordinance that would include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for membership. (However, this item has been put on hold while the Sustain Oneida initiative gathers information.)

#### Completed Items

So far this term, Councilman Ste-

#### Contact Councilman Stevens:

(920) 869-4378

BStevens@oneidanation.org

Legislative Assistant: RC Metoxen

(920) 869-4469

RMetoxe2@oneidanation.org

Stevens has sponsored three items which the LOC has completed processing, resulting in the adoption of emergency amendments for the Judiciary Law/Transition Plan, and for the Oneida Nation Gaming Ordinance.

### Items Sponsored by Tehassi Hill, LOC Vice-Chair

**Agriculture Law.** This is a proposal for the Tribe to consider enacting legislation that would enable the Tribe to identify agricultural products that can be grown on the Reservation.

**Code of Ethics Law Amendments.** This proposal seeks to amend the current Code of Ethics to strengthen accountability of employees, elected officials and appointed officials. Among other things, a new enforcement process would be added and would include a panel to hear ethical complaints and recommend penalties.

**Election Law Amendments.** Amendments are being processed that would prohibit persons from running for more than one seat in each election or from serving on multiple Tribal boards, committees and commissions at one time. Additional amendments add enforcement provisions; streamline the role of the Election Board, require a Milwaukee polling site, address election observers, and clarify the referendum process. Additional

changes have also been considered but rejected based on public meeting feedback and on GTC action.

**Environmental, Health and Safety Law.** This is a proposal for a new Law that will enable the Environmental, Health and Safety Department (to protect land, water, air people and safety on the Reservation; promote public health and safety, and do business on the Reservation.

**Hunting, Fishing and Trapping Law Amendments.** Updates have been requested that would streamline the Law and carve out various policy-making and management decisions, so the Law would no longer need amending on a yearly or bi-yearly basis.

**Law Enforcement Ordinance Amendments – Conservation Officers.** Proposed amendments would clarify that Conservation wardens are not sworn police officers, so there is no conflict when it comes to the issuance of fines.

**Leasing Law.** This new Law would

govern the leasing of Tribal trust land, as well as Tribal land held in fee status. If this Law is approved by the Secretary of the Department of the Interior, the Tribe would be able to approve surface leases of Tribal trust land without each individual lease needing to be approved by the Secretary of the Interior.

**Real Property Law Amendments.** Changes are being proposed in order to sure that the provisions of that Law are consistent with the proposed Leasing Law.

**Motor Vehicle Law Amendments.** Amendments have been proposed by the Licensing Department that would remove the registration prices from the Law so they could be changed without amending the Law. Additional amendments would generally update the Law, which has not been updated since 1999.

**Rulemaking Law.** This proposal seeks a consistent process for the adoption of administrative rules by

#### Contact Councilman Hill:

(920) 869-4420

RHill7@oneidanation.org

Legislative Assistant: Danelle Wilson

(920) 869-4389

DWilson1@oneidanation.org

Tribal agencies that have been granted rulemaking authority under other Tribal laws.

**Workplace Violence Policy.** This is a proposal for a Policy to guide Tribal employees in maintaining an environment at and within the Tribe's property and events that is free of violence and the threat of violence.

#### Completed Items

So far this term, Councilman Hill has sponsored two items which the LOC has completed processing, resulting in the adoption of emergency amendments to the Personnel Policies and Procedures regarding Job Duties and Work Assignments; and in the permanent adoption of amendments to the Public Use of Tribal Land law.

### Items Sponsored by Jennifer Webster, LOC Member

**Audit Law Amendments.** The Audit Committee has requested that various provisions be added to the Audit Law; including standards for correcting high-risk findings, a process for achieving results so that past audits can be resolved and closed; and clarification of various audit-related roles and responsibilities.

**Capping Damages and Awards from the Judicial System.** The OBC has directed the LOC to develop legislation that sets a limit on the damages and awards that can be ordered by the Judicial system.

**Comprehensive Policy Governing Boards, Committees and Commissions Amendments.** Requested changes would prohibit individuals from serving on multiple Tribal boards, committees and commissions at one time or from simultaneously serving and being a Tribal employee. The OBC has also requested that the LOC look into additional changes so

that stipend payments could be withheld from any board, committee or commission that does not submit their required reports in a timely manner.

**Employee Advocacy Law.** This is a proposal for a new Law to formally codify requirements for Tribal employees who wish to serve as an advocate for other Tribal employees who are challenging disciplinary action.

**Vehicle Driver Certification and Fleet Management Policies.** This is a proposal for a new law to update and replace the current Vehicle Driver Certification and Fleet Management Policies with a single law governing Tribal employees, volunteers and officials and the use of Tribal vehicles and personal vehicles being driven on Tribal business.

**Tribally-Owned Business Organization Code.** The Tribe owns several business entities, and this proposal seeks a Tribal corporations code to govern such entities.

**Rules of Appellate Procedure Amendments.** Proposed changes would enable the Judiciary and Family Court to make efficiencies in the appellate process.

**Investigative Leave Policy Amendments.** Requested changes would delete a section that prohibits the use of investigative leave when a complaint is filed. Originally, the intent of that language was to prohibit the use of investigative leave when one employee files a complaint against another, but a decision by the Oneida Appeals Commission interpreted that provision to prohibit investigative leave whenever the term "complaint" is used in an investigation; which would prohibit supervisors from being able to protect the Tribe by placing an employee on investigative leave whenever an allegation arose out of a disciplinary or complaint process.

Additional proposed amendments would reduce the investigation period

#### Contact Councilwoman Webster:

(920) 869-4457

JWebste1@oneidanation.org

Legislative Assistant: none

from 30 to 15 days.

**Fitness For Duty Policy.** Employees who are not fit for duty may present a health and/or safety hazard to themselves, to other employees, to the Tribe and to the general public. Since no policy exists currently, supervisors either do nothing and let the issues continue; force an employee on a leave of absence, adversely modify job duties, and/or terminate the employee. This is a proposal for a new policy to present additional options that the supervisor may exercise.

**Whistleblower Law.** This request seeks to replace the Employee Protection Law with a new Whistleblower Law with a more comprehensive avenue for complaints to be processed in a confidential manner.

### Items Sponsored by Fawn Billie, LOC Member

**Children's Code.** This is a proposal for a new Law to enable the Tribe to exercise jurisdiction in child welfare matters involving Tribal children. The Code would establish a Child Welfare Office and enable the Oneida Child Protective Board to address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.

**Furlough Policy.** In 2013, the OBC adopted a Furlough Policy on an emergency basis as a cost-containment measure. After it expired, the OBC directed the LOC to continue developing a permanent policy that allowed for furloughs.

**GTC Meetings Law.** This is a proposed new law to govern scheduling/conducting GTC meetings. Provisions

include a standard agenda format, a code of conduct for attendees; outlining duties for those preparing and assisting with GTC meetings, and establishing how petitions would be processed.

**Guardianship Law.** This new law was requested since the Child Custody, Placement and Visitation Law permits a third party to petition for custody of a child, but does not address third-party guardianships.

**Higher Education.** The OBC directed the LOC to look at codifying the rules created by the Higher Education Office, which govern how the Office disburses higher education funding under GTC directives.

**Marriage Law Amendments.** Amendments were proposed to ensure consistency between what the state

and Tribe recognize as legal marriage after the U.S. Supreme Court declined to overturn a lower court's finding that Wisconsin's same-sex marriage ban is unconstitutional.

**Pow-wow Committee Bylaws.** The requested changes would add qualification requirements for serving on the committee. Specifically, Oneida and Indian preference, are added, and members must have experience coordinating events.

Additional changes require Committee members to follow the Tribe's Code of Ethics and add that a certain number of unexcused absences may be grounds for removal.

**Removal Law Amendments.** Proposed amendments would make the OBC, instead of the GTC, responsible for the final vote as to whether an

elected official should be removed from office (removal of OBC members would still require a GTC vote). Additional changes add a new method for beginning the removal process—the board, committee, or commission would be able to request the removal of one of its elected officials, instead of going through the petition process.

**Audit Committee Bylaws.** The OBC deferred the Audit Committee Charter to the LOC for review of authority, because the Audit Committee is a standing committee of the OBC; operating under a charter instead of the normally-required bylaws.

#### Contact Councilwoman Billie:

(920) 869-4432

FBillie@oneidanation.org

Legislative Assistant: Fawn Cottrell

(920) 869-4428

FCottrel@oneidanation.org

# March 2015

March 2015						
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				

April 2015						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 1 - 7	Mar 1	2	3	4 9:00am 2:00pm LOC Meeting (BCCR)	5	6	7
	8	9	10	11 BC Meeting (BCCR)	12	13	14
Mar 8 - 14							
	15	16	17	18 9:00am 2:00pm LOC Meeting (BCCR)	19	20	21
Mar 15 - 21							
	22	23	24	25 BC Meeting (BCCR)	26	27	28
Mar 22 - 28							10:00am GTC Meeting (Radisson)
	29	30	31	Apr 1	2	3	4
Mar 29 - Apr 4							



# April 2015

April 2015						
Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4
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19	20	21	22	23	24	25
26	27	28	29	30		

May 2015						
Su	Mo	Tu	We	Th	Fr	Sa
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 29 - Apr 4	Mar 29	30	31	Apr 1	2	3	4
				9:00am 2:00pm LOC Meeting (BCCR)	12:15pm Public Meeting-Leasing Law, Real Property Law Amendments & Marriage Law Amendments (BC_C	12:00pm 4:30pm Good Friday-Offices Close	
Apr 5 - 11	5	6	7	8	9	10	11
				BC Meeting (BCCR)			7:00am 7:00pm Election
Apr 12 - 18	12	13	14	15	16	17	18
				9:00am 2:00pm LOC Meeting (BCCR)			
Apr 19 - 25	19	20	21	22	23	24	25
				BC Meeting (BCCR)			
Apr 26 - May 2	26	27	28	29	30	May 1	2